

STATE OF NEW YORK  
STATE TAX COMMISSION

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IN THE MATTER OF THE APPLICATION  
OF

F. H. VON DAMM, INC.

FOR A HEARING TO REVIEW THE DETER-  
MINATION OF THE STATE TAX COMMISSION  
ASSESSING HIGHWAY USE TAXES UNDER  
ARTICLE 21 OF THE TAX LAW FOR THE  
PERIOD JANUARY 1963 TO DECEMBER 1963  
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The taxpayer, having filed an application for a hearing to review the determination assessing highway use tax under Article 21 of the Tax Law for the period January 1963 through December 1963, and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, New York, on October 4, 1967 and December 21, 1967, before Francis V. Dow, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer was represented, and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer was an operator of motor vehicles and was subject to highway use tax under Article 21 of the Tax Law; that the taxpayer elected, pursuant to Section 903 of the Tax Law, to compute the tax on the maximum gross weight of its vehicles for the calendar year 1963.

(2) That an assessment for unpaid truck mileage tax was issued against the taxpayer on April 28, 1966 (Assessment No. B-56269) for the period January 1963 through December 1963; that the assessment issued was in the sum of \$23.92 of which amount \$18.92 was truck mileage tax and \$5.00 was for a permit fee on the basis that audit of the taxpayer's records disclosed a vehicle with

maximum gross weight in excess of 20,001 pounds operated without a highway use permit and incurred taxable mileage.

(3) That throughout the year 1963, the taxpayer was the owner of a 1959 International Van truck bearing New York Registration No. 268259 for the year 1963, the vehicle mentioned in finding of fact No. 2, which the taxpayer operated on New York highways in its business of selling garden and pet supplies.

(4) That on July 29, 1963, the taxpayer's vehicle was being operated by Mackey Isaac, Jr., an employee of the taxpayer, for the purpose of making a delivery of pet food when the vehicle was stopped at a roadblock at or near the intersection of Borden Avenue and Van Dam Street in Queens, New York and weighed; that the vehicle laden with pet food weighed 21,880 pounds; that no truck mileage tax permit had been issued for the vehicle; that the odometer on the vehicle registered 14,420 miles.

(5) That the taxpayer failed to submit any evidence as to the number of miles either laden or unladen traveled by its aforesaid International Van truck on the highways of New York State; that the truck mileage tax in the assessment was computed by estimating the number of miles traveled laden on the highways of this State by the said vehicle by dividing the number of 14,420 miles as shown on its odometer by four, the age of the truck in years; that the resulting figure of 3,605 miles was multiplied by 75%, the estimated miles traveled laden by the vehicle resulting in 2,703 taxable miles (miles traveled laden on the highways of this State).

(6) That the taxpayer failed to establish by documentary or other sufficient evidence it did not operate its said 1959 International Van truck less than 2,703 laden miles which were taxable at the tax rate applicable for vehicles having a gross weight in excess of 20,001 pounds during the year 1963 pursuant to Section 503 of the Tax Law.

Based upon the foregoing findings and all of the evidence presented herein, the State Tax Commission hereby

**DETERMINES:**

(A) That the taxpayer was subject to the highway use tax during the year 1963 on its 1959 International Van truck bearing New York Registration No. 268279 for the year 1963, since it operated such vehicle on the highways of this State during 1963 with a gross weight of 21,880 pounds, and, accordingly, was required to pay a permit fee of \$5.00 for such vehicle.

(B) That the taxpayer failed to substantiate that it did not operate the said vehicle 2,703 laden miles with a gross weight of 20,001 pounds or more during the year 1963.

(C) That, accordingly, the assessment of unpaid truck mileage tax for the period January 1963 through December 1963 (Assessment No. B-56269) does not include any tax or other charges which could not have been lawfully demanded.

Dated: Albany, New York this 25th day of March, 1968.

**STATE TAX COMMISSION**

/s/

JOSEPH H. MURPHY

**PRESIDENT**

/s/

A. BRUCE MANLEY

**COMMISSIONER**

/s/

SAMUEL E. LEPLER

**COMMISSIONER**