

Specifically, Milford alleged that: (1) part of the assessment covered a period which was beyond the three-year statute of limitations, (2) the assessment included receipts attributable to sales of products not manufactured by Milford, (3) the fertilizer manufactured and sold by Milford is exempt from the provisions of 30 Del. C., Chap. 27 because fertilizer is a "usual farm product" within the meaning of 30 Del. C. §2703, and (4) the imposition of the manufacturers gross receipts tax on out-of-state sales is in violation of the Constitution of the United States of America. Prior to January 12, 1979 hearing, the parties satisfactorily resolved alleged errors "1" and "2" above.

5. The Division contested the appeal and the parties remained in legal conflict before the Tax Appeal Board and/or the Superior Court of the State of Delaware until January 14, 1983, when a final Order was entered by the Tax Appeal Board.

6. On December 30, 1982, Milford filed refund claims for the period July 1, 1973, through December 31, 1978. The basis for Milford's refund claims is that Milford had erroneously been licensed as a manufacturer under 30 Del. C. §2702 during the period July 1, 1973, through December 31, 1978. Milford, during the period July 1, 1973, through December 31, 1978, should have been licensed as a farm machinery retailer pursuant to 30 Del. C., §2907. The total claimed is forty-eight thousand one hundred twenty-eight dollars and sixteen cents (\$48,128.16).

7. Milford Fertilizer and Valliant Fertilizer are both wholly owned by Fischer Holding Company. When the original controversy with Milford Fertilizer arose as a result of the 1977 assessment, it was the position of the Division of Revenue that any determination

made with respect to Milford Fertilizer would be applied to Valliant Fertilizer also.

8. On December 30, 1982, Valliant Fertilizer filed a claim for a refund of gross receipts it had paid at a different rate (manufacturing classification) from July 1, 1973, to December 31, 1978. Valliant, during the period July 1, 1973, through December 31, 1978, should have been licensed as a farm machinery retailer pursuant to 30 Del. C. §2907. The total claimed is twenty-three thousand six hundred forty-five dollars and fifty-two cents (\$23,645.52).

9. Prior to, during, and subsequent to (up through December 31, 1982) the assessment period of Valliant Fertilizer was licensed as a manufacturer pursuant to 30 Del. C. §2702.

10. The final Order entered by the Tax Appeal Board on January 14, 1983, was without prejudice to either of the parties positions relating to the claims for refunds that had been filed on December 20, 1982.

The Respondent denied Petitioners claim for refund on the basis that they were not filed within the three (3) year period as set forth in 30 Del. C. §2108. The issue therefore before the Tax Appeal Board is whether Petitioners claims for refunds were timely filed. There does not appear to be any Delaware cases interpreting said §2108, nor what constitutes a timely claim for refund purposes of that section.

Petitioners argued that the Delaware refund procedure is akin to the procedure under the Internal Revenue Code and thus we should follow their precedence. The Federal Courts have held that when a petition is filed with the United States Tax Court stating that a refund is claimed, this serves as an informal claim that will toll

the statute of limitations. The United States Tax Court is the federal counterpart of the Tax Appeal Board. This position is supported by the case of A.G. Rushlight & Co., v. United States, 146 F. Supp. 338 (D. Ore. 1956). The facts in the Rushlight case are similar to the ones sub judice. Taxpayer in 1948 filed a Tax Court petition alleging that it overpaid excess profit taxes for the year 1943. The parties litigated the matter for 5 years until the Court dismissed the petition insofar as it related to the overpayment. Taxpayers then in 1954 filed a formal claim for refund, but it was denied by the Internal Revenue Service on the contention that it was barred by the statute of limitations. On appeal the District Court held that the claim was not barred by the statute of limitations since the taxpayer, when it filed a petition in the Tax Court, set forth an "informal claim" that tolled the statute of limitations. The Court said:

"Further, although not filed with the Commissioner, [the petition] reached his hands and the court considers this adequate, under the facts as set forth herein to meet all the requirements. This claim was perfected by the amended claim, filed on Form 843, after the statute of limitations had run.

While not complying with all the technicalities of the regulations, the taxpayers acted in good faith, and while he perhaps erred technically, still the end purpose was accomplished. Good conscience will not permit this court to penalize the taxpayer in such a situation." 146 F. Supp. at 340.

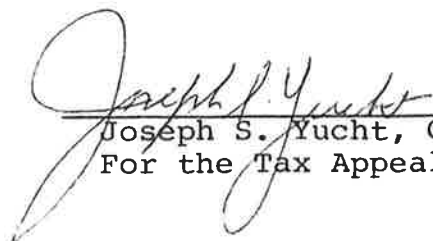
The Respondent's position is basically that 30 Del. C. §2108 requires a taxpayer to file a claim for refund within three years from the expiration date of the license to which such payment relates and the taxpayer did not so file. Therefore it is barred by the

statute of limitations. The Board finds that in this case, this contention is unpersuasive.

The Board concludes that the Petitioners' position, from the date they filed their original petitions to the date the formal refund claims were filed, was consistent and that the Respondent knew that Petitioners were seeking a return (refund) of the excess taxes they had paid. The fact that a formal claim of refund was not filed until December 30, 1982 does not change the fact Petitioners put Respondent on notice of its position on May 16, 1977 when they filed their Petitions with the Board. Justice requires that Petitioners should recover the overassessment. In our opinion, Petitioners are entitled to prevail under the federal informal claim doctrine, which we hereby adopt as Delaware law.

This decision is also applicable to the case of Valliant Fertilizer Co., Inc. v. Director of Revenue, being Docket No. 792. The parties stipulated, that any decision made with respect to the Milford Fertilizer case would be applicable to the Valliant case.

IT IS SO ORDERED



Joseph S. Yucht, Chairman
For the Tax Appeal Board

Dated: August 8, 1986

F-825 86
To Tax Board
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SUPERIOR COURT
OF THE
STATE OF DELAWARE

Submitted: July 13, 1987
VINCENT A. BIFFERATO Decided: November 16, 1987
JUDGE

COURT HOUSE
WILMINGTON, DE. 19801

LETTER OPINION AND ORDER

Re: Director of Revenue v. Milford
Fertilizer Co., Inc., et al.
C.A. No. 86A-AU-13

J. Patrick Hurley, Jr., Esq.
Deputy Attorney General
State Department of Justice
820 N. French Street
Wilmington, DE 19801

Michael J. Rich, Esq.
Eric C. Howard, Esq.
Morris, Nichols, Arsht & Tunnell
P.O. Box 231
Georgetown, DE 19947

Gentlemen:

The appellant, the Director of Revenue, has appealed the decision of the Tax Appeal Board (the "Board") that the appellees, Milford Fertilizer Co., Inc. ("Milford") and Valliant Fertilizer Co., Inc. ("Valliant")¹ were entitled to refund claims.

I. FACTS

The facts of the case are undisputed and contained in the stipulation of facts filed in the proceedings below. The relevant facts for the determination of this appeal are as follows:

During the entire period of issue, Milford and Valliant were licensed as manufacturers pursuant to 30 Del.C. § 2702. Following an audit of Milford, on April 20, 1977, the Division assessed a proposed deficiency of the manufacturer's license tax against Milford. The assessment period began July 1, 1973 through December 31, 1976.

¹Milford and Valliant are both wholly owned subsidiaries of Fischer Holding Company. The Board held that its decision as to Milford was also applicable to Valliant. The Director appealed this finding and will be addressed in Section VI below.

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Howard

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The Notice of Assessment was appealed to the Tax Appeal Board. In its petition, Milford admitted that it was a manufacturer; however, it claimed it was exempt from the payment of the manufacturer's license tax since the fertilizer it produced is a "usual farm product" within the meaning of 30 Del.C. § 2703 which exempts from tax the production of such farm products.

During the controversy, the Division of Revenue took the position that any determination made with respect to Milford would be applied to Valliant also. The parties remained in conflict before the Board or this Court until January 14, 1983 when a final order was entered by the Board finding that Milford and Valliant were subject to a lower rate imposed on farm machinery retailers.

On December 30, 1982, prior to the entry of the final order by the Board, both Milford and Valliant filed refund claims for the period July 1, 1973 through December 31, 1978, seeking a refund of the manufacturer's license tax that they had erroneously paid. In other words, Milford and Valliant claimed that they were erroneously licensed and taxed as a manufacturer when they should have been licensed and taxed as a farm machinery retailer.

The Division denied the claims for the refunds on the basis that they were not timely filed within the three-year period set forth in 30 Del.C. § 2108. The Board adopted the federal informal claim doctrine which tolls the statute of limitations and found that Milford and Valliant are entitled to prevail under such doctrine. The Director of Revenue now appeals the Board's decision.

The Director bases its appeal on several theories: (1) the statute of limitations bars the refund claims; (2) if the informal claims doctrine is applied, the refund claims asserted an entirely new ground for appeal; (3) if the informal claims doctrine is applied, the refunds for the years 1977 and 1978 should be barred; and (4) Valliant's claim for a refund should be denied since Valliant never filed an informal claim. Each of these contentions will be addressed below.

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II. STANDARD OF REVIEW

The Tax Appeal Board is subject to the Delaware Administrative Procedures Act. 29 Del.C. § 10161(6). Section 10152(d) of the Act provides for the standard of judicial review of the Board's decisions:

The Court, when factual determinations are at issue, shall take due account of the experience and specialized competence of the agency and of the purposes of basic law under which the agency has acted. The Court's review, in the absence of actual fraud, shall be limited to a determination of whether the agency's decision was supported by substantial evidence on the record before the agency.

Thus, this Court can only examine the record and determine if there is substantial evidence to support the findings and conclusions of the Board. If such evidence exists, and the Board has made no error of law, the decision below must be affirmed. Mooney v. Benson Management Co., Del.Super., 451 A.2d 839 (1982).

III. APPLICATION OF THE INFORMAL CLAIM DOCTRINE

Neither party disputes that the appellants overpaid their tax for the periods in question. The Division is refusing to refund the overpayment on the basis that the claims were not timely filed within the statutory period of 30 Del.C. § 2108. Such section requires a taxpayer to file a claim for a refund within three years from the expiration date of the license to which such payment relates or 30 days from the date of payment of any such amount, whichever is later. 30 Del.C. § 2108(a).

Milford and Valliant contend that they are entitled to the refunds since the petitions filed with the Tax Appeal Board tolled the statute of limitations. They argue that the Board's decision is supported by substantial evidence and, therefore, must be affirmed.

Prior to the Board's decision, there were no authorities interpreting what constitutes a timely claim for refund under § 2108. The Board relied on the federal cases interpreting the federal refund procedure since the Delaware refund procedure is akin to the procedure under the Internal Revenue Code.

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Federal case law has established that an informal claim for refund, providing sufficient notice to the Internal Revenue Service that a refund is being sought, will toll the running of the statute of limitations and permit a taxpayer to perfect his refund claim at a later date after the statute of limitations would otherwise run. Kales v. U.S., 314 U.S. 194 (1941).

The Board adopted the federal informal claim doctrine as Delaware law. The Director does not contest the Board's authority to engraft the concept to Delaware tax law. (Petitioner's Opening Brief, p.7). The Director does question the Board's application of the doctrine to the facts of the case.

The basic underlying principle in the decided cases determining the validity of an informal claim is the necessity to put the Commissioner on notice of what the taxpayer was claiming, and that he was in fact making a claim for a refund. American Radiator & Standard Sanitary Corp. v. U. S., Ct.Cl., 318 F.2d 915 (1963). A common factor is that the Commissioner was fully apprised of the taxpayer's intention to subsequently file. Id.

The Board relied on A.G. Rushlight & Co. v. United States, D.Ore., 146 F.Supp. 338 (1956) where the taxpayers in 1948 filed a tax court petition alleging that it had overpaid excess profit taxes for the year 1943. The parties litigated the matter for five years until the court dismissed the petition as it related to the overpayment. In 1954, the taxpayers filed a formal claim for a refund which was denied by the Internal Revenue Service on the grounds that it was barred by the statute of limitations. On appeal, the District Court of Oregon held that the claim was not barred by the statute of limitations since the petition filed in the tax court set forth an informal claim that tolled the statute of limitations. The Court found that the Commissioner of the Internal Revenue Service had adequate notice through the tax court petition setting forth the matters relating to the overassessment and overpayment. 340 F.Supp. at 340.

In the present case, the Board found that the Director of Revenue was put on notice of its position on May 16, 1977 when Milford and Valliant filed their petitions with the Board. The petition filed with the Tax Appeal Board was within the legal time limit for filing a claim for overassessment. The petition gave sufficient notice and set forth the claim adequately. The Director of Revenue was aware of the items which Milford and Valliant claimed an error and the grounds upon which they were

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making their claim. The Court is satisfied that the record contains sufficient evidence to sustain the Board's finding that Milford was entitled to prevail under the federal informal claim doctrine. Accordingly, the Board's finding is affirmed.

IV. NEW BASIS OF APPEAL

The Director next contends that if the informal claim doctrine is applied, the refund claims asserted an entirely new ground for appeal and, thus, did not give adequate notice. The informal refund claim, the Tax Board petition, was based upon the fact that Milford was a manufacturer but was exempt from the manufacturer's tax since it produced a "usual farm product." Milford and Valliant's claims for refunds are based upon the finding of the Board that Milford's activities and the types of products it sells entitle it to be treated as a "farm machinery retailer."

A principle in federal tax law holds that a claim for refund can be amended after expiration of the legal time limit, if the amendment adds a new ground for refund relating to the facts which would have been ascertained by the tax authorities in the ordinary course of determining the merits of the original claim. The rule was set forth in the case of Pink v. United States, 2d Cir., 105 F.2d 183, 187 (1939) as follows:

Whether a new ground of recovery may be introduced after the statute has run by amending a pending claim filed in time depends upon the facts which an investigation of the original claim would disclose. Where the facts upon which the amendment is based would necessarily have been ascertained by the commissioner in determining the merits of the original claim, the amendment is proper. The rule is otherwise when the amendment requires the examination of new matters which would not have been disclosed by an investigation of the original claim. [Citations omitted].

In the present case, the facts upon which Milford's original claim to a refund depended were the same facts which ultimately led to a decision that Milford was entitled to a refund. A determination of the merits of the informal claim depended upon an investigation of the nature of Milford's

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business, the type of products it sold and their proper tax status. The formal claim for refund is based upon the Board's finding that Milford is entitled to be treated as a "farm machinery retailer." Since the amended claim for the refund involves precisely the same facts that needed to be investigated in determining the merits of the original claim, the amendment properly relates back to the date of the filing of the petition.

V. CLAIMS FOR 1977 AND 1978

The Director also argues that while the original petition, that is, the informal claim, filed by Milford related to the period from July 1, 1973 through December 31, 1976, the formal claim seeking refunds for the years 1977 and 1978 should be barred. The grounds set forth by Milford in its petition for an exemption from the manufacturer's license tax would apply not only to the precise years at issue before the Board at that time, but also for the future. The Court is satisfied that there is sufficient evidence to uphold the Board's finding that Milford and Valliant are entitled to the refunds for the years 1977 and 1978.

VI. VALLIANT'S CLAIM

The Director finally argues that the Board erroneously granted Valliant's claim for a refund. The Board relied upon the fact that it was the position of the Division of Revenue that any determination made with respect to Milford Fertilizer would be applied to Valliant Fertilizer. It was for this reason that a proposed audit of assessment was filed against Valliant and that no notice of assessment was filed against Valliant. In other words, the Director would claim that Milford and Valliant should be treated as one if the Division is successful, and should be treated separately if a refund is due. Since the two companies have been treated by the Director as a single taxpayer, with a determination as to one binding upon the other, there is sufficient evidence to affirm the Board's finding that Valliant is entitled to a refund.

VII. CONCLUSION

In conclusion, the Director has failed to show that the findings of the Board are unsupported by substantial evidence or

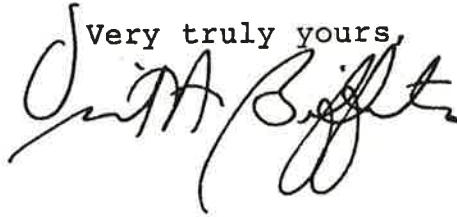
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Howard

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November 16, 1987

that the Board erred as a matter of law. The Board's finding that Milford and Valliant are entitled to refunds is, therefore, AFFIRMED. IT IS SO ORDERED.

Very truly yours,



Original to Prothonotary
xc: Law Libraries
Court Administrator
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CERTIFIED AS A TRUE COPY:
ATTEST: DEBORAH M. CAPANO
PROTHONOTARY
BY J. Carmichael

IN THE SUPREME COURT OF THE STATE OF DELAWARE

FILED

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PROTHONOTARY

DIRECTOR OF REVENUE vs MILFORD FERTILIZER

No. 391, 1987

C.A. No. 86A-AU-13
Superior Court
New Castle County

The following docket entry has been made in the above cause.

13. March 10. Record and Mandate to clerk of Court below. Case Closed.

pc: The Honorable Vincent Bifferato
Joseph P. Hurley, Jr., Esq.
Michael J. Rich, Esq.

Prothonotary

Received Above
By _____

Date _____

Date: 3/10/88

Margaret L. Naylor
Clerk

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Mandate

THE SUPREME COURT OF THE STATE OF DELAWARE

TO Superior Court of the State of Delaware
in and for New Castle County:

Greetings:

WHEREAS, in the case of:

DIRECTOR OF REVENUE

C.A. No. 86A-AU-13

v.

MILFORD FERTILIZER CO., INC.

PROTHONOTARY
MAY 14 10 13 AM '88
FILED

a certain judgment or order was entered on the 16th day of November
19 87, to which reference is hereby made; and

WHEREAS, by appropriate proceedings the judgment or order was duly appealed to this Court,
and after consideration has been finally determined, as appears from the opinion or order of this Court filed on
February 19 19 88, a certified copy of which is attached hereto;

ON CONSIDERATION WHEREOF IT IS ORDERED AND ADJUDGED that the judgment or order be and it is
hereby affirmed.

SIGNED, SEALED AND
ATTESTED BY:

Kaynot L. Naylor
Clerk of the Supreme Court

Issued March 10, 19 88
Supreme Court No. 391, 1987

SUPREME COURT OF THE STATE OF DELAWARE
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IN THE SUPREME COURT OF THE STATE OF DELAWARE

DIRECTOR OF REVENUE,	§	
	§	
Appellant Below,	§	No. 391, 1987
Appellant,	§	
	§	Court Below: Superior Court
v.	§	of the State of Delaware
	§	in and for New Castle County
MILFORD FERTILIZER CO., INC.	§	
and VALLIANT FERTILIZER CO.,	§	C.A. No. 86A-AU-13
INC.,	§	
	§	
Appellees Below,	§	
Appellees.	§	

Submitted: February 3, 1988
Decided: February 19, 1988

Before HORSEY, MOORE and WALSH, Justices.

ORDER

This 19th day of February, 1988, having considered the appellant's opening brief in support of this appeal and the appellees' motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) On April 20, 1977, appellant, the Director of Revenue (the "Director"), assessed a proposed deficiency of manufacturers license tax, pursuant to 30 Del. C. § 2702, against appellees, Milford Fertilizer Company, Incorporated ("Milford") and Valliant Fertilizer Company, Incorporated ("Valliant").¹ The assessment covered the period beginning

¹ Milford and Valliant are both wholly owned by Fisher Holding Company. When this controversy arose as a result of

(Footnote Continued)

July 1, 1973, through December 31, 1976. On May 16, 1977, Milford lawfully appealed the Notice of Assessment to the Tax Appeal Board (the "Board") alleging that the Director made certain errors in the assessment. The Director contested the appeal and the case remained unresolved until January 14, 1983, when the Board entered a final order in favor of Milford. The final order was without prejudice to either party's claim for refunds.

(2) On December 30, 1982, both Milford and Valliant filed formal claims for refunds for the period of July 1, 1973, through December 31, 1978. The Director denied the claims on the ground that they had not been filed within the three-year time limitation of 30 Del. C. § 2108.

(3) Milford and Valliant again appealed the Director's ruling to the Board, arguing that Milford's appeal from the deficiency assessments should be taken as timely filed informal claims for refund. They assert that the Delaware refund procedure is similar to that of the Internal Revenue Code and that Delaware should adopt the federal "informal claim" doctrine. Under this doctrine, Milford and Valliant assert, the federal courts have held that when a petition is filed with the United States Tax Court asserting an overpayment of tax, this puts the

(Footnote Continued)

the 1977 assessment, it was the position of the Director that any determination made with respect to Milford would be applied to Valliant.

Internal Revenue Service on notice and serves as an informal claim for refund sufficient to toll the statute of limitations on refunds. Milford and Valliant analogize the Board to the United States Tax Court as its federal counterpart. They then contend that the Director was put on timely notice of the taxpayers' ultimate claims for refund when on May 16, 1977, they appealed the Director's deficiency assessment to the Board.

(4) The Director's primary position before the Board was not that the Board lacked authority to adopt, or would commit legal error in recognizing, the informal claim doctrine. The Director contended that the facts did not warrant the doctrine's being invoked in this case to satisfy the three-year limitation of 30 Del. C. § 2108.

(5) In a decision dated August 8, 1986, based on stipulated facts, the Board ruled in favor of Milford and Valliant. Adopting the federal "informal claim" doctrine, the Board found it applicable to this case based on subordinate findings of fact found to "trigger" its application. The Director, pursuant to 29 Del. C. §§ 10142 and 10161, appealed the Board's decision to the Superior Court. The Director asserted that if the "informal claim" doctrine were adopted in Delaware, it should not be applied to this case. The Director's principal reasons were: (a) the refund claims asserted by Milford and Valliant were based on different theories and grounds for refund than the grounds stated in the May 16, 1977 petition to the Board;

and (b) the Board did not mislead Milford into not filing formal claims for refund within the statutory period.

(6) Judicial review by the Superior Court of a decision of the Tax Appeal Board is governed by the Administrative Procedures Act, § 10142(d). Section 10142(d) provides:

The Court, when factual determinations are at issue, shall take due account of the experience and specialized competence of the agency and of the purposes of the basic law under which the agency has acted. The Court's review, in the absence of actual fraud, shall be limited to a determination of whether the agency's decision was supported by substantial evidence on the record before the agency.

(7) Applying the controlling standard of review and finding no error of law, the Superior Court, in a well-reasoned letter ruling dated November 16, 1987, found the record to contain substantial evidence to sustain the Board's finding that the taxpayers were entitled to prevail under the "informal claim" doctrine. Specifically, the Superior Court ruled that since the December 1982 claims for refund involve precisely the same facts as the May 1977 petition filed with the Board, the refund claims properly relate back to the date of the filing of the petition, notwithstanding any change in theory or reasoning to support the refund. The Director appeals the ruling of the Superior Court asserting what amounts to basically the same arguments asserted below.

(8) Upon reviewing the record and the rulings of the Board and the Superior Court, we agree with Superior Court

that there is substantial evidence of record to support the Board's application of the "informal claim" doctrine to this case and that the Board did not err as a matter of law in adopting the reasoning of federal decisional law. See, United States v. Kales, 314 U.S. 186, 62 S.Ct. 214, 86 L.Ed.2d 132 (1941) (the informal claims doctrine is simply recognition of substance over form in the context of notice sufficient to toll a limitations statute); see also Furst v. United States, Ct. Cl., 678 F.2d 147 (1982); A.G. Rushlight & Co. v. United States, D.Or., 146 F.Supp. 338 (1956).

The issue on appeal being predominantly factual and peculiarly within the "specialized competence" of the Board, and the findings of the Board being clearly supported by substantial evidence, NOW, THEREFORE, it being manifest on the face of the appellant's brief that the appeal is without merit, appellees' motion to affirm under Rule 25(a) is hereby GRANTED and the judgment of the Superior Court is

AFFIRMED.

BY THE COURT:


Justice

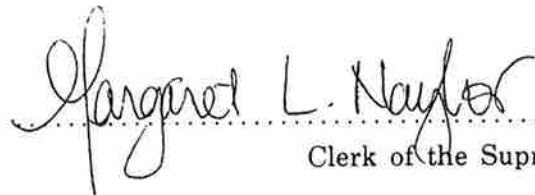
State of Delaware
Kent County

} ss.

I, Margaret L. Naylor, Clerk of the Supreme Court of the State of Delaware, do hereby certify that the foregoing is a true and correct copy of the Order issued February 19, 1988, Director of Revenue v. Milford Fertilizer Co., Inc., No. 391, 1987,

as the same remains on file and of record in said Court.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Dover this ..10th..... day of .. March..... , A.D. 19..88....


Clerk of the Supreme Court.