

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Cornell University - Campus Bus Service :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Motor Fuel Tax :
under Article 12-A of the Tax Law for the Period :
2/14/75 - 10/14/76. :
_____ :

AFFIDAVIT OF MAILING

State of New York }
County of Albany } ss.:

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 18th day of January, 1984, he served the within notice of Decision by certified mail upon Cornell University - Campus Bus Service, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Cornell University - Campus Bus Service
ATTN: Arthur E. Devlin
800 Dryden Rd.
Ithaca, NY 14853

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
18th day of January, 1984.

David Parchuck

James A. Hagedorn
pursuant to Tax Law section 174

Authorized to administer oaths

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

January 18, 1984

Cornell University - Campus Bus Service
ATTN: Arthur E. Devlin
800 Dryden Rd.
Ithaca, NY 14853

Gentlemen:

Please take notice of the Decision 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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law 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:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
CORNELL UNIVERSITY	:	DECISION
CAMPUS BUS SERVICE	:	
	:	
for a Hearing to Review a Determination of	:	
Motor Fuel Tax under Article 12-A of the Tax	:	
Law for the Period February 14, 1975 through	:	
October 14, 1976.	:	

Petitioner, Cornell University - Campus Bus Service, Attention: Arthur E. Devlin, 800 Dryden Road, Ithaca, New York 14853, filed a petition for a hearing to review a determination of motor fuel tax under Article 12-A of the Tax Law for the period February 14, 1975 through October 14, 1976. (File No. 21426)

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, State Office Annex, 164 Hawley Street, Binghamton, New York, on September 15, 1982 at 9:15 A.M., with all briefs to be submitted by January 1, 1983. Petitioner appeared by Thomas Mead Santoro, Esq., Associate University Counsel. The Audit Division appeared by Paul B. Coburn, Esq. (Barry M. Bresler, Esq., of counsel).

ISSUE

Whether the Audit Division properly denied petitioner's claim for refund of Motor Fuel Tax.

FINDINGS OF FACT

1. On or about January 18, 1977, petitioner, Cornell University - Campus Bus Service, filed a Motor Fuel Tax Refund Application (Form MT-390.24), covering the period February 14, 1975 through October 14, 1976, seeking a refund of motor fuel tax paid in the amount of \$4,379.20. Petitioner based its

claim for refund on the gallons of fuel its fleet of twelve (12) buses consumed while travelling over streets and parking lots owned and maintained by Cornell University (called "allowable miles"), calculating such refund as follows:

	Total Allowable Miles		197,065
divided by:	Fleet Average Mileage Per Gallon		3.6
equals:	Claimed Non-Taxable Gallons	=	54,740
times:	Tax Rate Per Gallon		x.08
equals:	Claimed Refund		\$4,379.20

2. By a letter dated November 7, 1977, the Audit Division advised petitioner that the above claim for refund was denied in full as the result of a field audit.

3. Petitioner timely protested the November 7, 1977 denial of its refund claim.

4. On or about September 13, 1982, petitioner amended its claim for refund by reducing the claimed amount of allowable miles from 197,065 (see above) to 118,797 miles, hence reducing the claimed non-taxable gallons (computed as above at 3.6 miles per gallon) to 32,999 gallons and the amount of refund claimed from \$4,379.00 to \$2,639.92.

5. Petitioner operated a bus service on the Cornell University campus during the period at issue providing transportation throughout the campus for Cornell's faculty, staff and students. Each of petitioner's twelve buses ran on an established schedule over a rigid geographic route covering a total of approximately five (5) miles per trip. A ten cent fare per ride was charged to students and visitors, while faculty and staff rode the buses free of charge.

6. The route travelled by petitioner's buses covered, in part, roads and two parking lots owned and maintained by Cornell and, in part, roads owned and maintained by the city of Ithaca, New York. Petitioner's claim for refund, as originally filed, sought a refund for fuel used during all travel on roads and

parking lots owned and maintained by Cornell. Petitioner's amended claim for refund seeks a refund for fuel used during travel only at those times and over those portions of the roads and parking lots owned and maintained by Cornell which were restricted for use only by petitioner's buses and by Cornell's faculty members, staff and service personnel, with use denied to the general public.

7. Restriction on the use of the roads to the above-mentioned parties and vehicles during the hours of 7:00 a.m. through 5:00 p.m. was accomplished by establishing booths at three main checkpoints manned by security personnel during the restricted hours. Only petitioner's buses and those vehicles exhibiting the proper parking stickers were allowed access to the restricted roads. In addition to the booths, security patrols both on foot and by car were used at the two parking lots, whose entrances were not covered by manned booths, as well as on the restricted roads.

8. It was possible for unauthorized vehicles to gain access to the restricted roads and the parking lots, since all entrances thereto were not guarded. However, when unauthorized vehicles were found in either of the restricted areas, tickets were issued. The three booths were not manned from 5:00 p.m. to 7:00 a.m., and access to the roads was not restricted during these hours.

9. Petitioner asserts that 3.3 miles out of each 5 mile bus trip was travelled over these restricted roads and parking lots (during the hours from 7:00 a.m. to 5:00 p.m.), and maintains that such mileage was not subject to Motor Fuel Tax since such fuel was not consumed during travel on public highways. Petitioner asserts that the restriction on access to and use of the roads and parking lots at issue during the specified hours rendered such roads and

parking lots non-public highways, and thus tax paid on fuel consumed by the buses operated thereon should be refunded.

CONCLUSIONS OF LAW

A. That section 289-c(3)(a) of the Tax Law, in pertinent part, provides:

"..., any person who shall buy any motor fuel or diesel motor fuel, on which the tax imposed by [Article 12-A] shall have been paid, and shall consume the same in any manner except in the operation of a motor vehicle upon or over the highways of this state, ..., shall be reimbursed the amount of such tax..." (emphasis added).

B. That section 289-c(2) of the Tax Law, in pertinent part, provides:

"..., the intention of this article is to place the ultimate burden resulting from such tax, so far as possible, on persons who use the public highways of the state for operating motor vehicles thereon..." (emphasis added).

Section 289-c(4) of the Tax Law further provides that "'[h]ighway', within the meaning of this section, means a highway, street, avenue, road, alley, boulevard, parkway, or other similar thoroughfare."

C. That there is no allegation raised that the areas under consideration, including the two parking lots, do not constitute highways within the definition provided in section 289-c(4) of the Tax Law.

D. That the Legislature's clearly-stated intention was to place the burden of the instant tax upon those persons who use the public highways of the state (Tax Law section 289-c(2), supra; cf. Matter of Greyhound Lines, Inc., 274 App. Div. 679 at 681). Petitioner seeks a refund of tax paid on fuel consumed only in the restricted areas and only during those hours when such restrictions were actively enforced, and not during those hours when the areas at issue, notwithstanding their ownership and maintenance by Cornell, could at least arguably be considered highways open and accessible to use by the public at large (i.e. public highways). Petitioner's use of the restricted areas at issue herein during the hours when the restrictions on use were enforced did

not constitute the use of public highways. Thus petitioner was not at such times among those persons upon whom the burden of this tax was intended to be placed and a refund should have been allowed.

E. That the petition of Cornell University - Campus Bus Service is hereby granted and a refund of tax in the amount specified in petitioner's amended claim for refund (\$2,639.92) is allowed.

DATED: Albany, New York

STATE TAX COMMISSION

JAN 18 1984

Rodwin A. Cline
PRESIDENT

Francis R. Koenig
COMMISSIONER

Mark J. Dwyer
COMMISSIONER