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

August 18, 1977

Cross County Taxi Service, Inc.
1544 Boone Avenue
Bronx, New York 10460

Gentlemen:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 288 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 4 months 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

Paul B. Coburn
Supervising Tax
Hearing Officer

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Applications of METROPOLITAN TAXICAB BOARD OF TRADE, Main Operating Corp.; Rego Maintenance Corp.; Carrick Service Corp.; Terminal System, Inc.; Helen Maintenance Corp.; 57th St. Management Corp.; Transportation Systems, Inc.; Meter Operating Corp.; Dover Garage, Inc.; Fare Operating Corp.; Frenat Service Corp.; Cadet Maintenance, Inc.; Iota Garage, Inc.; Sixth St. Management Corp.; Yankee Service Corp.; Ann Service Corp.; Jofan Maintenance Corp.; Capitol Cab Corp.; Chase Maintenance Corp.; Celbert Garage Corp.; Cab Operating Co., Inc.; Cordi Garage Corp.; Trans Maintenance; Cab Management Corp.; Taxi Maintenance Corp.; Cross County Taxi Service, Inc.; Butler Maintenance Corp.; Jayson Operating; Morlef Realty Corp.; Ike-Stan Maintenance Corp.; Ramp Operating Corp.; Ramp Maintenance Corp.; Lauran Service Corp.; Affiliated Taxi Inc., I; Affiliated Taxi Inc., II; Chad Operating Corp.; Haso Maintenance Corp.; Jaycee Service Corp.; Lod Service Corp.; Tone Operating Corp.; Taxicab Owners Cooperative, Inc. for Revision or for Refund of Motor Fuel Taxes under Article 12-A of the Tax Law.	DETERMINATION

Applicants filed an application for revision or for refund of motor fuel taxes under Article 12-A of the Tax Law. (File No. 00597)

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 29, 1976 at 9:15 a.m. Applicants appeared by Friedlander, Gaines, Cohen, Rosenthal and Rosenberg, Esqs. (Martin J. Hertz, Esq. of counsel). The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq. of counsel).

ISSUES

I. Whether section 284 of the Tax Law is constitutional.

II. Whether applicants are entitled to refund of tax paid on leaded gasoline.

FINDINGS OF FACT

1. Applicants are domestic corporations operating under the jurisdiction of the New York City Taxis and Limousine Commission. They operate fleets of taxis within the City of New York. The application for refund of tax paid on "leaded" gasoline was timely made. A stipulation was entered for further proof regarding number of gallons of gasoline purchased by certain applicants and their payment of tax thereon, depending on final determination of the matter.

2. Pursuant to the authorization contained in section 284(b) of the Tax Law, New York City enacted a local law known as Local

Law 40, Laws of 1971, effective August 1, 1971, known as sections AA46-1.0, AA46-2.0, AA46-2.1, AA46-3.0, AA46-4.0 and AA46-5.0 and AA46-6.0. Section AA46-2.0 sets forth that an excise tax is imposed upon every distributor "at the rate of one cent per gallon, upon motor fuel which contains one-half gram or more of tetra ethyl lead, tetra methyl lead or any other lead alkyls per gallon, sold within or for sale within the City by such distributor."

On February 19, 1971, the New York City Council passed Local Law 12 of the 1971 (Council Int. No. 463-A) which was approved by the Mayor of the City of New York on March 1, 1971. This Local Law amended the New York City Charter and Administrative Code in relation to the creation of the New York City Taxi and Limousine Commission and the provision for its jurisdiction, powers and duties. The Charter of the City of New York was amended by adding a new Chapter 65, known as "New York City Taxi &Limousine Commission." Part of Chapter 65 was section 2318, entitled "Anti-Noise and Air Pollution Provisions." This law provided at section 2318(b) thereof that "Effective July 1, 1971, all motor vehicles licensed under the provisions of this chapter which are manufactured in the model years 1972 or later shall be equipped with an engine designed to operate on non-leaded gasoline." All motor vehicles manufactured prior to the 1972 model year which are

licensed under the provisions of this Chapter shall operate in the City of New York on the effective dates, set forth below only on gasoline which contains no more than the following amount of lead by weight for the respective octane ranges, as follows:

	96 Octane No. & Above Grams Per Gal.	96 Octane No. & Below Grams Per Gal.
On and After July 1, 1971	2.0	1.5
On and After January 1, 1972	1.0	1.0
On and After January 1, 1973	0.5	0.5
On and After January 1, 1974	Zero	Zero

Local Law 12 and Local Law 40 present differing standards as to what constitutes "leaded" or "unleaded" gasoline. Local Law 12 presents its definition in terms of grams of lead per gallon in gasoline of varying octanes (I.E. 96 octane and above, or 96 octane and below, which itself conflicts) whereas Local Law 40 presents its definition in terms of grams of tetra ethyl lead, tetra methyl lead or other lead alkyls per gallon.

Tetra ethyl lead, tetra methyl lead or lead alkyls are lead compounds which are additives, added to gasoline. One-half gram of lead in a gallon of gasoline will consist of more than one-half gram of tetra ethyl lead, tetra methyl lead or other lead alkyls per gallon.

An average gallon of gasoline weighs approximately 2,814.8 grams. One-half gram of lead in the average gallon of gasoline would be at the ratio of approximately 150 parts per million.

The Rules promulgated by the New York City Taxi & Limousine Commission make certain requirements with reference to places within which a taxi is required to be garaged. Rule 50 states that "vehicles shall be garaged within the City of New York." The Rule goes on to state that changes of addresses of a person holding a hack driver's license shall be reported to the precinct where the vehicle is garaged. Rule 111 through 114 contains provisions with regard to fleet operation. Rule 111 states "Every operation shall maintain within the City of New York a garage of record approved by the Taxi & Limousine Commission for the storage, maintenance and repair of the owner's vehicle." Rule 116 provides that a "fleet operation shall provide taxicab or coach service to the public a minimum of two shifts of nine hours per day including holidays and weekends."

3. From August of 1971 to date, the applicant, the taxi fleets, have been supplied mainly through three distributors: The Taxicab Owners Cooperative, Inc., Rad Oil Company (hereinafter "Rad"), Viking Facilities, Inc., or Viking Petroleum Products, Inc. Some fleets were supplied directly by the oil

companies during all or a portion of the period from August 1, 1971 to date.

In the beginning of 1973, conditions of shortage of supply and scarcity of gasoline started to develop. Mobil Oil Corporation and other major producers started to inform customers that the supply of gasoline would be reduced, and offered them no alternative or prospects of relief. Mobil told the Taxicab Owners Cooperative, Inc. that it would cease delivery to the Co-op after March 31, 1973, although Mobil had supplied 5,119,345 gallons of gasoline out of the 14,327,000 gallons used by the Co-op during 1972. The balance was supplied by Texaco Inc. At about the same time, Mobil also informed Viking and Rad that it was their intention to reduce supplies to them by 25%. Subsequently, on April 5, 1973, Mobil agreed to continue to supply the Co-op through April 30, 1973. In May of 1973, Mobil agreed to supply the Co-op with only 75% of the quantity purchased by the Co-op during May, 1972, and indicated that the Co-op could not rely on Mobil for gasoline thereafter.

Previously, in May, in the face of the shortages, Mobil proposed to supply only 50% of the gasoline they had supplied during the previous year.

In September of 1973, Texaco threatened to deliver only 85% of what they delivered in June of 1973.

On October 25, 1973, Texaco, which had been following an allocation system pursuant to which it allocated a certain number of gallons to taxicab operators, announced a stoppage of deliveries for the balance of the month. The fleets began to run out of gasoline and had to take any gasoline they could get.

The Emergency Petroleum Act of 1973 was enacted by Congress and signed by the President on November 27, 1973. It established the Federal Energy Office ("FEO"), which issued its first rush copy of the Rules and Regulations on January 15, 1974 (Federal Register, Vol. 39, No. 10). These Rules generally provided that gasoline companies which supplied users (either directly or through distributors or brokers) with gasoline were required to continue to supply them with gasoline. Any user who wished to change his supplier could not change such supplier voluntarily, nor were the gasoline companies required to take on new customers.

The FEO was succeeded by the Federal Energy Administration ("FEA"), but the requirement that a user could not change his gasoline company without special permission continued, and still continues to this day.

In addition, the gasoline companies generally interpreted the Regulations in a manner which only required them to service existing accounts at existing locations within the City of New York.

The result of the shortages and the Federal Regulations was that the taxicab fleets had no choice as to the supplier of gasoline during the entire period from the time the shortages commenced and, therefore, if the gasoline company was not producing gasoline which was not subject to the one cent tax, the fleets had to purchase gasoline for which the one cent tax was charged.

Moreover, even as to those gasoline companies which claimed to have the grade of gasoline for which a one cent tax was not chargeable, there was not sufficient supply of that gasoline so that the fleet owners could purchase as much gasoline which was not subject to the one cent tax as the fleet owner wanted.

CONCLUSIONS OF LAW

A. That the constitutionality of the laws of the State of New York and the City of New York are presumed at the administrative level of the New York State Tax Commission. There is no jurisdiction at the administrative level to declare such laws unconstitutional. Therefore, it must be presumed that section 284(b)

of the Tax Law and New York City Local Law 40, Laws of 1971 effective August 1, 1971, are constitutional to the extent that they relate to the imposition of the tax which is the subject of this proceeding.

B. That the applications for refund of tax paid pursuant to section 284(b) of the Tax Law and New York City Local Law 40 are denied.

DATED: Albany, New York
August 18, 1977

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER