

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
L. P. Transportation, Inc.

:

:

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision
of a Determination or Refund of Fuel Use Tax
under Article 12A of the Tax Law for the Period
Ended 3/31/83.

:

:

State of New York :

ss.:

County of Albany :

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 28th day of June, 1985, he served the within notice of decision by certified mail upon L. P. Transportation, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

L. P. Transportation, Inc.
Rt. 17M - P.O. Box 489
Chester, NY 10918

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
28th day of June, 1985.

David Parchuck

Ann M. O'Hagan

Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
L. P. Transportation, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Fuel Use Tax :
under Article 12A of the Tax Law for the Period :
Ended 3/31/83. :

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

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 28th day of June, 1985, he served the within notice of decision by certified mail upon John L. Alfano, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John L. Alfano
Alfano & Alfano
550 Mamaroneck Ave.
Harrison, NY 10528

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 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
28th day of June, 1985.

David Parchuck

James P. [Signature]
Authorized to administer oaths
pursuant to Tax Law section 174

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

June 28, 1985

L. P. Transportation, Inc.
Rt. 17M - P.O. Box 489
Chester, NY 10918

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: Petitioner's Representative
John L. Alfano
Alfano & Alfano
550 Mamaroneck Ave.
Harrison, NY 10528
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
L. P. TRANSPORTATION, INC.	:	DECISION
	:	
for a Hearing to Review a Determination of	:	
Motor Fuel Tax under Article 12-A of the Tax	:	
Law for the Period Ended March 31, 1983.	:	

Petitioner, L. P. Transportation, Inc., Route 17M, P.O. Box 489, Chester, New York 10918, 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 ended March 31, 1983 (File No. 47820).

A formal hearing was held before Dennis M. Galliher, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 21, 1984 at 9:00 A.M., with all briefs to be submitted by November 16, 1984. Petitioner appeared by Alfano & Alfano, Esqs. (John L. Alfano, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Anna D. Colello, Esq., of counsel).

ISSUE

Whether the Audit Division properly denied petitioner's claim for refund of fuel use tax paid to Vermont.

FINDINGS OF FACT

1. On or about July 5, 1983, petitioner, L. P. Transportation, Inc., filed a Claim for Fuel Use Tax Refund (Form MT-906) covering the quarterly period ended March 31, 1983, seeking a refund of fuel use tax paid to nine

different states in the aggregate amount of \$5,716.38.¹ The Audit Division allowed the claimed refund for taxes paid to each of the states listed thereon, except for Vermont, in which case the claimed refund of \$677.20 was disallowed.

2. Petitioner, a transportation company, is engaged in the business of transporting liquified petroleum gases, other petroleum fuel commodities and other liquid commodities. Petitioner operates tractor-trailer units, with all trailers being tank-type vehicles. Its vehicle fleet consists of 86 tractor units and approximately 200 tanker-trailer units.

3. Each of the tractors in petitioner's fleet is powered by a diesel engine. The empty weight of a tractor-trailer unit is approximately 40,000 to 45,000 pounds, while the loaded gross weight of a unit is approximately 80,000 pounds.

4. Almost all of the diesel fuel used by petitioner's tractors is purchased and stored at its terminals in New York State, and petitioner purchases very little fuel in other states. The credit claim at issue herein is based on tax paid to Vermont based on diesel fuel used in that state, which fuel had been purchased (and stored) in New York and upon which tax had been paid pursuant to Tax Law Article 12-A.

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

1 The nine states were Connecticut, Maryland, Rhode Island, New Jersey, Delaware, New Hampshire, Massachusetts, Pennsylvania and Vermont.

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..." (emphasis supplied).

B. That the issue presented turns upon whether the Vermont tax (Title 23, Chapter 27, Vermont Statutes Annotated) is "similar in effect" to the fuel tax component in the tax imposed by Tax Law section 503-a. The Audit Division asserts it is not, citing three dissimilarities as follows:

- 1) the Vermont tax covers diesel fuel only, rather than diesel fuel and motor fuel;
- 2) the Vermont tax applies to vehicles with an unloaded weight exceeding 7,000 pounds, whereas the New York tax sets an 18,000 pound threshold; and
- 3) the Vermont tax allows credits for taxes paid to be carried over into the next reporting period, rather than the next four reporting periods.

C. That the thrust of taxes such as those at issue is to cause users of the State's public highways to bear their fair share of financing highway needs. An important motivation for enactment of section 503-a was to encourage the purchase of fuel in New York (N.Y. Legis. Ann., 1968, p. 398). It was contemplated that truck owners who purchased all or most of their fuel in New York and traveled extensively outside New York would be relieved of some of their tax liability (supra). The legislative history of section 503-a of the Tax Law further establishes that the legislature anticipated that "[t]ruckers would owe a fuel use tax only on that portion of the fuel used in New York on which they had not paid the New York tax at the time of purchase...[and that]... since credits are provided for any tax paid in New York on fuel used in other

states, all possibility of double taxation is eliminated." (N.Y. Legis. Ann., 1968, p. 400).

D. That the two taxes are similar in effect and petitioner is entitled to a refund as claimed. Both New York and Vermont tax users of diesel fuel.² Any diesel powered vehicle which is subject to the New York tax will also be subject to the Vermont tax, in view of the lower weight threshold at which the Vermont tax applies.³ Furthermore, the credit carryover time provisions are a matter of administrative function. In sum, the noted distinctions between the taxes do not serve to render the taxes dissimilar in effect. Allowance of the claimed refund comports with the legislative intent expressed in the enactment of section 503-a. Finally, not only is the effect of the two taxes similar, but as applied to petitioner the effect is identical, inasmuch as petitioner's entire fleet is powered by diesel tractors and all of the units in petitioner's fleet weigh in excess of 18,000 pounds.


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- 2 No unwarranted credit or refund would result based on the fact that New York taxes motor fuel as well as diesel fuel, while Vermont taxes diesel fuel only, inasmuch as a taxpayer must prove payment of tax to the other state, in order to claim a New York credit or refund (Tax Law §503-a). In Vermont there would be no payment of tax on motor fuel, and thus no claim for credit or refund thereon against New York tax could be maintained. Hence it is not determinative that the New York tax applies to a broader range of fuel than does Vermont's tax.
- 3 No credit or refund would be allowable, however, for tax paid to Vermont on diesel fuel used in vehicles which do not meet the 18,000 pound New York weight threshold under Tax Law section 503-a.

E. That the petition of L. P. Transportation, Inc. is hereby granted and the claimed refund is to be allowed.

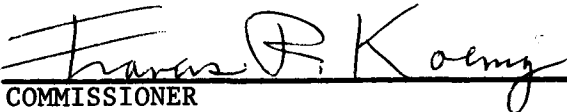
DATED: Albany, New York

STATE TAX COMMISSION

JUN 28 1985



PRESIDENT



COMMISSIONER



COMMISSIONER