

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of Sundstrand Corporation	: : : : : : :	: : : : : : :
for Redetermination of a Deficiency or Revision of a Determination or Refund of Sales & Use Tax under Article 28 & 29 of the Tax Law for the Period 5/31/80.		AFFIDAVIT OF MAILING

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 9th day of November, 1984, he served the within notice of Decision by certified mail upon Sundstrand Corporation, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sundstrand Corporation
4751 Harrison Ave., P.O. Box 7003
Rockford, IL 61125

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
9th day of November, 1984.

David Parchuck

James A. DeAngelis
Authorized to administer oaths
pursuant to Tax Law section 174

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

November 9, 1984

Sundstrand Corporation
4751 Harrison Ave., P.O. Box 7003
Rockford, IL 61125

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 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law 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
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
SUNDSTRAND 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 Period June 1, 1977	:	
through May 31, 1980.	:	

Petitioner, Sundstrand Corp., 4751 Harrison Avenue, P.O. Box 7003, Rockford, Illinois 61125, 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 period June 1, 1977 through May 31, 1980 (File No. 47128).

On May 18, 1984, petitioner's Tax Director advised the State Tax Commission, in writing, that petitioner desired to waive a formal hearing and to submit the case to the State Tax Commission based upon the entire record contained in the file. After due consideration of said record, the State Tax Commission renders the following decision.

ISSUE

Whether petitioner timely applied for a hearing.

FINDINGS OF FACT

1. On March 20, 1981, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner, Sundstrand Corp., covering the period June 1, 1977 through May 31, 1980. The Notice was issued as a result of an audit and asserted additional sales and use tax due of \$40,550.57, plus interest of \$9,063.48, for a total of \$49,614.05.

2. Petitioner's Tax Director executed a consent extending the period of limitation for the issuance of an assessment for the period June 1, 1977 through May 31, 1980 to March 20, 1981. Petitioner's Tax Director had also executed several earlier consents extending the period of limitation.

3. Petitioner acknowledged receipt of the "thirty day" letter dated January 22, 1981, which was enclosed with a "Statement of Proposed Audit Adjustments" and audit schedules showing the additional tax and interest due by quarter. Petitioner, however, did not then disagree in writing as to the auditor's finding as was requested by the January 22, 1981 letter.

4. A payment document was issued by the Tax Compliance Bureau on July 1, 1983 stating that petitioner failed to reply to a prior notice requesting payment of the balance due on the following tax liability:

Tax Assessed	\$40,550.57	Amount Due	\$62,067.65
Penalty	162.35	Total Amt. Paid &/or Credit	.00
Interest	21,354.73	Balance Due	62,067.65

5. Petitioner filed a petition, dated July 12, 1983, protesting the assessment. Petitioner contended that a Notice of Determination was not issued within the statutory period allowed for making assessments, that no notice was ever received and that the statute tolled on March 21, 1981. Petitioner also contended since no notice was ever issued, no tax, penalty or interest could be assessed.

6. On March 21, 1984 petitioner submitted an application for "Withdrawal of Petition and Discontinuance of Case" on which petitioner noted a change in interest owed, reducing \$23,933.26 (interest computed to March 31, 1984) to \$9,055.39 (interest computed through March 20, 1981). This reduction of interest was based upon the fact that petitioner never received the original notice or evidence confirming its mailing and no follow-up notice was sent until July 1,

1983. Petitioner issued a check dated March 23, 1984 in the amount of \$49,605.96 representing payment of tax assessed of \$40,550.57 and interest of \$9,055.39.

7. The Audit Division submitted the original U.S. Postal Service Certificate of Mailing issued upon the mailing of petitioner's notice on March 20, 1981. Said certificate shows that on said date the notice was mailed to petitioner's address pursuant to section 1147(a)(1) of the Tax Law.

CONCLUSIONS OF LAW

A. That section 1138(a)(1) of the Tax Law provides, in part, that a Notice of Determination "shall finally and irrevocably fix the tax unless the person against whom it is assessed, within ninety days after giving of notice of such determination, shall apply to the tax commission for a hearing...".

B. That any notice authorized or required may be given by mailing the same to the person for whom it is intended in a post paid envelope addressed to such person. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom it was addressed. Any period of time which is determined by the giving of notice shall commence to run from the date of the mailing of such notice. Tax Law section 1147(a)(1).

C. That since the notice was mailed to petitioner in accordance with section 1147(a)(1) of the Tax Law, it is presumptive evidence of the receipt of the notice and the ninety day period commenced to run from March 20, 1981, the date of the mailing of the Notice. Since petitioner did not apply for a hearing until approximately two years and four months after this date, it is time barred from petitioning for revision of the assessment.

D. That there is no provision in the Tax Law for the reduction of minimum interest. Therefore, petitioner may not arbitrarily reduce the amount of outstanding interest based upon the allegation that it never received the Notice of Determination.

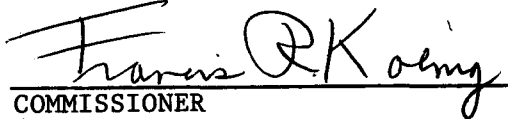
E. That the petition of Sundstrand Corp. is denied and the balance due on petitioner's tax liability is sustained.

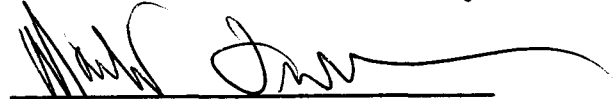
Dated: Albany, New York

STATE TAX COMMISSION

NOV 09 1984


PRESIDENT


COMMISSIONER


COMMISSIONER

P 693 168 925

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1983-403-517 PS Form 3800, Feb. 1982	Sent to	Sundstrand Corporation
	Street and No.	4715 L Hard Rock Ave.
	P.O., State and ZIP Code	P.O. Box 7003 Rockford, IL 61125
	Postage	
	Certified Fee	
	Special Delivery Fee	
	Restricted Delivery Fee	
	Return Receipt Showing to whom and Date Delivered	
	Return receipt showing to whom, Date, and Address of Delivery	
	TOTAL Postage and Fees	\$
Postmark or Date		