

STATE OF **NEW** YORK

STATE TAX COMMISSION

In the matter of the Petition

of

STARKWEATHER FREIGHT LINES, INC.

DECISION

for Redetermination of a Deficiency or for
Refund of Corporation Franchise Tax under
Article 9 of the Tax Law for the Years 1973
through 1978.

Petitioner, Starkweather Freight Lines, Inc., **P.O.** Box 31, Albion, New
York **14411**, filed a petition for redetermination of a deficiency or for refund
of corporation franchise tax under Article 9 of the Tax Law for the years 1973
through 1978 (File No. **40226**).

A hearing was held before Timothy J. Alston, Hearing Officer, at the
offices of the State Tax Commission, State Office Building, **65** Court Street,
Buffalo, New York on February 4, 1987 at 9:15 A.M. Petitioner appeared by
William Patterson, C.P.A. The Audit Division appeared by John P. Dugan, Esq.
(Deborah J. Dwyer, **Esq.**, of counsel).

ISSUE

Whether the Audit Division should be barred from invoking the statute of
limitations with respect to the timeliness of petitioner's claim for refund of
corporation franchise tax paid for the years 1973 through 1978.

FINDINGS OF FACT

1. Petitioner, Starkweather Freight Lines, Inc., filed corporation
franchise tax reports and paid its corporation franchise tax liability for the
years at issue as follows:

<u>Periods</u>	<u>Date Filed and Paid</u>
1/1/73 - 12/31/78	3/16/79
1/1/77 - 12/31/77	3/17/78
7/1/76 - 12/31/76	3/11/77
4/1/76 - 6/30/76	8/3/76
1/1/76 - 3/31/76	5/3/76
10/1/75 - 12/31/75	2/17/76
7/1/75 - 9/30/75	11/14/75
4/1/75 - 6/30/75	8/13/75
1/1/75 - 3/31/75	5/13/75

2. Although the specific filing date for reports filed for the years 1974 and 1973 were not introduced into the record, petitioner conceded that said reports were filed and tax paid more than three years prior to the filing of the refund claims at issue.

3. On June 21, 1982, petitioner filed claims for refund of corporation franchise tax paid for the years at issue as follows:

<u>Year</u>	<u>Amount of Claim</u>
1978	\$5,849.00
1977	4,112.00
1976	3,436.00
1975	2,221.00
1974	2,698.00
1973	2,414.00

4. On November 1, 1982, the Audit Division denied petitioner's refund claims in full.

5. Petitioner conceded that each of its refund claims were filed more than three years from the filing date of each of its franchise tax reports for the periods at issue. Petitioner contended, however, that the Audit Division should be barred from asserting the statute of limitations herein because of a purported failure of the Department of Taxation and Finance to properly advise petitioner with respect to a substantive tax issue upon which petitioner's refund claim was ultimately based. Specifically, on August 14, 1975, petitioner received certain requested information from the Department of Taxation and

preparation of petitioner's franchise tax reports. This information cited a specific State Tax Commission decision as determinative with respect to the question posed by petitioner. The cited Tax Commission decision was subsequently reversed on appeal to the Appellate Division of the Supreme Court of the State of New York in a decision issued in 1976. Petitioner did not become aware of the Appellate Division's decision until 1982, and had filed its franchise tax reports based upon the Department's advice throughout that time. Petitioner did not dispute that the Department's advice was accurate when given, but contended that the Department should have advised it of the subsequent change in the law, or, at the very least, should have advised it that the case which had been cited as determinative was subject to appellate review.

CONCLUSIONS OF LAW

A. That section 1087(a) of the Tax Law provides, in relevant part, that a claim for refund under Article 9 shall be filed within three years from the time of filing of the return or two years from the time the tax was paid, whichever of such periods expires the later. Accordingly, each of petitioner's refund claims herein was untimely pursuant to this section.

B. That petitioner's equitable claim is without merit for several reasons, the most fundamental of which is simply that the Department of Taxation and Finance made no misrepresentations to petitioner; the information provided was correct at the time it was given and no representation was made that the relevant law would not be subject to change in the future. Absent any misrepresentation, an assertion of estoppel cannot be maintained as a matter of law (~~see~~, generally, 57 N.Y. Jur. 2d, Estoppel, Ratification, and Waiver). Equally persuasive in defeating petitioner's contention (even assuming, arguendo, that misrepresentation were made and were reasonably relied upon) are the strong

principles in connection with tax matters against imputing estoppel to the state in the absence of statutory authority (see Matter of Jamestown Lodge 1681 Loyal Order of Moose Inc. [Catherwood], 31 AD2d 981) and against the use of estoppel against the state in matters involving mistakes of law (see Schuster v. Commissioner, 312 F2d 311).

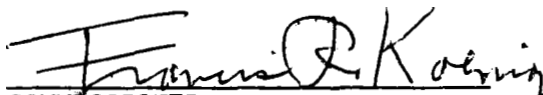
C. That the petition of Starkweather Freight Lines, Inc. is in all respects denied and the Audit Division's denial of refund letter, dated November 1982, is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

APR 17 1987


PRESIDENT


COMMISSIONER


COMMISSIONER