

STATE OF NEW YORK
STATE TAX COMMISSION

*Miss Wright
Truck mileage*

In the Matter of the Petition

of

Lakeland Farms

For a Redetermination of a Deficiency or
a Refund of Highway Use Tax
Taxes under Article(s) 21 of the
Tax Law for the (Year(s)) Period
4/1/66 - 12/31/67

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Janet Wright, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 20th day of March, 1970, she served the within Notice of Decision (or Determination) by (certified) mail upon Schiano and Pogzer, Esqs. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Schiano and Pogzer
P.O. Box 4749
4425 Lake Avenue
Rochester, New York 14612
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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

20th day of March, 1970

Maria Buckley

Janet Wright

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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Janet Wright, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 20th day of March, 1970, she served the within
Notice of Decision (or Determination) by (certified) mail upon Lakeland
Farms (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Lakeland Farms
Dresden, New York

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

20th day of March, 1970.

Marie Buckley

Janet Wright

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application
of
LAKELAND FARMS COMPANY
For a Hearing to Review a Determination
of Highway Use Tax due under Article 21
of the Tax Law for the periods May 19,
1965 through March 31, 1966, and April 1,
1966 through December 31, 1967

DECISION

The taxpayer having filed applications pursuant to section 510 of the Tax Law for a hearing to review determinations dated July 15, 1966 and February 21, 1968, assessing unpaid truck mileage tax (highway use taxes) due under Article 21 of the Tax Law for the periods May 19, 1965 through March 31, 1966 and April 1, 1966 through December 31, 1967; and a hearing having been duly held and the record having been duly examined and considered,

The State Tax Commission hereby

FINDS:

(1) The sole issue herein is whether certain of the taxpayer's vehicles are exempt from tax by reason of use of such vehicles exclusively in relation to farming as provided by Tax Law section 504 subdivision 3. The method of computation of the assessment is not otherwise in dispute.

(2) The assessments in issue are in the amount of \$2,846.00 for the period May 1965 through March 1966 and \$10,665.55 for the period April 1966 through December 1967, both with penalties and interest as provided in Tax Law section 512 subdivision 3. The assessments were computed on the unladen weight basis provided for in Section 503 subdivision 3.

(3) The vehicles assessed for the period May 1, 1965 through March 31, 1966 were four tractors: a 1965 "Diamond T" tandem axle

(1966 permit number 681408) and a 1966 "Diamond T" tandem axle (1966 permit number 819949) both of which are used exclusively to haul bulk feed trailers; a 1963 Ford (1966 permit number 789169) used for general purposes and a 1966 "Diamond T" single axle (1966 permit number 844779).

(4) The vehicles assessed for the period April 1966 through December 1967 included the four pieces assessed for the earlier period and in addition, a 1966 Dodge van truck (1966 permit number 921964) used to haul eggs only and a 1966 International tractor (1966 permit number 951412).

(5) Lakeland Farms Company is a partnership with business offices at DuPont Road, Dresden, New York.

(6) Taxpayer's primary business is the ownership of laying chickens and the sale of eggs for market. It owns about 500,000 chickens.

(7) Taxpayer purchases "primary breeding stock" in Canada. This stock is kept at hatchery farms, not owned or leased by taxpayer, in Pennsylvania. Day-old chickens are transported from Pennsylvania by the hatchery to farms in New York State which are under contract to the taxpayer. After twenty weeks on the pullet-growing farm, the chicks are transported by the taxpayer to other farms, also under contract, for laying eggs. After about another twenty weeks, the chickens are too old for laying and they are sold to a poultry dealer who transports them to a slaughter plant.

(8) Taxpayer leases its premises at Dresden, New York; and, during the latter part of the periods in question, leased other premises at Middlesex, New York. About 90,000 chickens are kept at the Dresden premises.

(9) Over 400,000 chickens belonging to taxpayer are housed on forty to fifty farms operated by others. These are in the central western part of New York State, mostly within sixty miles of Dresden.

These farms are not contiguous to any premises owned or leased by Lakeland Farms Company.

(10) The premises leased by taxpayer at Dresden are used for office space, for a truck garage and shop, for the processing and packaging of eggs, for the cooling and freezing of eggs, and for general storage; all of these operations are located on the main floor. The second and third floor of this building are devoted to a "cage-laying" operation with 90,000 chickens. The Middlesex premises came into operation late in 1967; and there is not sufficient evidence as to the details of its operation.

(11) Taxpayer employs fifty people: six are managers or clerks; 14 care for poultry on the taxpayer's own premises; 2 are inspectors of poultry on other persons' premises; 8 are truck drivers; and 20 are involved in the processing and packaging of eggs for market.

(12) The arrangement between taxpayer and the owners of the farms on which the chickens are raised is that of principal and independent contractor. The premises are not under lease to Lakeland and the "grower-producer" is not an employee of Lakeland.

(13) Legal title to the feed, the chickens, and the eggs remain with Lakeland at all times.

(14) The vehicles subject to assessment are used primarily with respect to operations at the farms under contract to the taxpayer. None of the vehicles are used exclusively with respect to the taxpayer's premises at Dresden or Middlesex, New York.

(15) Two "Diamond T" tractors are used exclusively to haul bulk feed trailers each being capable of hauling twenty-two tons of feed. These trailers load at Buffalo, Depew, or Geneva, New York, and deliver on schedule direct to the contract farms.

(16) The Dodge van truck is used exclusively to transport eggs from the contract farms to the processing plant in Dresden and from there to market.

(17) No proof has been presented to show the use of the 1963 Ford, the International tractor, or the Diamond T, single axle tractor.

Upon the foregoing findings and all the evidence in the case,
The State Tax Commission hereby

DECIDES:

(A) The exemption provided for farms by section 504(3) of the Tax Law applies only where the vehicles otherwise subject to tax are used exclusively, (1) by a farmer to transport commodities raised on his own farm; (2) by a farmer to transport supplies to his own farm or (3) by a farmer to transport products from his own farm or a farm contiguous thereto.

(B) The exemption does not apply to a vehicle which is used to any degree with respect to a farm neither owned nor leased by the farmer claiming the exemption.

(C) A farm, the owner of which is under contract to the taxpayer, is not thereby the farm of the taxpayer within the meaning of the exemption.

(D) The vehicles subject to assessment were not used exclusively by the taxpayer with respect to farms which qualify for exemption.

(E) The determinations dated July 15, 1966, and February 21, 1968, are correct in the amounts as stated in paragraph 2, hereof, and are affirmed, together with such penalties and interest, if any, as may be lawfully due pursuant to section 512(3) of the Tax Law.

DATED: Albany, New York

STATE TAX COMMISSION

March 19, 1970

Norman Gallivan

PRESIDENT

Robert H. H. H.

COMMISSIONER

Milton K. K.

COMMISSIONER