

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Madison Taxi of Buffalo, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Motor Fuel Tax :  
under Article 12-A of the Tax Law for the Period :  
10/1/76-3/31/78. :

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 16th day of July, 1982, he served the within notice of Decision by certified mail upon Madison Taxi of Buffalo, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Madison Taxi of Buffalo, Inc.  
4430 N. Bailey Ave.  
Buffalo, NY 14226

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  
16th day of July, 1982.

*Annice R. Boydland*

*J. Vredenburg*

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
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State of New York  
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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 16th day of July, 1982, he served the within notice of Decision by certified mail upon Robert B. Conklin the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert B. Conklin  
Hodgson, Russ, Andrew, Woods & Goodyear  
1800 One M & T Plaza  
Buffalo, NY 14203

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  
16th day of July, 1982.

*Connie A. Haglund*

*J. Vredenburg*

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Yellow Cab Co. of Greater Buffalo, Inc. :  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Motor Fuel Tax :  
under Article 12-A of the Tax Law for the Period :  
10/1/76-3/31/78. :  
AFFIDAVIT OF MAILING

State of New York  
County of Albany

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Yellow Cab Co. of Greater Buffalo, Inc.  
4430 N. Bailey Ave.  
Buffalo, NY 14226

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  
16th day of July, 1982.

*Carrie A. Haglund*

*J. Vredenburg*

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Yellow Cab Co. of Greater Buffalo, Inc. :  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Motor Fuel Tax :  
under Article 12-A of the Tax Law for the Period :  
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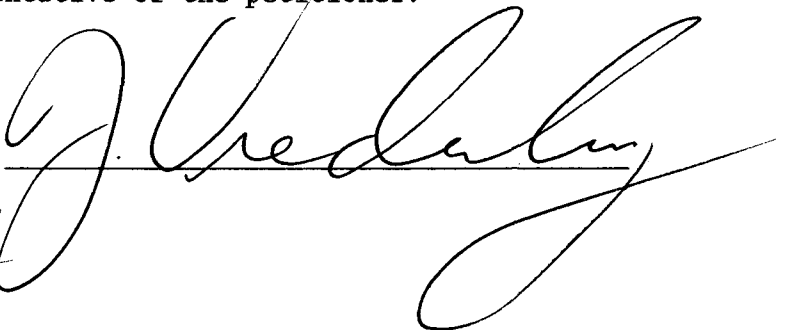
Robert B. Conklin  
Hodgson, Russ, Andrew, Woods & Goodyear  
1800 One M & T Plaza  
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Sworn to before me this  
16th day of July, 1982.

  
\_\_\_\_\_  
Commissioner of Taxation and Finance

  
\_\_\_\_\_  
Jay Vredenburg

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

July 16, 1982

Madison Taxi of Buffalo, Inc.  
4430 N. Bailey Ave.  
Buffalo, NY 14226

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, 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:

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

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Robert B. Conklin  
Hodgson, Russ, Andrew, Woods & Goodyear  
1800 One M & T Plaza  
Buffalo, NY 14203  
Taxing Bureau's Representative

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

July 16, 1982

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Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Robert B. Conklin  
Hodgson, Russ, Andrew, Woods & Goodyear  
1800 One M & T Plaza  
Buffalo, NY 14203  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application  
of  
MADISON TAXI OF BUFFALO, INC.  
for a Hearing to Review a Determination of  
Motor Fuel Tax under Article 12-A of the Tax  
Law for the Period October 1, 1976 through  
March 31, 1978.

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DECISION

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In the Matter of the Application  
of  
YELLOW CAB CO. OF GREATER BUFFALO, INC.  
for a Hearing to Review a Determination of  
Motor Fuel Tax under Article 12-A of the Tax  
Law for the Year 1977.

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Petitioner, Madison Taxi of Buffalo, Inc., 4430 North Bailey Avenue, Buffalo, New York 14226, filed an application for a hearing to review a determination of motor fuel tax under Article 12-A of the Tax Law for the period October 1, 1976 through March 31, 1978 (File No. 25206).

Petitioner, Yellow Cab Co. of Greater Buffalo, Inc., 4430 North Bailey Avenue, Buffalo, New York 14226, filed an application for a hearing to review a determination of motor fuel tax under Article 12-A of the Tax Law for the year 1977 (File No. 25207).

A consolidated formal hearing was held before Doris E. Steinhardt, Hearing Officer, at the offices of the State Tax Commission, State Office Building, 65 Court Street, Buffalo, New York, on July 7, 1981 at 1:45 P.M. and continued to conclusion on July 8, 1981 at 1:15 P.M. Petitioner appeared by Hodgson, Russ, Andrews, Woods & Goodyear, Esqs. (Robert B. Conklin, Esq., of counsel). The

Audit Division appeared by Ralph J. Vecchio, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

### ISSUE

Whether petitioners, which own a fleet of licensed taxicabs, are entitled to reimbursement for motor fuel taxes paid, by virtue of section 289-c.3(b) of the Tax Law.

### FINDINGS OF FACT

1. Petitioner, Madison Taxi of Buffalo, Inc. ("Madison Taxi"), filed applications for refund of motor fuel tax for the periods April 1, 1976 through September 30, 1976; October 1, 1976 through March 31, 1977; April 1, 1977 through September 30, 1977; and October 1, 1977 through March 31, 1978. The Audit Division denied Madison Taxi's claims as to the last two periods. The Division initially allowed and paid the claims for the first two periods but thereafter disallowed said claims; on January 31, 1979, it issued to Madison Taxi a Notice of Determination of Tax Due under Motor Fuel Tax Law, asserting taxes in the amount of \$4,601.40, plus penalties of \$1,449.44, for a total amount of \$6,050.84.

2. Petitioner, Yellow Cab Co. of Greater Buffalo, Inc. ("Yellow Cab"), filed applications for refund of motor fuel tax for the periods January 1, 1977 through June 30, 1977 and July 1, 1977 through December 31, 1977, which claims the Audit Division initially allowed and paid but subsequently denied. On January 31, 1979, the Audit Division issued to Yellow Cab a Notice of Determination of Tax Due under Motor Fuel Tax Law, asserting taxes due for 1977 under Article 12-A in the amount \$4,820.79, plus penalties of \$1,084.68, for a total amount of \$5,905.74.



3. Madison Taxi is the wholly-owned subsidiary of Yellow Cab. Both petitioners are fleet taxicab operators. During the period under consideration, petitioners operated 159 licensed taxis, at a fixed rate of fare, in Buffalo, New York and also serviced the surrounding communities of Kenmore, Cheektowaga, Tonawanda and North Tonawanda. Petitioners employ approximately 22 individuals as mechanics, dispatchers and office personnel.

4. Petitioners purchased gasoline for their taxicabs from suppliers in bulk, at a fleet discount. Petitioners paid applicable Federal and State motor fuel taxes upon such purchases. Each of petitioners' three business locations (360 Niagara Street, Buffalo; 3409 Broadway, Cheektowaga; and 4430 North Bailey Avenue) contains facilities for the underground storage of gasoline. Petitioners are licensed by the appropriate jurisdictions to store and sell fuel.

5. Prior to January, 1976, petitioners employed taxicab drivers and remunerated them based upon 50 percent of their gross revenue (fares), from which were deducted Federal and State taxes, social security and a charge for gasoline consumed during the particular driver's operation of his cab.

6. Commencing in January, 1976, petitioners leased their cabs to taxi drivers in order to avoid the problem of employee pilferage of fares, among other reasons. The lease agreement which the drivers execute on a daily basis, together with the various charges, may be summarized as follows:

(a) flat fee, based upon the number of hours for which the driver leases the vehicle: \$13.00 for 12 hours, \$12.00 for 10 hours, \$11.00 for 8 hours;

(b) mileage charge: 15¢ per mile, Monday through Friday, 13¢ per mile, Saturdays, Sundays and holidays;

(c) charge for gasoline used in the cab during the lease period: 55¢ per gallon;

(d) charge for dispatch service: 50¢ per hour.

When the driver leases the cab, the vehicle has a tankful of gasoline. When he returns the car, it is refilled, and he is billed the per gallon charge for fuel used.

The driver is charged an additional flat fee and an additional amount for dispatch service if he keeps the cab out for longer than the time for which he contracted.

All of the above amounts are added to arrive at a subtotal, upon which 7 percent "tax, miscellaneous and other" is calculated. The lease agreement form in use early in the audit period contained the printed word "tax" and the handwritten words "miscellaneous and other", at which line the computation was done. Beginning in the middle or latter part of 1976, as the older forms ran out, petitioners began use of a smaller form which contained the printed words "tax, miscellaneous and other", at which line the 7 percent computation was done. Nevertheless, the gasoline charge is included in the subtotal against which the 7 percent is applied.

A two dollar per day charge is next made for collision insurance.

Finally, authorized charges, that is, charges to customer accounts approved by Madison Taxi or Yellow Cab prior to the start of the particular trip, are subtracted. Generally, the authorized charges to customer accounts exceed the total amount due petitioners from the driver under the lease.

7. Petitioners sell gasoline to drivers at cost. Since 1976, and the sharp rises in oil prices, however, petitioners are not notified by suppliers of the precise cost of gasoline until two or three days subsequent to purchase. Consequently, petitioners occasionally charge drivers less than their (petitioners') cost.

8. Petitioners sell gasoline to drivers in order to provide proper care of their taxis and in order to conserve fuel. This practice ensures that the tank will be filled for the next driver who leases the car, and that drivers will attempt to limit fuel consumption.

9. It is customary for drivers to obtain additional gas at the business location from which they leased their cabs, but it is not mandatory that they do so.

10. Madison Taxi and Yellow Cab each bear the cost of registration and insurance for the vehicles they own. In addition, petitioners perform all necessary repairs and maintenance, including body repair and painting, for their cabs.

#### CONCLUSIONS OF LAW

A. That paragraph (b) of subdivision (3) of section 289-c of the Tax Law provides for reimbursement of a taxicab licensee who or which has purchased motor fuel on which the taxes imposed by Article 12-A have been paid, "provided such motor fuel...has been consumed by such licensee in the operation of a taxicab in this state."

B. That paragraph (c) of subdivision (3) of section 289-c provides that when a claim for reimbursement is made by a taxicab licensee, the claimant must satisfy the Department of Taxation and Finance that "...he has borne the tax and that the amount claimed is the amount of such tax reimbursable under paragraph (b)...of subdivision three of this section."

C. That among the charges made to lessee-drivers by petitioners was a charge for gasoline used, based upon petitioners' cost. The lessee-drivers were thus the parties who carried the burden of motor fuel tax. Petitioners,

having failed to satisfy one of the requirements set forth in section 289-c.3(c), do not qualify for refund.

D. That penalties and interest in excess of the minimum statutory rate are hereby cancelled.

E. That the petition of Madison Taxi of Buffalo, Inc. is denied and the notice of determination issued January 31, 1979 is sustained, together with such additional minimum interest as may be due; and further, the petition of Yellow Cab Co. of Greater Buffalo, Inc. is denied and the notice of determination issued January 31, 1979 is sustained, together with such additional minimum interest as may be due.

DATED: Albany, New York

JUL 16 1982

STATE TAX COMMISSION

ACTING

PRESIDENT

COMMISSIONER

COMMISSIONER