

STATE OF NEW YORK  
STATE TAX COMMISSION

*DuBois Cabs Inc.*  
*Gasoline*  
*(1971)*

In the Matter of the Petition

of  
DUBOIS CABS INCORPORATED :

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or  
a Refund of GASOLINE :  
Taxes under Article(s) 12A of the  
Tax Law for the ~~(Year(s))~~ period June 1, 1969  
through January 30, 1970

State of New York  
County of Albany

Rae Zimmerman , being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 27th day of October , 19 71, she served the within Notice of Decision (or Determination) by (certified) mail upon DuBois Cabs Incorporated (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: DuBois Cabs Incorporated  
385 Main Street  
Poughkeepsie, New York 12601  
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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

27th day of October , 1971

*Martha Furcolo*

*Rae Zimmerman*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
DUBOIS CABS INCORPORATED

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
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For a Redetermination of a Deficiency or  
a Refund of GASOLINE  
Taxes under Article(s) 12A of the  
Tax Law for the ~~(Year(s))~~ period June 1, 1969  
through January 30, 1970.

State of New York  
County of Albany

Rae Zimmerman , being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 27th day of October , 19 71, she served the within  
Notice of Decision (or Determination) by (certified) mail upon

Joseph Worona, Esq. (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Joseph Worona, Esq.  
4 Liberty Street  
Poughkeepsie, New York 12601

and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) 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

27th day of October , 1971.

Martha Furaro

Rae Zimmerman

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
DUBOIS CABS INCORPORATED	:	DETERMINATION
for reimbursement of Gasoline Taxes under	:	
Article 12A, section 289-C of the Tax Law	:	
for the period June 1, 1969 through	:	
January 30, 1970.	:	

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Dubois Cabs Incorporated has filed an application for reimbursement of gasoline taxes under Article 12A, section 289-C of the Tax Law for the period June 1, 1969 through January 30, 1970. A formal hearing was held before Lawrence A. Newman, Hearing Officer, in the offices of the State Tax Commission in the City of Albany on March 23, 1971. The applicant appeared through Charles Laisman, its president, and was represented by Joseph Warona, Esq. The Miscellaneous Tax Bureau was represented by Edward H. Best, Esq., (Solomon Sies, Esq., of Counsel).

ISSUES

I. Was the applicant licensed by local authorities to operate taxicabs at a fixed rate of fare, within the meaning and intent of section 289-C of the Tax Law, and,

II. Was the motor fuel, upon which the gasoline taxes were paid in full, consumed in the applicant's taxicab operations within New York State.

FINDINGS OF FACT

1. On March 31, 1970, the applicant, Dubois Cabs Incorporated, filed a claim for reimbursement of gasoline taxes in the amount of \$5,073.33, based on 169,111 gallons of gasoline consumed in a fleet of taxicabs owned and operated by the applicant and related corporations, whose base of operations was within the City of Poughkeepsie, New York. The application was denied by the Miscellaneous Tax Bureau

on December 16, 1970, and the applicant requested a formal hearing on January 5, 1971.

2. Section 289-C (at paragraph 3b) grants a reimbursement of the gasoline tax in excess of four cents per gallon, which is paid by a taxicab licensee on its purchases of motor fuel consumed in its operations within the state.

However, a "taxicab licensee" as defined in section 282, paragraph 10, requires that "the corporation, company, association, partnership or person.....(be) licensed by local authorities as defined in section 122 of such (Vehicle and Traffic) law to operate at a fixed rate of fare".

Section 122 of the Vehicle and Traffic Law defines a local authority as "every county, municipal and other local board, body or officer.....having authority to enact laws or regulations relating to traffic under the constitution or laws of this state".

3. Chapter 18, of the Code of Ordinances of the City of Poughkeepsie, requires taxicab operators to be licensed, upon the approval of the Chief of Police, by the City Chamberlain. A schedule must accompany the license application containing the rates of fare that will be charged by the operator to and from points within the city limits and to and from points outside the city limits, plus other special charges.

Upon complaint of any person, and after a hearing by the city judge, a taxicab license may be revoked or suspended....."if a fare in excess of the rate of fare on file for said taxicab shall knowingly be charged for the use of said taxicab".

4. The Common Council of the City of Poughkeepsie has not enacted any statute requiring a uniform rate for all taxicab operators. Chapter 18 of the Code of Ordinances does not empower any municipal officer to promulgate regulations regarding traffic

or the licensing of taxicab operators. The ordinance does not impose a duty upon any municipal officer to establish uniform rates for all taxicab operators. A taxicab license is issued as of May 1, and expires on April 30, next succeeding, unless sooner suspended or revoked. The licensee is obligated to charge the rates shown on its own filed schedule. The ordinance does not prohibit the filing of a higher rate schedule with a succeeding license application.

The applicant's compliance with the provisions of Chapter 18 of the Code of Ordinances was not disputed by the Miscellaneous Tax Bureau.

5. The application of Dubois Cabs Incorporated for reimbursement includes amounts of gasoline taxes paid on fuel consumed in the taxicab operations of two related corporations, i.e. Lee Central Inc. and Poughkeepsie Cab Co., Inc. Fuel, which has been purchased and billed to either Dubois Cabs Incorporated, or to Lee Central, Inc. is stored in common in bulk tanks, and from which tanks, the taxicabs of the three related corporations are refueled. The applicable gasoline taxes were paid through Dubois Cabs Incorporated to the State of New York for all consumers. However, the applicant did not plead or prove that it held an agency appointment from the related corporations to claim the reimbursement of the motor fuel taxes on their behalf.

6. The applicant has failed to plead or prove the separable amounts of gasoline taxes applicable to the consumption of fuel by Lee Central Inc., Poughkeepsie Cab Co., Inc. and Dubois Cabs Incorporated in their taxicab operations within the state. It was also determined that an unspecified amount of fuel was consumed in operating taxicab and/or limousine service between the City of Poughkeepsie and places outside of New York State.

DETERMINATION

A. The motor fuel, upon which the gasoline taxes were paid in full, was not consumed solely by the applicant in its taxicab operations within New York State.

B. The applicant was not licensed by local authorities to operate taxicabs at a fixed rate of fare, within the meaning and intent of section 289-C of the Tax Law.

C. The application for reimbursement of gasoline taxes is hereby denied.

DATED: Albany, New York  
*October 27, 1971.*

STATE TAX COMMISSION

*Norman Gallman*  
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COMMISSIONER

*Bruce Hawley*  
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COMMISSIONER

*Milton Kuen*  
\_\_\_\_\_  
COMMISSIONER