

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Micro - Carburetor 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 4/15/80-1/31/83.
_____ :

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 30th day of June, 1986, he/she served the within notice of Decision by certified mail upon Micro - Carburetor Corp. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Micro - Carburetor Corp.
109 Larchmont Rd.
Buffalo, NY 14214

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
30th day of June, 1986.

David Parchuck

Janet M. Snay
Authorized to administer oaths
pursuant to Tax Law section 174

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

June 30, 1986

Micro - Carburetor Corp.
109 Larchmont Rd.
Buffalo, NY 14214

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

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
MICRO-CARBURETOR CORPORATION : DECISION
for Redetermination of a Deficiency or for :
Refund of Sales and Use Tax under Articles 28 :
and 29 of the Tax Law for the Period April 15, :
1980 through January 31, 1983.

Petitioner, Micro-Carburetor Corporation, 109 Larchmont Road, Buffalo, New York 14214, filed a petition for redetermination of a deficiency or for refund of sales and use tax under Articles 28 and 29 of the Tax Law for the period April 15, 1980 through January 31, 1983 (File No. 59319).

A hearing was held before James J. Morris, Jr., Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Room 206, Buffalo, New York, on January 15, 1986 at 10:45 A.M. Petitioner appeared by Albert Csonkas, President. The Audit Division appeared by John P. Dugan, Esq. (Deborah J. Dwyer, Esq., of counsel).

ISSUES

- I. Whether the petition for redetermination herein was timely filed.
- II. If so, whether the Audit Division's denial of petitioner's claim for refund of sales tax paid was proper.

FINDINGS OF FACT

1. On February 15, 1983 petitioner, Micro-Carburetor Corporation, filed an Application for Credit or Refund of State and Local Sales or Use Tax claiming

a refund of \$216.00¹ in sales tax paid on certain purchases of gasoline between April 15, 1980 and January 31, 1983. The claimed refund was premised upon petitioner's contention that the gasoline purchased was used exclusively in its research and development operations and was therefore exempt from sales tax.

2. To substantiate its claim, petitioner submitted along with its refund application dated sales slips of the corporation made out to cash purportedly representing purchases of gasoline on various dates during the relevant period. In its application petitioner also advised the Audit Division that it had previously received a refund of sales tax paid on purchases of gasoline similarly used in its research and development operations.

3. On January 11, 1984, by letter to petitioner, the Audit Division denied petitioner's refund claim in full. The denial was premised upon petitioner's failure to substantiate the amount of sales tax paid: "The sales slips are made out to cash and do not show the amount of sales tax paid."

4. The Audit Division's denial letter also stated the following:

"This determination denying your claim in full shall be final and irrevocable unless you apply to the State Tax Commission for a hearing within ninety (90) days from the date of this letter in accordance with the provisions of Section 1139(b) of the Tax Law."

5. On October 30, 1984 the Tax Appeals Bureau of the State Tax Commission received a letter from petitioner dated October 23, 1984, which stated the following:

"On January 15, 1984 we asked you to accept our request for an unduly paid amount sale's [sic] tax of \$188.60.

Since we miss very much this amount, please revise your standpoint [sic] stated in your letter of January 11, 1984 and remit us this unduly paid amount of \$188.60 with interest without any more delay." (emphasis in original)

1 Petitioner subsequently reduced the amount of its refund claim to \$188.60.

6. The Tax Appeals Bureau responded to petitioner by letter on November 21, 1984 acknowledging receipt of petitioner's letter dated October 23, 1984, and advising petitioner to complete and return to the Tax Appeals Bureau an enclosed standard petition form.

7. Petitioner responded to this communication by letter received by the Tax Appeals Bureau on December 4, 1984 advising that no petition form had been enclosed in the previous letter and requesting such a form.

8. Petitioner filed a formal petition protesting the Audit Division's denial of its refund claim on December 17, 1984.

9. On December 26, 1984 the Tax Appeals Bureau requested more information from petitioner regarding its claim. Petitioner responded to this request by letter on January 8, 1985.

10. On January 16, 1985 the Tax Appeals Bureau advised petitioner that its petition had been deemed late and that therefore no further action would be taken by the Tax Appeals Bureau with respect to said petition.

11. Petitioner responded to the Tax Appeals Bureau by letter on January 31, 1985 which stated, in pertinent part:

"On January 12, 1984 we received a letter of the Bureau dated on January 11, 1984. In this letter the Bureau denied the requested refund and we were asked to apply for a hearing within 90 days.

On January 15, 1984, that is within three days we sent the Bureau a letter of application, the letter's xerox copy is enclosed. This means that our petition was not late as you mentioned in your letter."

12. At hearing, petitioner, by its president, Albert Csonkas, reiterated its contention that it had responded to the Audit Division's denial letter of January 11, 1984 by protest letter dated January 15, 1984, and that such letter was sent by ordinary mail with proper postage to the Tax Appeals Bureau on that

date. Petitioner produced a copy of a letter addressed to the Tax Appeals Bureau, dated January 15, 1984, protesting the denial of refund. Mr. Csonkas argued that his prompt response to the many letters received by petitioner regarding the refund claim at issue proved that petitioner had responded to the denial of refund letter of January 11, 1984 by protest letter on January 15, 1984.

13. The Tax Appeals Bureau has no record of receiving the aforementioned letter dated January 15, 1984.

CONCLUSIONS OF LAW

A. That section 1139(b) of the Tax Law provides, in pertinent part:

"If an application for refund or credit is filed... the tax commission may grant or deny such application in whole or in part and shall notify the taxpayer by mail accordingly. Such determination shall be final and irrevocable unless the applicant shall, within ninety days after the mailing of notice of such determination, apply to the tax commission for a hearing." (emphasis supplied)

Thus, petitioner's letter-petition would be timely only if filed within ninety days of January 11, 1984, the date on which the Audit Division's denial letter was issued.

B. That "(a)11 proceedings before the Commission must be commenced by the filing of a petition..." 20 NYCRR 601.3(a). The following time limitations regarding the filing of a petition are provided in 20 NYCRR 601.3(c):

"Time limitations. The petition must be filed within the time limitations prescribed by the applicable statutory sections, and there can be no extension of that time limitation. If the petition is filed by mail, it must be addressed to the particular operating bureau in Albany, New York. When mailed, the petition will be deemed filed on the date of the United States postmark stamped on the envelope."

C. That Tax Law §1147(a)(2) provides, in pertinent part:

"If any return,... petition, or other document required to be filed, or any payment required to be made within a prescribed period or on or before a prescribed date under

authority of any provision of this article is, after such period or such date, delivered by United States mail to the tax commission, bureau, office, officer or person with which or with whom such document is required to be filed..., the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. ... If any document or payment is sent by United States registered mail, such registration shall be prima facie evidence that such document or payment was delivered to the tax commission, bureau, office, officer or person to which or to whom addressed. To the extent that the tax commission shall prescribe by regulation, certified mail may be used in lieu of registered mail under this section." (emphasis supplied)

D. That in Matter of Anthony and Mary Mancuso, State Tax Commission, September 28, 1983, and Matter of Joseph and Grace Garofalo, State Tax Commission, September 28, 1983, petitions alleged to have been timely filed were never received by the State Tax Commission. The Commission held the following with respect to section 691(a) of the Tax Law in both cases:

"That to be timely, a petition must be actually delivered to Tax Commission within ninety days after a deficiency notice is mailed, or it must be delivered in an envelope which bears a United States postmark of a date within the ninety day period. The petitioners have not shouldered their burden of proof under Tax Law §689(e) to show that the petition was delivered to the Tax Commission. Proof of mailing by registered or certified mail was not shown. Proof of mailing by ordinary mail does not satisfy the requirement of proving delivery of the petition to the Tax Commission. See Deutsch v. C.I.R., 599 F.2d 44 (2d Cir), cert. denied, 444 U.S.1015." Garofalo, supra; Mancuso, supra.

E. That Tax Law section 1147(a)(2) is patterned after Tax Law section 691(a). Accordingly, the burden of proving delivery of a petition to the Tax Commission which is imposed by section 691(a) (Garofalo, supra; Mancuso, supra) is likewise imposed by section 1147(a)(2) of the Tax Law.

F. That petitioner has not shouldered the burden of proof imposed upon it by section 1147(a)(2) of the Tax Law to show that its letter-petition dated January 15, 1984, was actually delivered to the Tax Commission. Even assuming,

arguendo, that petitioner's prompt response to other letters mailed to it by the Tax Appeals Bureau and petitioner's production of a carbon copy of a letter addressed to the Tax Appeals Bureau, and dated January 15, 1984, establishes that petitioner mailed a petition-letter to the commission on January 15, 1984, such proof of ordinary mailing does not satisfy the requirement of proving delivery of the petition to the Tax Commission. Matter of Ronald K. and Diana J. Leirvik, State Tax Commission, January 17, 1986; Matter of Garofalo, supra, Matter of Mancuso, supra.

G. That petitioner had until April 10, 1984 to timely file a petition and did not do so.

H. That inasmuch as the petition herein was untimely, Issue II is moot.

I. That the petition of Micro-Carburetor Corporation is in all respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

JUN 30 1986

Roderick W. Chou
PRESIDENT

Francis R. Koenig
COMMISSIONER

W. H. J.
COMMISSIONER

P 319 372 850

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 Micro-Carburetor Corp.	
Street and No. 100 Larchmont Rd.	
P.O., State and ZIP Code Buffalo, N.Y. 14214	
Postage 00	\$
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	