

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Deda Fuel Oil Corp. :

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 12/1/78 - 2/28/82.

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 19th day of June, 1986, he/she served the within notice of Decision by certified mail upon Deda Fuel Oil Corp. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Deda Fuel Oil Corp.
2910 Valentine Ave.
Bronx, NY 10458

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
19th day of June, 1986.

Janet M. Snay

Daniel J. Ravalli
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Deda Dedvukha a/k/a Deda Dedvukaj : AFFIDAVIT OF MAILING
Indiv. & as Officer of Deda Fuel Oil Corp. :

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 12/1/78 - 2/28/82.

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 19th day of June, 1986, he/she served the within notice of Decision by certified mail upon Deda Dedvukha a/k/a Deda Dedvukaj, Indiv. & as Officer of Deda Fuel Oil Corp. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Deda Dedvukha a/k/a Deda Dedvukaj
Indiv. & as Officer of Deda Fuel Oil Corp.
2910 Valentine Ave.
Bronx, NY 10458

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
19th day of June, 1986.

Janet M. Snay

Daniel J. Randall
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Deda Fuel Oil Corp. :

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 12/1/78 - 2/28/82.

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 19th day of June, 1986, he served the within notice of Decision by certified mail upon Michael Sheehan, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Michael Sheehan
7 Carry Lane
Melville, NY 11747

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
19th day of June, 1986.

Janet M. Snay

Daniel J. Ranelli
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Deda Dedvukha a/k/a Deda Dedvukaj : AFFIDAVIT OF MAILING
Indiv. & as Officer of Deda Fuel Oil Corp. :

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 12/1/78 - 2/28/82.

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 19th day of June, 1986, he served the within notice of Decision by certified mail upon Michael Sheehan, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Michael Sheehan
7 Carry Lane
Melville, NY 11747

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
19th day of June, 1986.

Daniel J. Carroll
Authorized to administer oaths
pursuant to Tax Law section 174

Janet M. Snay

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

June 19, 1986

Deda Fuel Oil Corp.
2910 Valentine Ave.
Bronx, NY 10458

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:
Michael Sheehan
7 Carry Lane
Melville, NY 11747

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

June 19, 1986

Deda Dedvukha a/k/a Deda Dedvukaj
Indiv. & as Officer of Deda Fuel Oil Corp.
2910 Valentine Ave.
Bronx, NY 10458

Dear Mr. Dedvukha:

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
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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:
Michael Sheehan
7 Carry Lane
Melville, NY 11747

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
DEDA FUEL OIL CORP.
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 December 1, 1978
through February 28, 1982.

DECISION

In the Matter of the Petition
of
DEDA DEDVUKHA A/K/A DEDA DEDVUKAJ,
Individually and as Officer of
Deda Fuel Oil Corp.
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 December 1, 1978
through February 28, 1982.

Petitioners, Deda Fuel Oil Corp. and Deda Dedvukha a/k/a Deda Dedvukaj, 2910 Valentine Avenue, Bronx, New York 10458, each 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 December 1, 1978 through February 28, 1982 (File Nos. 41171 and 46832).

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 February 5, 1986 at 10:45 A.M., with all briefs to be submitted by March 19, 1986. Petitioners appeared by Michael Sheehan, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Mark F. Volk, Esq., of counsel).

ISSUE

Whether petitioners were properly subjected to penalty and maximum interest imposed pursuant to section 1145(a)(1)(i) of the Tax Law on additional taxes found due as the result of an audit of the books and records of petitioner Deda Fuel Oil Corp.

FINDINGS OF FACT

1. On June 20, 1982, the Audit Division, as the result of a field audit of the available books and records of petitioner Deda Fuel Oil Corp. ("Deda"), issued to Deda a Notice of Determination and Demand for Payment of Sales and Use Taxes Due assessing additional sales taxes of \$357,299.65, plus penalty of \$63,148.01 and interest of \$62,075.53, for a total amount due of \$482,523.19 for the period December 1, 1978 through May 31, 1982. On the same date, the Audit Division also issued an identical notice to petitioner Deda Dedvukha, individually and as officer of Deda. On February 25, 1982, Mr. Dedvukha, as the president of Deda, executed a consent extending the statute of limitations for issuing an assessment of sales and use taxes for the period December 1, 1978 through November 30, 1981 to June 20, 1982.

2. Each of the petitioners timely filed a petition for revision of the notice.

3. Based on a further review of Deda's books and records conducted by an examiner for the Audit Division on July 16, 1984, the additional sales taxes due were reduced to \$89,046.42 and the audit period to January 1, 1979 through March 31, 1982. Again, on January 18, 1985, the additional taxes due were reduced to \$68,992.69 as the result of a pre-hearing conference.

4. Prior to the commencement of the hearing, petitioners and the Audit Division agreed to a further reduction of the assessments to \$64,721.66.

Petitioner Deda Dedvukha executed withdrawals of petition and discontinuance of case on behalf of himself and the corporate petitioner with respect to the aforesaid amount plus statutory penalty and interest.

5. At the hearing held herein, the petitioners requested and were granted thirty days to submit evidence of reasonable cause for the failure to remit the taxes at issue. No such evidence has been submitted by petitioners.

CONCLUSIONS OF LAW

A. That section 1145(a)(1)(iii) of the Tax Law provides for the remission of penalty and interest in excess of the minimum statutory rate where it is shown that the failure or delay in payment of the tax is due to reasonable cause and not due to willful neglect.

B. That petitioners have failed to present evidence of reasonable cause for failure to pay the taxes at issue; therefore, the Audit Division properly imposed penalty and maximum interest.

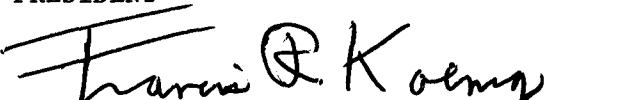
C. That the petitions of Deda Fuel Oil Corp. and Deda Dedvukha a/k/a Deda Dedvukaj, individually and as officer of Deda Fuel Oil Corp., are denied, and the notices of determination and the demand for payment of sales and use taxes due issued June 20, 1982 and revised prior to the hearing (see Finding of Fact "4") are sustained.


DATED: Albany, New York

STATE TAX COMMISSION

JUN 19 1986


PRESIDENT


COMMISSIONER


COMMISSIONER

P 319 372 796

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to Deda Dedvakhia aka	
Deda Dedvakhia, Senior as officer of	
Deda Fuel Oil Corp.	
2910 Valentine Ave.	
P.O. State and ZIP Code Bronx, N.Y. 10458	
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 319 372 797

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 Deda Fuel Oil Corp.	
	Street and No. 2910 Valentine Ave	
	P.O., State and ZIP Code Bronx, NY. 10458	
	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 319 372 798

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 Michael Sheehan	
	Street and No. 7 Carry Lane	
	P.O., State and ZIP Code Melville, NY. 11747	
	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		