

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALWAYS AVAILABLE PRIVATE
CAR SERVICE, INC.

AFFIDAVIT OF MAILING

For ~~a Refund or a Reduction~~ of New York State Motor Fuel
Taxes under Article ~~(x)~~ 12-A of the
Tax Law for the ~~Taxable~~ Period ~~(x)~~
June 1, 1973 to May 30, 1975.

State of New York
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that
 he is an employee of the Department of Taxation and Finance, over 18 years of
 age, and that on the 8th day of April , 1977, he served the within
 Notice of Determination by ~~(certified)~~ mail upon Always Available
 Private Car Service, Inc. ~~(representative of)~~ the petitioner in the within proceeding,
 by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
 as follows: Always Available Private Car Service, Inc.
 2045 McDonald Avenue
 Brooklyn, New York 11223

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 Postal Service within the State of New York.

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

8th day of April, 1977.

Bruce Botchelo

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALWAYS AVAILABLE PRIVATE

CAR SERVICE, INC.

For ~~an Order of Determination of a Deficiency or~~
a Revision ~~of a Deficiency or~~ or a Refund
of New York State Motor Fuel
Taxes under Article ~~(*)~~ 12-A of the
Tax Law for the ~~Year(s) or~~ Period ~~(*)~~
June 1, 1973 to May 30, 1975.

AFFIDAVIT OF MAILING

State of New York
County of Albany

Bruce Batchelor, being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 8th day of April, 1977, ~~he~~ served the within
Notice of Determination by ~~(certified)~~ mail upon Thomas A. Dussault, Esq.

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Thomas A. Dussault, Esq.
Harvey and Harvey
Twenty-Nine Elk Street
Albany, New York 12207

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 Postal Service within the State of New York.

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

8th day of April, 1977.

Bruce Batchelor

Jean Bach



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

April 8, 1977

TELEPHONE: (518) **457-1723**

Always Available Private Car Service, Inc.
2045 McDonald Avenue
Brooklyn, New York 11223

Gentlemen:

Please take notice of the **DETERMINATION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(~~38~~ **288**) of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

Inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned. They
will be referred to the proper party for reply.

Very truly yours,

Paul E. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
	:	
of	:	
ALWAYS AVAILABLE PRIVATE CAR SERVICE, INC.	:	DETERMINATION
	:	
for Revision or for Refund of New York State	:	
Motor Fuel Tax under Article 12-A of the Tax	:	
Law for the Period June 1, 1973 to May 30,	:	
1975.	:	

Always Available Private Car Service, Inc., 2045 McDonald Avenue, Brooklyn, New York 11223, filed an application for revision or for refund of New York State motor fuel tax under Article 12-A of the Tax Law for the period June 1, 1973 to May 30, 1975. (File No. 0014025)

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on September 23, 1976 at 9:15 a.m. Applicant appeared by Harvey and Harvey, Esqs. (Thomas A. Dussault, Esq. of counsel). The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Michael Weinstein, Esq. of counsel).

ISSUE

Whether applicant is entitled to a refund of motor fuel taxes on the basis of being a taxicab licensee.

FINDINGS OF FACT

1. On July 16, 1975, applicant, Always Available Private Car Service, Inc., filed an application for refund of New York State motor fuel tax of three cents per gallon in the amount of \$13,777.71, for the period June 1, 1973 to May 30, 1975, based on 459,257 gallons of gasoline consumed in a fleet of taxicabs owned and operated by the applicant.

2. On December 12, 1975, the Miscellaneous Tax Bureau denied the claim of applicant, Always Available Private Car Service, Inc., on the grounds that it was not operating under a fixed rate of fare.

3. Applicant, Always Available Private Car Service, Inc., is a livery service located at 2045 McDonald Avenue, Brooklyn, New York, operating with forty taxicabs within a 70 mile radius. It is regulated by the New York City Taxi and Limousine Commission and with whom rates for geographic zones are filed. Any proposed change in filed rates must be presented to the New York City Taxi and Limousine Commission for approval.

4. The New York City Taxi and Limousine Commission does not fix the rates charged by the applicant, Always Available Private Car Service, Inc., nor does it direct applicant as to what applicant must charge. The Commission has the power to prescribe, revise and regulate rates of fare of private liveries.

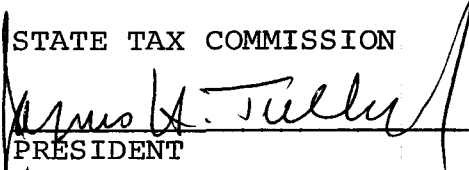
CONCLUSIONS OF LAW

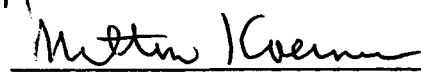
A. That the applicant, Always Available Private Car Service, Inc., was not licensed by the New York City Taxi and Limousine Commission to operate their vehicles, taxicabs and/or limousines at a fixed rate of fare within the meaning and intent of section 289(c) of the Tax Law and is therefore not entitled to a refund of motor fuel taxes on the basis of being a taxicab licensee. Application of Dubois Cabs Incorporated, State Tax Commission October 27, 1971.

B. That the application of Always Available Private Car Service, Inc. is denied.

DATED: Albany, New York
April 8, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER