

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

MATHEW ANDRUK  
D/B/A **MATTY'S** TRUCKING CO.

DECISION

for Revision of Determinations or for Refund  
of Highway Use Tax under Article 21 of the Tax  
Law for the Period October 1979 through  
September 1982.

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Petitioner, Mathew Andruk d/b/a Matty's Trucking Co., 86 Malba Drive,  
Malba, New York 11357, filed a petition for revision of determinations  
or for refund of highway use tax under Article 21 of the Tax Law for the  
period October 1979 through September 1982 (File No. 52998).

A hearing was held before Frank A. Landers, Hearing Officer, at the  
offices of the State Tax Commission, Two World Trade Center, New York, New York  
on June 18, 1986 at 10:45 A.M. and continued on June 10, 1987 at 10:45 A.M.  
Petitioner appeared pro se. The Audit Division appeared by John P. Dugan,  
Esq. (Mark F. Volk, Esq. and Michael Alexander, Esq. of counsel).

#### ISSUE

Whether assessments of truck mileage tax and fuel use tax issued to  
petitioner and based on a field audit, were correct.

#### FINDINGS OF FACT

1. Petitioner, Mathew Andruk d/b/a Matty's Trucking Co., operates a  
trucking business, delivering lumber to retailers in the Metropolitan New York  
City area, including portions of New York, New Jersey and Connecticut.

2. A truck mileage tax audit of petitioner was performed in conjunction  
with the audit of an affiliated carrier, Timber Transport Corp. Petitioner had

permits for seven tractors and eight trailers, however not all tractors and trailers were used during the audit period.

3. The auditor found that petitioner did not keep odometer or hubometer readings. Petitioner recorded mileage based on distances computed from a moving industry guide. The guide calculated mileage from one location to another based on the shortest mileage from point to point. It did not allow for the use of expressways which would require less driving time but would result in greater mileage.

4. The auditor found toll receipts which he could not match to recorded trips and also found that some fuel purchases were made on days when no trips were recorded.

5. In view of the above, the auditor found that mileage records were unreliable and decided to use 1980 as a test year to determine if additional truck mileage tax and fuel use tax were due.

6. Mileage was determined as follows: Total fuel expense from petitioner's Federal tax return for the year 1980 was used as a starting point. From this, the auditor deducted all non-diesel fuel purchases to allow for vehicles which did not have truck mileage tax permits, resulting in net diesel fuel purchases of \$19,428.00. This was divided by the average estimated retail price of \$1.35 per gallon to arrive at 14,391 gallons. Next, the auditor computed the number of miles traveled by using a factor of five miles per gallon, due to a lack of fuel consumption records. This resulted in 71,955 audited miles. After deducting miles reported on petitioner's Combined Truck Mileage and Fuel Use Tax Return, Form MT-903 (30,049), reported out-of-state miles (5,137) and New York State Thruway credit miles (2,057), net additional New York State miles were found to be 34,712.

## 7. Calculation of Truck Mileage Tax

Petitioner reported on the maximum gross weight basis with 50% of mileage treated as laden and 50% as unladen.

a. Since petitioner did not retain records as to which tractor was pulling which trailer on a particular trip, the auditor could not use the weight stated on the permit to calculate the exact mileage via the chart on the back of the tax return. Therefore, the auditor used the unidentified rate of .0325 per mile multiplied by 17,356 laden miles (50% of 34,712 audited additional mileage) and calculated an additional laden tax of \$564.07.

b. Petitioner's heaviest tractor weighed 12,000 pounds and his heaviest trailer weighed 10,500 pounds, a total of 22,500 pounds. Accordingly, the auditor used the rate of .008 per mile multiplied by 17,356 unladen miles and calculated additional unladen tax of \$138.85.

c. Total additional truck mileage tax due for 1980 was \$702.92. Truck mileage tax paid for 1980 was \$546.98, resulting in an error ratio of 128.51%;

d. The truck mileage tax error ratio of 128.51% was applied to the truck mileage tax paid for the period October 1, 1979 through December 31, 1982 of \$1,647.41, resulting in additional audited truck mileage tax of \$2,117.09.

e. An assessment of unpaid truck mileage tax of \$2,117.09, plus penalty and interest, was issued to petitioner on March 30, 1984.

## 8. Calculation of Fuel Use Tax

a. The auditor added back the New York State Thruway mileage of 2,057 to the additional audited miles of 34,712 to find additional audited fuel use tax miles of 36,769 for 1980.

b. Since reported New York State fuel use tax mileage for 1980 was 32,105, this resulted in an error ratio of 114.53%.

c. New York State purchases claimed on petitioner's original return were recomputed using the error ratio of 114.53% and a consumption factor of 5 miles per gallon, resulting in additional fuel use tax due of \$2,146.42.

d. On March 30, 1984 the Audit Division issued an assessment of unpaid fuel use tax against petitioner for the period October 1979 through September 1982 of \$2,146.42, plus penalty and interest.

CONCLUSIONS OF LAW

A. That petitioner failed to keep accurate records as required by Tax Law § 507 and 20 NYCRR 483.1 et seq. Accordingly, pursuant to Tax Law § 510, it was proper for the Audit Division to estimate truck mileage tax and fuel use tax from such information as was available. (Lionel Leasing Industries Co., Inc. v. State Tax Commission, 105 AD2d 581.)

B. That the audit methods utilized were proper and petitioner has failed to show that the audit was erroneous.

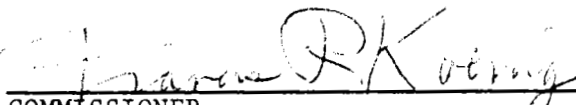
C. That the petition of Mathew Andruk d/b/a Matty's Trucking Co. is denied and the assessments of truck mileage tax issued under Tax Law § 503 and fuel use tax issued under Tax Law § 503-a are sustained.


DATED: Albany, New York

STATE TAX COMMISSION

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PRESIDENT

  
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COMMISSIONER

  
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COMMISSIONER