

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of  
Casco Service Station, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Sales & Use Tax  
under Article(s) 28 & 29 of the Tax Law :  
for the Period 9/1/82 - 6/30/84.

\_\_\_\_\_  
State of New York :

ss.:

County of Albany :


David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 23rd day of December, 1986, he/she served the within notice of Decision by certified mail upon Casco Service Station, Inc. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

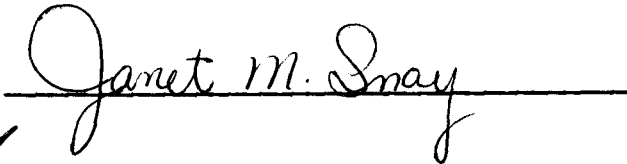
Casco Service Station, Inc.  
482 South Road  
Poughkeepsie, NY 12601

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  
23rd day of December, 1986.

  
\_\_\_\_\_  
Authorized to administer oaths  
pursuant to Tax Law section 174

  
\_\_\_\_\_

STATE OF NEW YORK

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In the Matter of the Petition :  
of  
Casco Service Station, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :  
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State of New York :

ss.:

County of Albany :


David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 23rd day of December, 1986, he served the within notice of Decision by certified mail upon Thomas E. Reilly, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

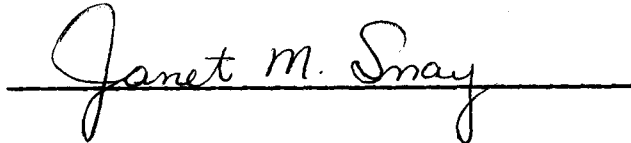
Thomas E. Reilly  
Ziff, Weiermiller, Learned & Hayden  
301 William St., PO Box 1078  
Elmira, NY 14902

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  
23rd day of December, 1986.

  
\_\_\_\_\_  
Authorized to administer oaths  
pursuant to Tax Law section 174

  
\_\_\_\_\_

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

December 23, 1986

Casco Service Station, Inc.  
482 South Road  
Poughkeepsie, NY 12601

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  
Audit Evaluation Bureau  
Assessment Review Unit  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:  
Thomas E. Reilly  
Ziff, Weiermiller, Learned & Hayden  
301 William St., PO Box 1078  
Elmira, NY 14902

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

CASCO SERVICE STATION, INC.

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 September 1, 1982 :  
through June 30, 1984. :

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Petitioner, Casco Service Station, Inc., 482 South Road, Poughkeepsie, New York 12601, 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, 1982 through June 30, 1984 (File No. 61579).

On June 9, 1986, petitioner, by its duly authorized representatives, Ziff, Weiermiller, Learned & Hayden, Esqs. (Thomas E. Reilly, Esq., of counsel), waived a hearing and submitted its case for decision based on the entire file, including briefs to be filed by August 22, 1986. After due consideration, the Commission renders the following decision.

ISSUE

Whether the Audit Division's denial of petitioner's claim for refund of sales tax paid to its supplier of gasoline for the period in question was proper.

FINDINGS OF FACT

1. On or about September 12, 1984, petitioner, Casco Service Station, Inc., filed an Application for Credit or Refund of State and Local Sales or Use Taxes seeking a refund of sales tax allegedly overpaid in the amount of \$3,000.86 for the period in question.

2. Petitioner operates a retail service station located in Poughkeepsie, New York, selling petroleum products including, specifically, gasoline at retail. Petitioner, during the period in question, purchased gasoline from its supplier, Amerada Hess Corp., and paid sales tax on such purchases to Amerada Hess Corp. based on the regional average retail sales price for gasoline. Thereafter, petitioner sold the gasoline to its retail customers.

3. Attached to petitioner's refund application was a schedule for the months during the period at issue showing the gallons of gasoline purchased and the tax paid thereon to petitioner's supplier, as well as the gallons of gasoline sold and the amount of tax which would be due thereon (apparently computed on the basis of petitioner's actual retail selling price[s]) at the combined State (4%) plus Dutchess County (1½%) rate of tax.

4. The foregoing schedule indicates that for some months, petitioner's tax payments to the supplier exceeded the amount of tax which would be due as computed by petitioner on actual retail sales. However, for other months, payments to the supplier were less than the tax which would be due as computed on such actual retail sales. The \$3,000.86 refund sought by petitioner represents the net of the resulting differences per month (a net claimed overpayment) over the period in question.

5. By a letter dated October 4, 1984, the Audit Division denied petitioner's application for refund, taking the position that the Tax Law does not allow a refund under the circumstances presented. It is petitioner's position, by contrast, that the amount of refund sought corrects a collection of sales tax in excess of the maximum amount allowable pursuant to Tax Law § 1105.

CONCLUSIONS OF LAW

A. That Tax Law Article 28, § 1105(a) authorizes the imposition of a statewide sales tax at the rate of four percent upon the receipts from every retail sale of tangible personal property. Said section encompasses the sale of gasoline as is herein at issue. Under the authority of Tax Law Article 29, Dutchess County imposes an additional sales tax at the rate of one and one-quarter percent upon the receipts from such sales of gasoline. Thus petitioner, located in Dutchess County, faces a total sales tax rate of 5½ percent.

B. That Tax Law § 1111(d) authorizes the Tax Commission to prescribe and amend schedules determining the amount of sales tax to be collected by a distributor for each gallon of gasoline sold. Tax Law § 1111(e), as in effect during the period in question provided, inter alia, that the retail sales tax imposed by Tax Law § 1105(a) was, with respect to automotive fuel, to be based on the regional average retail sales price and collected in accordance with the noted § 1111(d) schedules. Here, petitioner's distributor collected tax upon its delivery of gas to petitioner at the rate of 5½ percent upon such regional average retail sales price, as was required by and in accordance with Tax Law § 1111(d) and (e). Such price, rather than the actual (subsequent) selling price set by a gasoline station at its pumps, had been determined by the Legislature as the retail selling price upon which the tax was to be paid. Accordingly, petitioner's subsequent selling price, though different, does not under the adopted statutory scheme constitute an overpayment by petitioner or form a basis for allowing a refund.

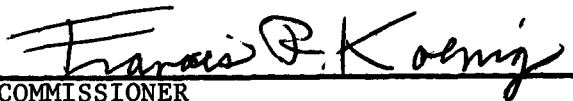
C. That the petition of Casco Service Station, Inc. is hereby denied and the Audit Division's denial of petitioner's application for refund is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

DEC 23 1986

  
\_\_\_\_\_  
PRESIDENT

  
\_\_\_\_\_  
COMMISSIONER

  
\_\_\_\_\_  
COMMISSIONER

P 319 117 222

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL  
(See Reverse)

★ U.S.G.P.O. 1985-480-794

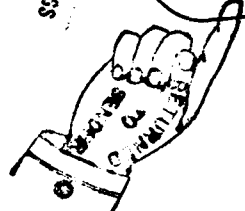
PS Form 3800, June 1985

Sent to <b>Thomas E. Reilly</b>	
Street and No. <b>210 State St. PO Box 1078</b>	
City, State, and ZIP Code <b>Elmira, NY 14902</b>	
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	

TA-26 (7/85)  
STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU  
W. A. Harriman Campus  
ALBANY, N.Y. 12227

Moved Left to Address

NOT HERE



P 319 117 221

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL  
(See Reverse)

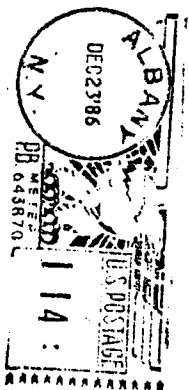
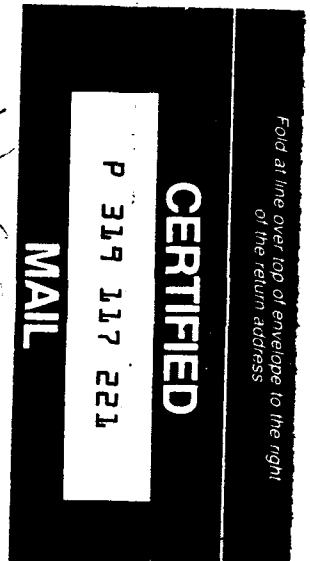
★ U.S.G.P.O. 1985-480-794

PS Form 3800, June 1985

Sent to <b>Casco Service Station Inc.</b>	
Street and No. <b>482 South Road</b>	
City, State, and ZIP Code <b>Poughkeepsie, NY 12601</b>	
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	

Moved Left to Address

Casco Service Station, Inc.  
482 South Road  
Poughkeepsie, NY 12601





REQUEST FOR BETTER ADDRESS

ST

Requested by <b>Tax Appeals Bureau</b> Room 107 - Bldg. #9 State Campus Albany, New York 12227	<b>Tax Appeals Bureau</b> Unit Room 107 - Bldg. #9 State Campus Albany, New York 12227	Date of Request  1/9/87
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number	Date of Petition Dec. 12/23/86
Name Carco Service Station, Inc.	
Address 482 South Rd. Poughkeepsie, N.Y. 12601	

## Results of search by Files

<input type="checkbox"/> New address:	N/A 1/12/87 NGW
<input type="checkbox"/> Same as above, no better address	
<input type="checkbox"/> Other:	Manual Left no Address

Searched by	Section	Date of Search

PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER