

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of  
Flash Fuel Corp.

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: 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 2/28/75 & 2/28/77.

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 2nd day of October, 1981, he served the within notice of Decision by certified mail upon Flash Fuel Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Flash Fuel Corp.  
c/o Gennaro Izzo  
129-01 Metropolitan Ave.  
Kew Gardens, NY 11415

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  
2nd day of October, 1981.

*Connie A. Haglund*

*J. Vredenburg*

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

October 2, 1981

Flash Fuel Corp.  
c/o Gennaro Izzo  
129-01 Metropolitan Ave.  
Kew Gardens, NY 11415

Gentlemen:

Please take notice of the Decision 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  
*Kathy Pfaffenbach*

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
FLASH FUEL CORP. DECISION  
for Revision of a Determination or for Refund  
of Sales and Use Taxes under Articles 28 and  
29 of the Tax Law for the Periods February 28,  
1975 and February 28, 1977.

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Petitioner, Flash Fuel Corp., 129-01 Metropolitan Ave., Kew Gardens, New York 11415, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the periods February 28, 1975 and February 28, 1977 (File No. 22231).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 23, 1981 at 1:15 P.M. Petitioner appeared by Gennaro Izzo, Secretary. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether the Audit Division properly disallowed sales tax credits claimed by petitioner for bad debts and uncollected sales taxes.

FINDINGS OF FACT

1. Petitioner, Flash Fuel Corp., was a fuel oil dealer located at 129-01 Metropolitan Avenue, Kew Gardens, New York.
2. Petitioner claimed sales tax credits of \$1,600.00 and \$8,000.00 on its sales tax returns filed for the periods ending February 28, 1975 and February 28, 1977, respectively. Said taxes represented bad debts and sales

taxes billed by petitioner but not collected as of the date the sales tax returns were filed.

3. On March 20, 1978, the Audit Division denied petitioner's credit claims and issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due in the amount of \$9,600.00, plus penalty and interest of \$3,024.00, for a total of \$12,624.00.

4. Petitioner estimated the amount of credits claimed on its sales tax returns. Petitioner submitted accounts receivables showing individual accounts deemed uncollectible either in whole or in part. Such documentation substantiated bad debt credits of \$1,157.11 for the period December 1, 1971 through February 28, 1975 (\$582.80 - totally uncollectible and \$574.31 - unpaid balance of the sales price proportionately bears to the total sales price). The accounts receivables submitted by petitioner included sales dating back to 1969, 1970 and 1971; however, since petitioner's credit claim was filed March 20, 1975, only sales made on or after December 1, 1971 were considered.

Petitioner adduced no further evidence to support the remaining balance of its claim for sales tax credits.

5. Petitioner acted in good faith at all times.

#### CONCLUSIONS OF LAW

A. That section 1101(b)(3) of the Tax Law defines the term "receipt" as "(t)he amount of the sale price of any property...taxable under this article, valued in money, whether received in money or otherwise, including any amount for which credit is allowed by the vendor to the purchaser..." That section 1137(a) of the Tax Law provides that every person required to file a return shall at the time of filing such return, pay to the tax commission the applicable New York State and local tax on the total of all receipts. Accordingly,

petitioner was required to pay the sales tax at issue at the time the returns were filed regardless of whether the customer had made any payments towards the sales price and is not entitled to a credit until such time as an account is determined worthless.

B. That 20 NYCRR 525.5(c) allows for a credit or refund of sales tax paid on a receipt that has been ascertained to be uncollectible either in whole or in part. That in accordance with Finding of Fact "4", petitioner is entitled to bad debt credits of \$1,157.11. Petitioner has not shown that the remaining sales tax credits claimed as bad debts were uncollectible.

C. That the penalty is abated and interest shall be computed at the minimum statutory rate.

D. That the petition of Flash Fuel Corp. is granted to the extent indicated in Conclusions of Law "B" and "C"; that the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued March 20, 1978; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

OCT 02 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER