

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
B & C Getty Service Station :
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 9/1/79 - 8/31/82. :
:

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 7th day of November, 1985, he served the within notice of Decision by certified mail upon B & C Getty Service Station, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

B & C Getty Service Station
1255 Hempstead Tpke.
Elmont, NY 11003

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
7th day of November, 1985.

David Parchuck

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

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
B & C Getty Service Station :
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 9/1/79 - 8/31/82. :
:

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 7th day of November, 1985, he served the within notice of Decision by certified mail upon John B. Amrod, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John B. Amrod
Bloom & Amron
1050 Franklin Ave.
Garden City, NY 11530

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 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
7th day of November, 1985.

David Parchuck

Anna D. Hagelud

Authorized to administer oaths
pursuant to Tax Law section 174

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

November 7, 1985

B & C Getty Service Station
1255 Hempstead Tpke.
Elmont, NY 11003

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: Petitioner's Representative
John B. Amrod
Bloom & Amron
1050 Franklin Ave.
Garden City, NY 11530
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
B & C Getty Service Station
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, 1979
through August 31, 1982.

DECISION

Petitioner, B & C Getty Service Station, 1255 Hempstead Turnpike, Elmont, New York 11003, 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 September 1, 1979 through August 31, 1982 (File No. 56329).

A hearing was held before Frank A. Landers, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 5, 1985 at 1:15 P.M. Petitioner appeared by John B. Amrod, Esq. The Audit Division appeared by John P. Dugan, Esq. (Mark F. Volk, Esq., of counsel).

ISSUE

Whether B & C Getty Service Station filed a timely petition for a hearing pursuant to section 1138(a)(1) of the Tax Law.

FINDINGS OF FACT

1. On June 27, 1983, the Audit Division, as the result of an audit, issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due

against the petitioner, B & C Getty Service Station ("B & C")¹ for taxes due of \$65,998.00, plus penalty of \$15,013.56 and interest of \$18,073.14, for a total due of \$99,084.70 for the period September 1, 1979 through August 31, 1982. On the same date, the Audit Division issued similar notices against Peter Corsentino and Angelo Bacalocostantis, as officers of B & C. All of the notices were mailed by certified mail on June 27, 1983.

2. On October 30, 1982, Peter Corsentino, vice-president and secretary of B & C, executed a consent extending the statute of limitations for issuing an assessment for sales and use taxes against B & C for the period September 1, 1979 through August 31, 1980 to September 20, 1983.

3. At the hearing, Angelo Bacalocostantis testified that upon receipt in late June or early July of 1983 of the notice issued to B & C he immediately turned it over to petitioner's accountant, Elias Loukas, with instructions to the effect that he (Angelo Bacalocostantis) and Mr. Corsentino intended to protest it.

On September 30, 1983, the Tax Appeals Bureau received a petition for a hearing on behalf of B & C. The petition was dated September 27, 1983 and was signed by Angelo Bacalocostantis. The date of the United States postmark stamped on the envelope was September 27, 1983 and the petition was mailed by certified mail.

1 The petitioner's real name is Bacor Automotive Services, Inc. d/b/a B & C Getty Service Station. The Certificate of Registration filed on behalf of petitioner with the Audit Division specified petitioner's business name as B & C Getty Service Station and was signed by Peter Corsentino as owner. The sales and use tax returns filed on behalf of petitioner for the period at issue indicated petitioner's name as B & C Getty Service Station and were signed by Peter Corsentino with titles varying from president to vice president and secretary.

4. By letter dated October 7, 1983, the Tax Appeals Bureau advised petitioner that it had no petition rights in this matter because its petition of September 27, 1983 was mailed 92 days after the date of the notice of determination (June 27, 1983) and, therefore, was not timely.

5. Petitioner contends the phrase "within ninety days after giving of notice of such determination" as used in section 1138(a)(1) of the Tax Law means that a taxpayer has ninety days after receipt of a notice to file a petition for a hearing.

Petitioner further claims that Rule 2103.(b)2 of the New York Civil Practice Law and Rules should apply to section 1138(a)(1) of the Tax Law. Rule 2103.(b)2 provides, in pertinent part, that "where a period of time prescribed by law is measured from the service of a paper and service is by mail, five days shall be added to the prescribed period."

CONCLUSIONS OF LAW

A. That section 1138(a)(1) of the Tax Law provides, in pertinent part, as follows:

"...Notice of such determination shall be given to the person liable for the collection or payment of the tax. Such 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 section 1147(a)(1) of the Tax Law provides as follows:

"§1147. Notices and limitations of time

(a)(1) Any notice authorized or required under the provisions of this article may be given by mailing the same to the person for whom it is intended in a postpaid envelope addressed to such person at the address given in the last return filed by him pursuant to the provisions of this article or in any application made by him or, if no return has been filed or application made, then to such address as may be obtainable. A notice of determination shall be mailed promptly by registered or certified mail. The

mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom addressed. Any period of time which is determined according to the provisions of this article by the giving of notice shall commence to run from the date of mailing of such notice" (emphasis added).

C. That, since September 25, 1983 was a Sunday, petitioner's time to file a petition for a hearing regarding the June 27, 1983 notice expired on September 26, 1983. Petitioner's petition was mailed on September 27, 1983 and was, therefore, not timely. As there are specific provisions in the Tax Law regarding the giving of notice, Rule 2103.(b)2 of the New York Civil Practice Law and Rules is not dispositive.

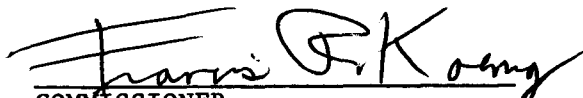
D. That the petition of B & C Getty Service Station is hereby denied.


DATED: Albany, New York

NOV 07 1985

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

P 153 387 632

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1984-446-014

PS Form 3800, Feb. 1982

Sent to <i>B & C Utility Service Station</i>	
Street and No. <i>125 S. Hempstead Turnpike</i>	
P.O., State and ZIP Code <i>Elmhurst NY 11003</i>	
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	

P 153 387 633

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1984-446-014

PS Form 3800, Feb. 1982

Sent to <i>John B. Amrod</i>	
Street and No. <i>Burm & Amrod</i>	
P.O., State and ZIP Code <i>1050 Franklin Ave</i>	
Postage <i>Elmhurst City NY 11530</i>	
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	