

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Shepard Oil Co. Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Sales & Use Tax :
under Article 28 of the Tax Law
for the Period 3/1/70 - 2/28/73. :

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 Shepard Oil Co. Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

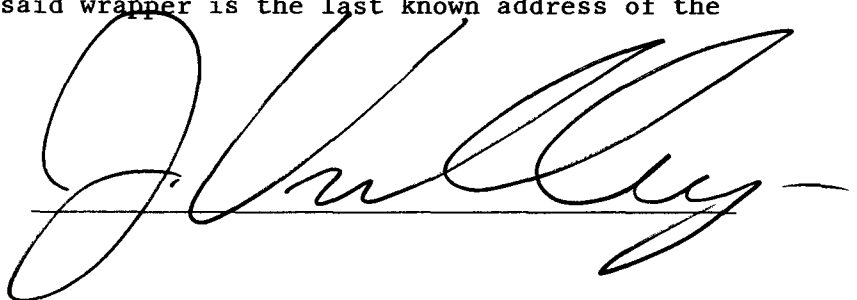
Shepard Oil Co. Inc.
114 Water St.
Johnstown, NY 12095

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 Krapp



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Shepard Oil Co. Inc. :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Sales & Use Tax :
under Article 28 of the Tax Law :
for the Period 3/1/70 - 2/28/73. :

AFFIDAVIT OF MAILING

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 Terrence M. Walsh the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

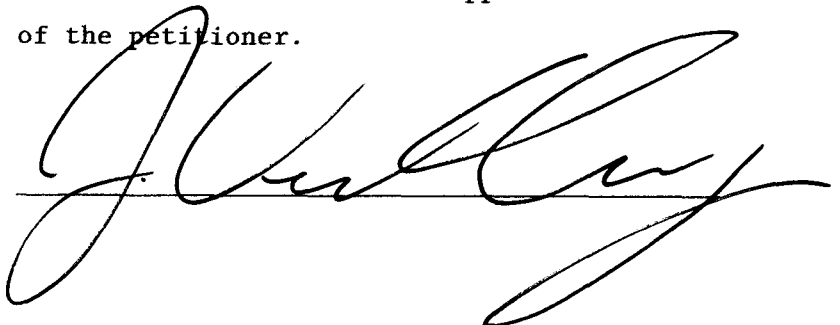
Mr. Terrence M. Walsh
Russo, Walsh & Walsh
132 W. Main St.
Johnstown, NY 12095

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 representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

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

Shepard Oil Co. Inc.
114 Water St.
Johnstown, NY 12095

Gentlemen:

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
Terrence M. Walsh
Russo, Walsh & Walsh
132 W. Main St.
Johnstown, NY 12095
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
SHEPARD OIL CO., INC.	:	DETERMINATION
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 March 1, 1970 through February 28,	:	
1973.	:	

Applicant, Shepard Oil Co., Inc, 114 Water Street, Johnstown, New York 12095, filed an application 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 March 1, 1970 through February 28, 1973 (File No. 01514).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on June 3, 1976 at 9:15 A.M. Applicant appeared by Russo, Walsh & Walsh (Terrence M. Walsh and Rudolph A. Russo, Esqs., of counsel). The Sales Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether the determination of additional sales taxes due for the period March 1, 1970 through February 28, 1973, based on an audit of applicant's records by the Sales Tax Bureau, was correct.

FINDINGS OF FACT

1. On October 20, 1973, pursuant to a field audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant, Shepard Oil Co., Inc., for the period March 1, 1970 through February 28, 1973, in the amount of \$26,318.92, plus penalty and interest of \$6,796.82, for a total of \$33,115.74. On August 9, 1974, pursuant

to a Notice of Assessment Review from the Field Coordination Unit, the adjusted tax due, revised to reflect adjustments made at a conference held at the Albany District Office, was found to be \$11,000.84, plus penalty and interest of \$4,687.61, for a total of \$15,688.45.

2. During the period at issue, applicant bought gasoline from Mobil Oil Co. (Mobil) and delivered the gas to various individual gasoline stations, for which applicant received a commission. Applicant used Robin Oil Co., Inc., a corporation formed for the sole purpose of writing checks and holding some money during a legal difficulty with its supplier, Mobil. When the relationship with Mobil was severed, Robin Oil Co., Inc. was dissolved.

3. During the period at issue, applicant owned approximately ten gasoline stations and hired operators who received a commission of \$.04 per gallon of gas sold. Actually, the operator received \$.02 1/2, since \$.01 1/2 was withheld and paid to the State Tax Commission, in partial payment of the operator's taxes. Applicant named the operator and the State Tax Commission as payees on checks for these payments.

4. The audit performed on applicant for the period in issue was based on the books and records which were made available at applicant's place of business. For every taxable period, credit was given for the tax paid on total taxable gallons received. A tax credit was allowed on all purchase invoices produced. Five particular credits on checks written in August and December, 1970 were disallowed by the auditor because no purchase invoices for Mobil gasoline were produced; the amount of tax thereon would have represented more than the amount of gasoline purchased by applicant.

5. Applicant, Shepard Oil Co., Inc., offered no documentary or other substantial evidence to show that the recomputed additional taxes due did not reflect applicant's additional sales tax liability.

CONCLUSIONS OF LAW

A. That section 1138(a) of the Tax Law provides that if a return is incorrect or insufficient when filed, the amount of tax shall be determined by the State Tax Commission from such information as may be available; therefore, the Sales Tax Bureau's determination of additional taxes due is in accordance with the meaning and intent of said section.

B. That the application of Shepard Oil Co., Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued October 23, 1973 and revised August 9, 1974 is sustained as revised.

DATED: Albany, New York

FEB 22 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER