

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Greyhound Lines, Inc.

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Motor Fuel Use
Tax under Article 21 of the Tax Law for the Fourth :
Quarter of 1977 and Second Quarter of 1978 .

State of New York
County of Albany

Jay Vredenburg, 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 30th day of October, 1981, he served the within notice of Corrected Decision by certified mail upon Greyhound Lines, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Greyhound Lines, Inc.
Greyhound Tower, Tax Dept. 0301
Phoenix, AZ 85077

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
30th day of October, 1981.

Annie A. Bagelrud

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Greyhound Lines, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Motor Fuel Use :
Tax under Article 21 of the Tax Law for the Fourth :
Quarter of 1977 and Second Quarter of 1978.

State of New York
County of Albany

Jay Vredenburg, 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 30th day of October, 1981, he served the within notice of Corrected Decision by certified mail upon R. Lee McFadden the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

R. Lee McFadden
Greyhound Lines, Inc. Greyhound Tower - 0301
Phoenix, AZ 85077

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
30th day of October, 1981.

Ann A. Highland

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

October 30, 1981

Greyhound Lines, Inc.
Greyhound Tower, Tax Dept. 0301
Phoenix, AZ 85077

Gentlemen:

Please take notice of the Corrected Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 510 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 30 days from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
R. Lee McFadden
Greyhound Lines, Inc. Greyhound Tower - 0301
Phoenix, AZ 85077
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
GREYHOUND LINES, INC.
for Redetermination of Denials of Parts
of Claims for Refund of Motor Fuel Use
Tax under Article 21 of the Tax Law for
the Fourth Quarter of 1977 and the Second
Quarter of 1978.

CORRECTED
DECISION

Petitioner, Greyhound Lines, Inc., Tax Department - 0301, Greyhound Tower, Phoenix, Arizona 85077, filed a petition for redetermination of denials of parts of claims for refund of motor fuel use tax under Article 21 of the Tax Law for the fourth quarter of 1977 and the second quarter of 1978 (File No. 27297).

The petitioner, by letter dated May 30, 1980, has requested that this matter be submitted to the State Tax Commission for a decision without the necessity of a formal hearing.

Based on the entire record herein, the State Tax Commission renders the following decision.

ISSUE

Whether the satisfaction of a Virginia motor fuel tax liability through the application of a carryover diesel motor fuel tax credit qualifies as a payment of the fuel use tax liability and, therefore, entitles petitioner to a refund under subdivision 3 of section 503(a) of the Tax Law.

FINDINGS OF FACT

1. Petitioner filed claims for fuel use tax refunds for the fourth quarter of 1977 (quarter ended December 31, 1977) in the amount of \$41,513.53

and for the second quarter of 1978 (quarter ended June 30, 1978) in the amount of \$46,500.80.

2. The Audit Division granted petitioner part of the refunds claimed and denied a portion thereof as follows:

<u>Period</u>	<u>Refund Claimed</u>	<u>Amt. Refunded</u>	<u>Refund Denied</u>
Fourth Quarter 1977	\$41,513.53	\$41,251.45	\$ 262.08
Second Quarter 1978	46,500.80	42,981.53	3,519.27

Petitioner timely protested the denial of portions of the refunds claimed.

3. The petitioner was advised that the claims for refund were denied for the following reasons:

"One of the requirements for obtaining a fuel use tax refund is that you must have paid to another state under a lawful requirement of that state a tax similar to the fuel use tax, on the use or consumption in such other state of motor fuel or Diesel motor fuel purchased in New York State.

Copies of your tax returns filed with the State of Virginia indicate no tax payments since any tax due was offset by applying prior credits. Therefore, this portion of your claim was disallowed."

4. The carryover consisted of the diesel motor fuel tax paid on diesel motor fuel purchased in Virginia during prior periods which was not used in that state.

CONCLUSIONS OF LAW

A. That subdivision 3 of section 503-a of the Tax Law provides, in part:

"...If proof satisfactory to the tax commission is submitted showing that a carrier has paid to another state...a tax, similar in effect to the fuel tax component in the tax imposed by this section, on the use or consumption in such state of motor fuel or diesel motor fuel purchased in this state and on which the taxes imposed by article twelve-a of this chapter have been paid, and if a claim for refund is filed within one year from the end of any calendar quarter, such excess for such quarter shall be refunded but only to the extent of such payment to such other state and in no case to exceed the applicable rate per gallon in effect under article twelve-a of this chapter..." (The regulations contain similar language. See 20 NYCRR 494.2).

B. That the use of the excess motor fuel credit was an actual payment of tax to the State of Virginia.

C. That since the Virginia motor fuel tax (similar to the New York State Fuel Tax) was paid to the State of Virginia for the fourth quarter of 1977 and the second quarter of 1978, there is a basis for a refund within the intent and meaning of subdivision 3 of section 503-a of the Tax Law.

D. That the petition of Greyhound Lines, Inc. is granted.

DATED: Albany, New York

OCT 30 1981

STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER