

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Anthony Alfano 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 3/1/82 - 5/31/82.

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 6th day of April, 1987, he/she served the within notice of decision by certified mail upon Anthony Alfano Service Station, Inc. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Anthony Alfano Service Station, Inc.
Marcus Avenue & Jericho Turnpike
Garden City Park, NY 11040

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
6th day of April, 1987.

David Parchuck
Authorized to administer oaths
pursuant to Tax Law section 174

Janet M. Snay

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Anthony Alfano 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 3/1/82 - 5/31/82.

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 6th day of April, 1987, he served the within notice of decision by certified mail upon Jerome Eisen, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

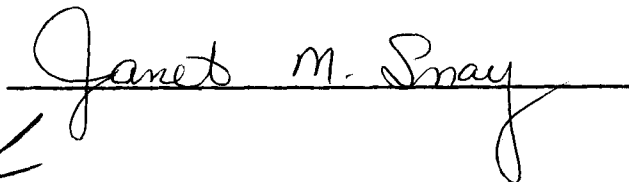
Jerome Eisen
2513 East 64th Street
Brooklyn, NY 11234

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
6th day of April, 1987.


Authorized to administer oaths
pursuant to Tax Law section 174



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

April 6, 1987

Anthony Alfano Service Station, Inc.
Marcus Avenue & Jericho Turnpike
Garden City Park, NY 11040

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:
Jerome Eisen
2513 East 64th Street
Brooklyn, NY 11234

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ANTHONY ALFANO 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 March 1, 1982 :
through May 31, 1982. :

Petitioner, Anthony Alfano Service Station, Inc., Marcus Avenue and Jericho Turnpike, Garden City Park, New York 11040, 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 March 1, 1982 through May 31, 1982 (File No. 54958).

A hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 24, 1986 at 9:00 A.M. Petitioner appeared by Jerome Eisen, CPA. The Audit Division appeared by John P. Dugan, Esq. (Gary Palmer, Esq., of counsel).

ISSUE

Whether reasonable cause existed for petitioner's late filing of the March 1982 estimated New York State and Local Sales and Use Tax Return.

FINDINGS OF FACT

1. Petitioner, Anthony Alfano Service Station, Inc. filed and paid its Part-Quarterly New York State & Local Sales & Use Tax Return (ST-809) for March 1982 on April 20, 1982.

2. On September 24, 1982, the Tax Compliance Bureau issued a Notice and Demand for Payment of Sales and Use Taxes Due to petitioner for penalty of

\$367.28 and interest of \$84.25, for a total amount due of \$451.53. Said notice indicated that the penalty and interest was due for not filing the March 1982 estimated return which was due on March 20, 1982.

3. Petitioner timely filed a petition for revision of the assessment. Petitioner subsequently paid the notice and is now seeking a refund of \$451.53.

4. Petitioner is a monthly filer of sales tax returns and has a prior history of timely filing such returns. The due date for monthly returns is the 20th day of the following month. Petitioner's accountant filed the part-quarterly return for March 1982 on April 20, 1982; however, he was not aware that an estimated return for March 1982 was required to be filed by March 20, 1982.

CONCLUSIONS OF LAW

A. That petitioner was required to file an estimated return for March 1982 on or before March 20, 1982 in accordance with section 1137-A(b) of the Tax Law.

B. That section 1145(a)(1)(i) of the Tax Law provides for the imposition of penalty and interest for failure to file a return or pay over any tax when due. Subdivision (ii) of said section provides for the remission of penalty and that portion of interest that exceeds the minimum rate if the Tax Commission determines that the failure or delay was due to reasonable cause and not due to willful neglect.

C. That 20 NYCRR 536.5(b) (formerly 536.2[b]) provides:

"Reasonable Cause. In determining whether reasonable cause exists, either as a basis for remitting assessed interest or penalties or as grounds for remitting interest or penalties upon the late filing of a return or payment, the taxpayer's previous compliance record may be taken into account. Reasonable cause for failure to file a return on time must be affirmatively shown by the taxpayer in a written statement. Grounds for reasonable cause, where clearly established, may include the following:

* * *

(6) any other cause for delinquency which appears to a person of ordinary prudence and intelligence as a reasonable cause for delay in filing a return and which clearly indicates an absence of gross negligence or willful intent to disobey the taxing statutes. Past performance will be taken into account. Ignorance of the law, however, will not be considered reasonable cause."


D. That petitioner relied on the professional expertise of its accountant and given its past exemplary filing record, petitioner established that the late filing was due to reasonable cause and not willful neglect. Accordingly, the penalty is cancelled and interest shall be reduced to the minimum rate.

E. That the petition of Anthony Alfano Service Station, Inc. is granted; the Audit Division is hereby directed to calculate the applicable interest due on the late payment and issue a refund to petitioner for the balance.


DATED: Albany, New York

STATE TAX COMMISSION

APR 06 1987


PRESIDENT


COMMISSIONER


COMMISSIONER