

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Edsel Matthews :  
d/b/a Matthews Edsel Service Ctr. : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of :  
Sales & Use Tax :  
under Article 28 & 29 of the Tax Law :  
for the Period 9/1/71-5/31/75. :

State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 22nd day of February, 1980, he served the within notice of Determination by mail upon Edsel Matthews, d/b/a Matthews Edsel Service Ctr., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Edsel Matthews  
d/b/a Matthews Edsel Service Ctr.  
235 St. Nicholas Ave.  
New York, NY 10027

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
22nd day of February, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

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Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 22nd day of February, 1980, he served the within notice of Determination by mail upon Ludwig Sheppard the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

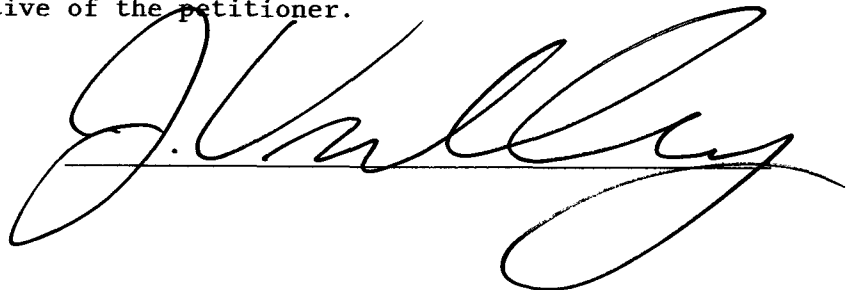
Mr. Ludwig Sheppard  
156 Fifth Ave.  
New York, NY

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Sworn to before me this  
22nd day of February, 1980.

Joanne Knapp



STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

February 22, 1980

Edsel Matthews  
d/b/a Matthews Edsel Service Ctr.  
235 St. Nicholas Ave.  
New York, NY 10027

Dear Mr. Matthews:

Please take notice of the Determination of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1138 & 1243 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Ludwig Sheppard  
156 Fifth Ave.  
New York, NY  
Taxing Bureau's Representative

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition  
of

Edsel Matthews

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
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Sales & Use Tax :  
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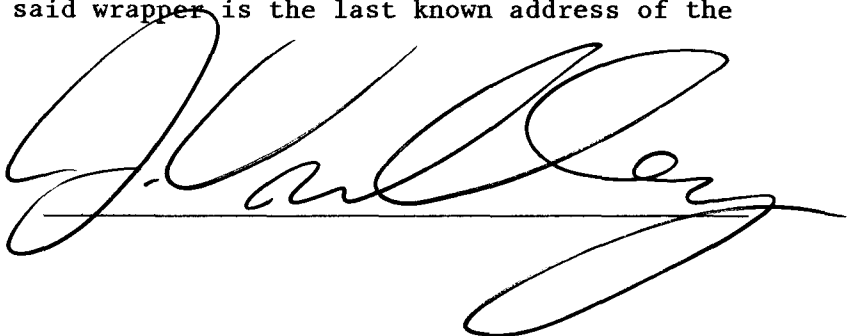
Edsel Matthews  
355 W. 124th St. & Morningside Ave.  
New York, NY

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STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition  
of

Edsel Matthews

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision  
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Joanne Knapp

[Signature]

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

February 22, 1980

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New York, NY

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NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Ludwig Sheppard  
156 Fifth Ave.  
New York, NY  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Applications	:	
	:	
of	:	
	:	
EDSEL MATTHEWS and	:	DETERMINATION
EDSEL MATTHEWS d/b/a	:	
MATTHEWS EDESEL SERVICE CENTER	:	
	:	
for Revision of a Determination or for	:	
Refund of Sales and Use Taxes under	:	
Articles 28 and 29 of the Tax Law for	:	
the Period September 1, 1971 through	:	
May 31, 1975.	:	

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Applicants, Edsel Matthews, 355 West 124th Street and Morningside Avenue, New York, New York, and Edsel Matthews d/b/a Matthews Edsel Service Center, 235 St. Nicholas Avenue, New York, New York, filed applications for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period September 1, 1971 through May 31, 1975 (File Nos. 14132 and 15036).

A formal hearing was held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 22, 1978 at 2:45 P.M. Applicants appeared by Ludwig Sheppard. The Audit Division appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether the Audit Division properly determined additional sales taxes for gasoline sales.

FINDINGS OF FACT

1. Applicant, Edsel Matthews, operates under his name, a service station located at 355 West 124th Street and Morningside Avenue, New York, New York,

and a second service station at 235 St. Nicholas Avenue, New York, New York, operating under the name of Edsel Matthews d/b/a Matthews Edsel Service Center. At both locations, applicant sells gasoline, tires, batteries and miscellaneous automobile accessories and parts, in addition to servicing motor vehicles.

2. On November 19, 1975, Edsel Matthews consented to extend the period of limitation for assessment of sales and use taxes for the station operated under his name, under Articles 28 and 29 of the Tax Law for the taxable period September 1, 1972 through May 31, 1975 to March 20, 1976.

3. On November 21, 1974, Edsel Matthews d/b/a Matthews Edsel Service Center consented to extend the period of limitation for assessment of sales and use taxes under Articles 28 and 29 of the Tax Law for the taxable period September 1, 1971 through August 31, 1974 to December 20, 1975. On November 19, 1975, Edsel Matthews consented to the further extension of the period of limitation to March 20, 1976.

4. On March 17, 1976, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due to Edsel Matthews for the station operated under his name, for the taxable period December 1, 1972 through May 31, 1975. The tax due was \$7,701.25, plus penalty and interest of \$2,923.87, for a total of \$10,625.12.

5. On March 17, 1976, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due to Edsel Matthews d/b/a Matthews Edsel Service Center for the taxable period September 1, 1971 through May 31, 1975. The tax due was \$15,769.61, plus penalty and interest of \$6,362.96, for a total of \$22,132.57.

6. Applicants conceded that the portion of the deficiencies which represent taxes on taxable sales, purchases and services other than sales of gasoline is correct. Taxable sales, purchases and services other than sales of gasoline,



included in the deficiency in Finding of Fact "4" were \$10,861.00 and for the deficiency in Finding of Fact "5" were \$84,012.00.

7. The auditor for the Audit Division examined applicants' purchase invoices, cancelled checks, worksheets and daily sales reports. These records were not a complete record of applicants' business, as approximately 30 percent of the records were missing. Applicants do not contest the fact that their books and records were incomplete.

8. As a result of an examination of applicants' gasoline supplier's records, it was determined that applicants made the following gasoline purchases:

Gallons of Gasoline Purchased					
	<u>1971*</u>	<u>1972*</u>	<u>1973</u>	<u>1974</u>	<u>1975</u>
January	----	70,800	116,100	93,000	87,000
February	----	65,700	116,800	94,000	72,000
March	----	72,000	121,700	93,000	84,000
April	----	61,200	116,000	93,100	87,000
May	----	68,200	128,000	113,000	90,000
June	----	68,000	123,000	108,000	----
July	----	65,300	90,000	108,000	----
August	----	66,400	101,900	93,000	----
September	65,100	65,100	105,000	90,000	----
October	67,000	67,000	111,600	93,000	----
November	68,500	68,500	97,500	84,000	----
December	87,900	127,000	120,000	90,000	----
Total	<u>288,500</u>	<u>865,200</u>	<u>1,347,600</u>	<u>1,152,100</u>	<u>420,000</u>

\* Gasoline sold to station located at 124th Street and Morningside included beginning December 1, 1972.

9. Using February, 1973, as a test period and from an examination of purchase invoices and daily sales sheets, the composition of gasoline sales were determined to be:

59.78%	Super Shell
18.85%	Super Regular
21.37%	Regular
<u>100.00%</u>	Total

10. To obtain a selling price of gasoline for the audit period, the auditor averaged the pump prices (after extracting the taxes) for February, 1973 and January, 1975 and arrived at the following sales price of each gallon of gasoline sold:

Super Shell	44.9 cents
Regular	42.1 cents
Super Regular	44.4 cents

11. Applicants disputed the sales price, as determined by the auditor, of the gasoline sold, and produced documents at the hearing which showed the sales price of each gallon of gasoline was:

Super Shell	42.8 cents
Regular	40.3 cents
Super Regular	42.0 cents

12. Applicants contended that gasoline was lost through spillage and the percentage composition of gasoline sales as per Finding of Fact "9" was incorrect. Applicants did not produce any documentary evidence to support their contentions.

#### CONCLUSIONS OF LAW

A. That Edsel Matthews records for both of his service stations were incomplete and the Audit Division properly relied on the records of applicants' supplier.

B. That applicant failed to show by credible evidence that certain quantities of gasoline were put into inventory rather than sold, or that gasoline was lost through spillage and that the percentage composition of gasoline sales determined by the auditor as per Finding of Fact "9" was not accurate.

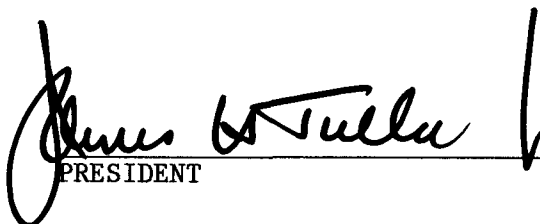
C. That the Audit Division improperly determined the average sales price of a gallon of gasoline and the average prices are reduced to those determined in Finding of Fact "11".


D. That the applications of Edsel Matthews and Edsel Matthews d/b/a Matthews Edsel Service Center is granted to the extent provided in Conclusion of Law "C"; that the Audit Division is hereby directed to modify accordingly the notices of determination and demand for payment of sales and use taxes due issued March 17, 1976; and that, except as so granted, the applications are in all other respects denied.

DATED: Albany, New York

FEB 22 1980

STATE TAX COMMISSION

  
\_\_\_\_\_  
PRESIDENT

  
\_\_\_\_\_  
COMMISSIONER

\_\_\_\_\_  
COMMISSIONER