STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petitions	:	
of	:	
ATLAS VAN LINES, INC.	:	DECISION DTA NOS. 823490
for Revision of Determinations or for Refund of Highway Use Tax under Article 21 of the Tax Law for the Period August 1, 1998 through April 30, 2003.	:	AND 823491

Petitioner, Atlas Van Lines, Inc., filed an exception to the determination of the Administrative Law Judge issued on February 9, 2012. Petitioner appeared by Bond, Schoeneck & King, PLLC (Richard L. Smith, Esq., and Frank C. Mayer, Esq., of counsel). The Division of Taxation appeared by Mark Volk, Esq. (Michael B. Infantino, Esq., of counsel).

Petitioner filed a brief in support of its exception. The Division of Taxation filed a brief in opposition. Petitioner filed a reply brief. Oral argument, at petitioner's request, was heard on July 11, 2012 in Albany, New York.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUES

I. Whether petitioner qualified for the exemption from highway use tax provided for in Tax Law § 504 (5) for the period in issue based upon vehicles used exclusively in the transportation of household goods.

II. Whether the definition of "household goods" applicable to this matter included those items described in Transportation Law § 2 (15) (b) and (c).

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge except for finding of fact "6," which has been modified. We also make an additional finding of fact. The Administrative Law Judge's findings of fact, the modified finding of fact, and the additional finding of fact are set forth below.

During the period in issue, August 1, 1998 through April 30, 2003 (audit period), Atlas Van Lines, Inc. (Atlas) was engaged in the business of interstate transportation of household goods and other items for a fee. Atlas specialized in household moving, offering a number of moving services for interstate distance moves.

The Division of Taxation (Division) conducted an audit of the books and records of Atlas for the audit period, resulting in the issuance of two notices of determination dated June 29, 2009. The first Notice, notice number L-032254638-9, asserted additional highway use tax in the sum of $120,828.59 plus penalty and interest for the period August 1, 1998 through July 31, 2002. The second, notice number L-032254750-9, asserted additional highway use tax in the sum of $26,493.18 plus penalty and interest for the period August 1, 2002 through April 30, 2003.

At the heart of the dispute in this matter is the definition of "household goods" and each party's interpretation of that term. During the audit period, petitioner utilized five Commodity Code definitions to determine taxability for purposes of the highway use tax. Those codes described commodities as follows:

Commodity Code 1: personal effects and property used or to be used in a dwelling when a part of the equipment or supply of such dwelling and similar property; except property moving from a factory or store; except such property as the householder has purchased with intent to use

in his dwelling and which is transported at the request of, and the transportation charges paid to the carrier by, the householder.

Commodity Code 2: furniture, fixtures, equipment, and the property of stores, offices, museums, institutions, hospitals or other establishments when a part of the stock, equipment, or supply of such stores, offices, museums, institutions, hospitals, or other establishments and similar property; except the stock-in-trade of any establishment, whether consignor or consignee other than used furniture and used fixtures, except when transported as incidental to moving of the establishment, or a portion thereof, from one location to another.

Commodity Code 3: articles, including objects of art, displays, and exhibits, which because of their unusual nature or value require the specialized handling and equipment usuallly employed in moving household goods and other similar articles; except an article, whether crated or uncrated, which does not, because of its unusual nature or value, require the specialized handling and equipment usually employed in moving household goods.

Commodity Code 4: new household goods and products not included in Code 1, i.e., property moving from a factory or store not purchased directly by the householder, and store fixtures.

Commodity Code 5: general commodities (i.e. all other commodities not included in the foregoing definitions).[1]

The Division agreed that Commodity Code 1 shipments qualified for the household goods exemption in Tax Law § 504 (5) and petitioner conceded that Commodity Code 4 and 5

[1] It is noted that Commodity Codes 1, 2 and 3 are, with minor immaterial differences, identical to the definition of household goods found in Transportation Law § 15 (b) and (c), respectively.

shipments did not. The parties disagree as to whether Commodity Code 2 and 3 shipments qualified for the exemption, framing the only issues left in dispute.

At two separate times during the audit, the Division consulted with the New York State Department of Transportation (DOT) to determine the proper definition of "household goods." In response to the Division's March 18, 2004 letter, Attorney Robert A. Rybak expressed the opinion of the DOT that the Interstate Commerce Commission Termination Act of 1995, Pub L 104-88, (ICCTA) had preempted Transportation Law § 2 (15) (b) and (c) and excluded those items from the definition of "household goods" for New York purposes. Attorney Rybak added that it was the position of the DOT that only those items in Transportation Law § 2 (15) (a) were, by definition, "household goods."

Attorney Rybak reiterated this position in a letter to the Division dated September 18, 2008, in response to another Division inquiry, stating that "it is the [DOT's] position that the ICC Termination Act of 1995 effectively pre-empted the [DOT] from regulating the goods described in [§ 2 (15) (b) and § 2 (15) (c)] as household goods."

We have modified finding of fact "6" of the Administrative Law Judge's determination to read as follows:

> The Rybak response to the March 18, 2004 Division letter included a notice, sent by the Commissioner of DOT, John Daly, to holders of certificates to transport household goods in New York. It advised them of the change in the federal law definition of "household goods," and that this federal change preempted the New York definition. Commissioner Daly informed these transporters that they would have until August 31, 1996 to apply for a second certificate to haul "property" other than "household goods," which was still defined in Transportation Law § 2 (15) (b) and (c). The Commissioner's notice included a copy of an Order, Case T-31732, an official explanation of the change, and the DOT's interpretation of the preemptive operation of the ICCTA, which served as a substitute for a new certificate to haul property until August 31, 1996. The Order indicated that by that date, all motor carriers that had previously received permission from DOT to transport certain property, and wished to

> continue to transport property other than "household goods," were required to have applied for and received a certificate to do so.[2]

Mr. Rybak's opinion was consistent with the December 13, 2004 statement of Commissioner of DOT, John C. Egan, in his comments on the Federal Aviation Administration Authorization Act of 1994,[3] Pub L 103-305, effective January 1, 1995. Commissioner Egan noted that the most significant aspect of the new federal law was that carriers would no longer be required to file transportation rates and territory and commodities would no longer be limited.

In a separate document, entitled "Implementation of the Federal Aviation Administration Authorization Act of 1994 by New York State Department of Transportation, Commercial Transport Division, December 13, 1994," the DOT noted that the federal legislation was consistent with the DOT's transition from a system of economic regulation to a noneconomic regulatory system that issues authority to all carriers that comply with safety and insurance standards and has no distinction between common and contract carriage.

The application for authority to transport household goods issued subsequent to the Commissioner's Notice stated that the ICCTA had preempted the DOT's authority to regulate the route rates and services of that part of household goods described in section 2 (15) (b) and (c) of the Transportation Law.

We make the following additional finding of fact:

> The parties entered into a stipulation dated January 24, 2011, which provided that the only issue in dispute was whether the shipments of articles described in Transportation Law § 2 (15) (b) and (c) qualify for the "household goods" exemption in Tax Law § 504 (5). Petitioner conceded all other issues with

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[2] We modify this fact to more accurately reflect the record.

[3] The Act specifically preempted state economic regulation of motor carriers by prohibiting any state from enacting any law or regulation related to price, route or service of any motor carrier with respect to the transportation of property, except household goods.

regard to the Division of Taxation's audit, which led to the issuance of two Notices of Determination, and the Division agreed to waive the penalties asserted in those Notices. In addition, in performing the audit, the Division became aware of the fact that petitioner sometimes paid tax on shipments of household goods described in Transportation Law § 2 (15) (b) and (c). If petitioner prevails herein, all tax determined to be due on those shipments will be cancelled and any tax paid on the same will be refunded or credited. If the Division prevails, the parties agreed that petitioner would be liable for tax on the Transportation Law § 2 (15) (b) and (c) shipments and accorded a credit for any taxes paid on same.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge reviewed the relevant provisions of the highway use tax and the "household goods" exemption sought by petitioner. The Administrative Law Judge noted that, in order to prevail, petitioner had to prove clear entitlement to the exemption and either, the Division interpreted the statute unreasonably or that its interpretation was the only reasonable one.

The Administrative Law Judge determined that the resolution of this matter turned on the relevant definition of "household goods." In reviewing the relevant statutes, the Administrative Law Judge found that the definition of "household goods" provided in Transportation Law § 2 (15) mirrored the definition provided by the now-defunct Interstate Commerce Commission (ICC). The Administrative Law Judge also found that, effective January 1, 1996, the ICCTA abolished the ICC and replaced the aforementioned definition of "household goods" in favor of a more restrictive definition.

Turning to Tax Law § 504 (5), the Administrative Law Judge noted that the law provided that "household goods" were to be defined by the "commissioner of transportation" of New York. The Administrative Law Judge noted that he need not opine on the validity of the preemption itself, but only whether the interpretation of the Commissioner of DOT was neither irrational nor unreasonable. The Administrative Judge determined that the Commissioner of

DOT reasonably concluded that the ICCTA preempted the definition of "household goods" in Transportation Law § 2 (15), and attempted to alert carriers of this conclusion. As such, the Administrative Law Judge found that it was proper for the Division to rely upon the definition provided by the Commissioner of DOT.

The Administrative Law Judge concluded that petitioner has not demonstrated that its interpretation of the language of the exemption in Tax Law § 504 (5) was the only reasonable interpretation or that the Division's interpretation was unreasonable. Accordingly, the Administrative Law Judge denied the petition and sustained the Notices of Determination (subject to the terms of the agreement between the parties).

ARGUMENTS ON EXCEPTION

In its exception, petitioner argues that the ICCTA did not preempt the applicable Transportation Law and, therefore, petitioner should be allowed to utilize the definition of "household goods" found in the Transportation Law. For the first time on exception, petitioner argues that it is not an intrastate transporter of goods, and thus has never received notice of the Commissioner of DOT's decision to treat the Transportation Law definition of "household goods" as preempted by the ICCTA.

Petitioner further argues that the relevant Tax Law section refers only to the ICC and not any successor entity. As such, petitioner asserts that the Tribunal should not turn to the ICCTA (or any successor entity to the ICC) for guidance on the definition of "household goods," but should instead determine that there is "currently no definition of 'household goods' provided for by the [ICC]." Petitioner argues that the notices provided by the DOT and its Commissioners to intrastate transportation entities do not effectively change DOT's regulations, and thus, the DOT regulations as currently written are still in full force and effect. Accordingly, petitioner asserts

that the Administrative Law Judge erred in denying the petition. Petitioner also argues that it cannot find certain documents referred to by the Administrative Law Judge, specifically: (1) a previous version of the DOT application for authority to transport household goods in New York; and (2) a document entitled "Implementation of the Federal Aviation Administration Authorization Act of 1994 by New York State Department of Transportation, Commercial Transport Division, December 13, 1994."

In opposition, the Division argues that the ICCTA preempted the Transportation Law, and thus, the definition of "household goods" found in the Transportation Law is bound by that which is prescribed in the ICCTA. The Division asserts that the relevant section of the Transportation Law refers to the definition of "household goods" as such is defined by the Commissioner of DOT, and in this case, regardless of actual preemption, the Commissioner has determined that the definition of "household goods" is the definition provided in the ICCTA. The Division argues that there is no action required by the State to amend or otherwise adjust its statutes or regulations if such have been preempted by a federal law. Furthermore, the Division stresses that the relevant statute does not refer to the definition of "household goods" as provided in statute or regulations of the DOT, but rather to the definition as determined by the Commissioner of DOT. In the alternative, the Division argues that should the Tribunal determine that the more expansive Transportation Law definition of "household goods" applies, petitioner, as an interstate carrier of household goods, is subject to federal regulation. As such, petitioner may utilize only the definition of "household goods" as provided by the federal ICCTA and not the more expansive state definition of "household goods" provided in the Transportation Law, which would be limited to DOT authorized motor carriers only.

OPINION

The instant matter presents the question of whether petitioner is entitled to an exemption from highway use tax found under Tax Law § 504 (5). This statute exempts from taxation, carriers of "household goods" who are authorized either by the DOT or the ICC (Tax Law § 504 [5]).

Initially, we note that a taxpayer who seeks an exemption bears the burden of proving clear entitlement to it because "an exemption is not a matter of right, but is allowed only as a matter of legislative grace" (***Matter of Grace v New York State Tax Commn.***, 37 NY2d 193, 196 [1975], ***rearg denied*** 37 NY2d 816 [1975], ***appeal denied*** 37 NY2d 708 [1975]).

In order to prevail over an agency's interpretation of a statute or regulation, a taxpayer must prove either that the agency's interpretation is unreasonable or that its interpretation "is the only reasonable construction available" (***Matter of Custom Shop Fifth Ave. Corp. v Tax Appeals Trib. of State of N.Y.***, 195 AD2d 702, 703 [1993]. Regarding statutory construction, we also note that:

> "it is a well-established rule that resort must be had to the natural signification of the words employed, and if they have a definite meaning, which involves no absurdity or contradiction, there is no room for construction and courts have no right to add to or take away from that meaning" (citations omitted) (***Majewski v Broadalbin-Perth Cent. School Dist.***, 91 NY2d 577, 583 [1998]).

Having established the relevant standards, we turn to the instant question of whether petitioner has met its burden.

New York state imposes a highway use tax under Tax Law § 503 (1):

> "for the privilege of operating any vehicular unit upon the public highways of [New York State] and for the purpose of recompensing the state for the public expenditures incurred by reason of the operations of such vehicular units on the public highways of [New York]."

Tax Law § 504 (5) provides for an exemption from this tax for vehicular units that are:

> "[u]sed exclusively in the transportation of household goods (as defined by the commissioner of transportation of this state or the interstate commerce commission) by a carrier under authority of the commissioner of transportation of this state or of the interstate commerce commission."

Herein, the issue turns on whether petitioner qualifies as a carrier of "household goods" when it transported Commodity Code 2 and 3 items. The resolution of this question turns on whether the Division reasonably interpreted Tax Law § 504 (5), and whether it reasonably relied on the definition of "household goods" as provided by the Commissioner of DOT.

Up until January 1, 1996, Tax Law § 504 (5) relied on the definitions of the term provided by the now-defunct ICC and Transportation Law § 2 (15). Both of the aforementioned sections provided (and the Transportation Law still provides) that the term "household goods" means:

> "(a) personal effects and property used or to be used in a dwelling when a part of the equipment or supply of such dwelling and such other similar property as the commissioner may provide by regulation; except that this paragraph shall not be construed to include property moving from a factory or store, except such property as the householder has purchased with intent to use in his or her dwelling and which is transported at the request of, and the transportation charges paid to the carrier by, the householder;
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> (b) furniture, fixtures, equipment, and the property of stores, offices, museums, institutions, hospitals or other establishments when a part of the stock, equipment, or supply of such stores, offices, museums, institutions, hospitals, or other establishments and such other similar property as the commissioner may provide by regulation; except that this paragraph shall not be construed to include the stock-in-trade of any establishment, whether consignor or consignee, other than used furniture and used fixtures, except when transported as incidental to moving of the establishment, or a portion thereof, from one location to another; and
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> (c) articles, including objects of art, displays, and exhibits, which because of their unusual nature or value require the specialized handling and equipment usually employed in moving household goods and such other similar articles as the commissioner may provide by regulation; except that this paragraph shall not be construed to include any article, whether crated or uncrated, which does not,

> because of its unusual nature or value, require the specialized handling and equipment usually employed in moving household goods" (Transportation Law § 2 [15]; 17 NYCRR 800.1 [f]; 49 USC § 10102 former [11] [A], [B], [C]).[4]

This federal definition of "household goods" was initially legislated in 1980 (see Pub L 96-454, 94 US Stat 2011 [96th Cong, 2nd Sess, Oct. 15, 1980 (termed the "Household Goods Transportation Act of 1980")]). However, effective January 1, 1996, the ICCTA abolished the ICC and changed the federal definition of "household goods." The new federal definition provided that:

> "The term 'household goods,' as used in connection with transportation, means personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of such dwelling, and similar property if the transportation of such effects or property is - -
>
> (A) arranged and paid for by the householder, including transportation of property from a factory or store when the property is purchased by the householder with the intent to use in his or her dwelling, or
>
> (B) arranged and paid for by another party" (former 49 USC § 13102 [10]).

Essentially, the definition contained in the ICCTA restricted the meaning of "household goods" to the first paragraph of the former federal definition and the first paragraph of the current Transportation Law provision (Transportation Law § [2] [15] [a]).

The history of the relevant federal legislation is useful in resolving this matter. In general, the ICC was charged with regulating interstate motor carriers (i.e. movers that cross state borders), while intrastate motor carriers (movers that do not cross state borders) are typically rgulated by the various states. For many years, the federal government, through the ICC, regulated various entities including motor carriers of freight. However, in 1955, the federal

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[4] The federal definition of household goods differed only in that in place of the word "commissioner" was the word "Commission."

government significantly reduces its regulation of such carriers, although it continued certain limited regulation of "household goods."

> "Once upon a time the United States banned price competition among interstate motor carriers of freight. See Howe v. Allied Van Lines, Inc., 622 F.2d 1147, 1152-54 (3rd Cir. 1980) (describing institution of tariff regime for railroads in 1887 and its extension to motor carriers in 1935). Each carrier was required to file with the late Interstate Commerce Commission a tariff of its prices and conditions of carriage. See 49 U.S.C. § 10762(a)(1) (1994) (repealed 1995). The carrier could not charge a shipper any rate other than the rate in the filed tariff, see 49 U.S.C. 10761(a) (1994) (repealed 1995), give any shipper "preferential treatment," see 10735(a)(1), or discriminate "unreasonably" in its charges to similarly situated shippers, see 10741(b) (1994) (repealed 1995).
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> * * *
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> In 1995 the Congress found that motor carriage had become a 'mature, highly competitive industry where competition disciplines rates far better than tariff filing and regulatory intervention,' and that rate regulation was no longer necessary except for '[two] specialized categories of trucking operations.' S. Rep. No. 104-176, at 10 (1995) (referring to household goods and certain noncontinguous domestic trade, hereinafter collectively 'household goods'); see id. at 43 (noting that '[f]or the two categories of traffic for which rates would be regulated, new [ ] 13701(a) would import the basic rate reasonableness requirement'); see also 49 U.S.C. 13701 (also imposing reasonableness requirement on 'through routes,' 'divisions of joint rates,' and rates 'made collectively by [any group of] carriers under agreements approved' by the Surface Transportation Board). Therefore, the Congress abolished the ICC and repealed the provisions . . . .
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> The Congress then enacted a new statutory scheme under which a carrier need file tariffs only for the transportation of household goods, as to which preferential treatment is still prohibited" (***Munitions Carriers Conference v U.S.***, 147 F.3d 1027, 1029 [1998]).

Even before the termination of the ICC in 1995, Congress had already legislated a preemption of state laws, which impacted the interstate transportation of certain goods by motor carriers. This was performed via the Federal Aviation Administration Authorization Act of 1994, (FAAAA), which expressly preempted the state economic regulation of motor carriers by prohibiting any state from enacting or enforcing any law or regulation related to a price, route or

service of any motor carrier with respect to the transportation of property, with the exception of "household goods" (49 USC § 11501 [h] [1], [h] [2] [B] [1995]). Courts have acknowledged both the statutory preemption provision and the exceptions to such preemption, including the exception for "household goods."

> "The FAAAA has specifically enumerated matters concerning motor carriers which are not preempted. States are free to enact or enforce laws or regulations with respect to (1) motor vehicle safety, (2) highway route controls or limitations based on size or weight of the vehicle or the hazardous nature of the cargo; (3) motor carriers' financial responsibility relating to insurance; (4) the transportation of household goods; and . . . 49 U.S.C. §14501(c)(2)(A-C)" (***New York State Motor Truck Ass'n. v Pataki***, 03 CV 2386, 2004 WL 2937803 [2004]).

Importantly, the express preemption of state laws provided for under the FAAAA continued through implementation of the ICCTA.

> "The Interstate Commerce Act, as amended by the Federal Aviation Administration Authorization Act of 1994, 108 Stat. 1606, and the ICC Termination Act of 1995, 109 Stat. 899, generally preempts state and local regulation 'related to a price, route, or service of any motor carrier . . . with respect to the transportation of property'" (***City of Columbus v Ours Garage and Wrecker Serv., Inc.***, 536 U.S. 424, 429 [2002]; ***see also Rowe v New Hampshire Motor Transport Ass'n.***, 552 US 364, 377 [2008]).

Thus, even after implementation of the ICCTA, the federal government continued to preempt most state laws that impacted motor carriers; however, the preemption exception for "household goods" continued. As noted above, the applicable federal definition of "household goods" was enacted in 1980. Accordingly, when the FAAAA was enacted in 1994, the "household goods" exemption provided therein was limited to the pre-existing ICC statutory definition of "household goods." Any state that had a definition of "household goods" that differed from the federal ICC definition had a significant potential of being preempted. Otherwise, states could easily have thwarted the federal preemption provision by using their own much more expansive definition of "household goods."

When the ICCTA changed the federal definition of "household goods," it put the Transportation Law definition of "household goods" out of sync with the federal definition. By way of a written notice to holders of certificates to transport "household goods" in New York, Commissioner of DOT, Daly opined that the change in the federal law definition of "household goods" preempted and overrode the Transportation Law definition. Thus, the Commissioner of DOT defined "household goods" as how those goods are defined in the ICCTA. Counsel for the DOT similarly indicated the opinion that the Transportation Law definition had been preempted by the federal definition.

We do not conclude that the ICCTA change in the definition of "household goods" positively preempted the Transportation Law's definition of the same. Rather, we conclude that the Commissioner of DOT defined the term "household goods" as those goods contained in Transportation Law § 2 (15) (a), and that the exemption to highway use tax provided for in Tax Law § 504 (5) relies on the Commissioner of DOT's definition, notwithstanding the current provisions of Transportation Law § 2 (15) and the regulation at 17 NYCRR 800.1 (f). We agree with the Division that the relevant provision of the tax law does not refer to the definition of "household goods" as provided for by the statute or regulation of the DOT, but rather the definition of such as defined by the Commissioner of DOT. The Commissioner of DOT has indicated that the relevant definition of "household goods" is the same as the federal ICCTA definition. Furthermore, the Commissioner of DOT's determination that the Transportation Law definition of "household goods" was preempted by the ICCTA definition appears reasonable under the circumstances.

Petitioner provides no legal authority for its assertion that in order for the federal preemption of a state law to be effective, the state legislature must in fact change the underlying

statute. Petitioner appears to be confusing the concept of the federal preemption of a certain state statutory provision with an independent legislative change to a state statute and the attendant procedures required for the legislative change.

Petitioner argues that Tax Law § 504 (5) refers only to the ICC and not to any successor entity of the ICC. Therefore, petitioner argues, the Tribunal should not turn to the ICCTA (or any successor entity to the ICC) for guidance on the definition of "household goods," but should instead determine that there is "currently no definition of 'household goods' provided for by the [ICC]" (Petitioner's Reply Brief at 2). We are not willing to limit the statute as such. First, we note that if this argument were taken to its logical conclusion, it appears that petitioner may not even qualify for the relevant tax exemption. Tax Law § 504 (5) provides for an exemption from the tax imposed by Tax Law § 503 (1) for vehicular units:

> "Used exclusively in the transportation of household goods (as defined by the commissioner of transportation of this state or the interstate commerce commission) by a carrier [1] under authority of the commissioner of transportation of this state or [2] of the interstate commerce commission."

As noted, the ICC was eliminated by the ICCTA, with many of its functions taken over by successor federal agencies. Under petitioner's proposed reading of the statute, petitioner would not be an eligible party for the subject exemption under either prong [1] or [2] of the statute, since petitioner also claims that it does not operate under the authority of the DOT. Moreover, the Commissioner of DOT defined the term "household goods" and that is the definition we apply herein.

In his determination, the Administrative Law Judge noted the various ways in which the Commissioner of DOT informed parties of his conclusion that the change in the federal law definition of "household goods" had preempted and replaced the Transportation Law definition.

We need not restate the Administrative Law Judge's detailed analysis in that regard. Petitioner now claims that it is an interstate transporter of goods and does not engage in the intrastate transportation of goods.

Petitioner asserts that much of the Administrative Law Judge's analysis is incorrect because petitioner is not subject to the authorization of the DOT, but rather that of the federal regulators. As such, petitioner claims that it had no notice that the definition of "household goods" provided for in the Transportation Law was considered preempted. In this regard, we note that petitioner is an interstate motor carrier subject to federal regulation and authorization, and a motor carrier of "household goods." As such, it is reasonable to surmise that petitioner should have been aware of ICC and its pre-existing definition of "household goods," the FAAAA and its preemption provision addressing conflicting state laws,[5] and the FAAAA's "household goods" exception to preemption. Significant legislation such as the ICCTA, and the ICCTA's change to the federal definition of "household goods," would appear to be laws of which an interstate motor carrier of "household goods" would be aware.

In any event, petitioner's assertion that it never received notice from the DOT regarding the Commissioner's determination that the Transportation Law definition had been preempted does not relieve petitioner (as a party regulated by the former ICC and the successor federal regulator thereto) of the expected knowledge of the possible preemption issue. The preemption manifested itself in significant legislation, the FAAAA and the ICCTA, which directly and materially impacted all interstate motor carriers, including petitioner.

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[5] At the time of the implementation of the FAAAA preemption provision, it appears that approximately 41 states were regulating intrastate motor carrier activities that could be potentially preempted (***see Kelley v U.S.***, 69 F.3d 1503 [1995], ***cert denied***, ***sub nom. Kelley v Dept. of Justice***, 517 US 1166 [1996]).

Whether tax practitioners for either intrastate or interstate motor carriers would necessarily be aware of the Commissioner of DOT's definition of "household goods" based upon federal preemption is less certain. However, we note that in this case, the penalties have been waived by the Division.

> "Where the interpretation of a statute or its application involves knowledge and understanding of underlying operational practices or entails an evaluation of factual data and inferences to be drawn therefrom, the courts regularly defer to the governmental agency charged with the responsibility for administration of the statute. If its interpretation is not irrational or unreasonable, it will be upheld" (***Kurcsics v Merchants Mut. Ins. Co.***, 49 NY2d 451, 459 [1980]).

Petitioner has not demonstrated that its interpretation of the language of the exemption in Tax Law § 504 (5) is the only reasonable interpretation or that the Division's interpretation is unreasonable (***Matter of Grace v New York State Tax Commn.***, 37 NY2d 193 [1975], ***rearg denied*** 37 NY2d 816, ***appeal denied*** 37 NY2d 708 [1975]), ***supra***; ***Matter of Marriott Family Rests. v Tax Appeals Trib. of State of N.Y.***, 174 AD2d 805 [1991], ***appeal denied*** 78 NY2d 863 [1991]) and has failed to sustain its burden herein.

Finally, we note that the Administrative Law Judge's reference to a previous version of an application for authority to transport household goods in New York appears to be a reference to a document that was attached to the petitions submitted by petitioner. Also, the Administrative Law Judge's reference to the document entitled "Implementation of the Federal Aviation Administration Authorization Act of 1994 by New York State Department of Transportation, Commercial Transport Division, December 13, 1994," is as a reference to a document that is included within the audit file that was submitted by the Division to the Administrative Law Judge during the litigation of this matter. The record does not indicate any objection by a party to either of these submissions.

Upon consideration, we find that petitioner's remaining arguments lack merit.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of the Atlas Van Lines, Inc., is denied;

2. The determination of the Administrative Law Judge is affirmed;

3. The petitions of Atlas Van Lines, Inc., are denied; and

4. The Notices of Determination, dated June 29, 2009, are sustained, subject to the agreement of the parties more fully set forth in the stipulation, dated January 24, 2011.

DATED: Albany, New York
January 10, 2013

/s/ James H. Tully, Jr.
James H. Tully, Jr.
President

/s/ Charles H. Nesbitt
Charles H. Nesbitt
Commissioner