

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Belgian Lines, Inc. and :
Dart Containerline, Inc. : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Highway Use Tax :
under Article 21 of the Tax Law :
for the Period 4/1/67-12/31/73. :

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 18th day of July, 1980, he served the within notice of Decision by certified mail upon Belgian Lines, Inc. and, Dart Containerline, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Belgian Lines, Inc. and
Dart Containerline, Inc.
5 World Trade Center, Suite 1159
New York, NY 10004

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
18th day of July, 1980.

Robert A. Bank

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Belgian Lines, Inc. and :
Dart Containerline, Inc. : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
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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 18th day of July, 1980, he served the within notice of Decision by certified mail upon Lloyd DeVos the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Lloyd DeVos
Hill, Betts & Nash
One World Trade Center, Suite 5215
New York, NY 10048

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
18th day of July, 1980.

Richard A. Bank

J. Vredenburg

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

July 18, 1980

Belgian Lines, Inc. and
Dart Containerline, Inc.
5 World Trade Center, Suite 1159
New York, NY 10004

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) 510 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 30 days 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
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Lloyd DeVos
Hill, Betts & Nash
One World Trade Center, Suite 5215
New York, NY 10048
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
BELGIAN LINES, INCORPORATED and	:	DECISION
DART CONTAINERLINE, INC.	:	
for Revision or for Refund of Truck	:	
Mileage and Highway Use Taxes under	:	
Article 21 of the Tax Law for the Period	:	
April 1, 1967 through December 31, 1973.	:	

Applicant, Belgian Lines, Incorporated, 67 Broad Street, New York, New York, and Dart Containerline, Inc., 5 World Trade Center, New York, New York 10004, filed an application for revision or for refund of highway use taxes under Article 21 of the Tax Law for the period April 1, 1967 through December 31, 1973 (File No. 01024 and 12835).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 24, 1976 at 9:15 A.M. Applicant appeared by Hill, Betts & Nash, Esqs. (Lloyd DeVos, Esq., of counsel). The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUE

Whether the determination of additional truck mileage and highway use taxes, based on an audit of applicants' available records by the Miscellaneous Tax Bureau, was correct.

FINDINGS OF FACT

1. *On July 14, 1971, the Miscellaneous Tax Bureau issued an Assessment of Unpaid Fuel Use Tax against applicant, Belgian Lines, Inc., for the periods July 1968 through June 1970 in the amount of \$525.60, plus penalty and interest

of \$160.29, for a total of \$685.89, together with an assessment of Unpaid Truck Mileage Tax for the periods April 1967 through December 1970 in the amount of \$1,423.50, plus penalty and interest of \$442.44, for a total of \$1,865.94.

2. On December 3, 1974, the Miscellaneous Tax Bureau issued an Assessment of Unpaid Fuel Use Tax against applicant Dart Containerline, Inc. for the periods July 1, 1970 through December 31, 1973 in the amount of \$183.79 plus penalty and interest of \$40.43 for a total due of \$224.22, together with an Assessment of Unpaid Truck Mileage Tax in the amount of \$312.81 plus penalty and interest of \$68.82 for a total due of \$381.63.

3. Applicant, Belgian Lines, Inc. and its successor Dart Containerline, Inc., operated a steamship line which hauled freight to European ports. It also owned and leased containers used to haul the freight between inland points in the United States. It did not own any power units. As a result of an audit of applicant for the first quarter (a period acquiesced to by applicant's manager), a list of carriers was compiled from the Reports of Equipment Interchanged or Leased (Form TMT-4) submitted by applicants to determine if New York State mileage was reported from carriers designated thereon. With respect to the audit of Belgian Lines, Inc., eight carriers were determined to be "lessees not permitted" or unregistered carriers. A further computation for the quarter indicated that 73 days were unreported for the chassis used. Using a Department standard of fifty miles per day at the maximum rate-of-charge per mile of .03 for unidentified vehicles, the computation and projections for the thirteen quarters involved resulted in a truck mileage tax due of \$1,423.50 (73 days x 50 miles per day x .03 rate x 13 periods = \$1,423.50).

Further computations using the same number of days and the standard for mileage indicated the fuel tax due to be \$525.60. Department standards

were 5 miles to a gallon and .09 as the tax per gallon (73 days x 50 miles divided by 5 m.p.g. x 8 quarters x \$.09 = \$525.60).

In the audit performed upon Dart Containerline, Inc., the year selected by the auditor was 1972 and was the basis for the assessment for the three and one-half year period. Lessees were checked to ascertain if returns were filed. Out-of-state lessees were not eliminated. The number of trips made multiplied by 50 miles, multiplied by .0325, equaled the truck mileage tax due and the fuel tax was then computed on the basis of the truck mileage using 5 gallons per mile at 9 cents and 10 cents, depending on period.

4. Applicants' books and records were inadequate for the Miscellaneous Tax Bureau to conduct a detail audit and determine the exact amount of tax due.

5. Dart Containerline, Inc., is the successor to Belgian Lines, Inc. The assessment against Dart Containerline, Inc., is for periods following those against Belgian Lines, Inc. The issue is the same on both assessments and it was stipulated that the decision bind both parties.

6. Based upon the experience of applicants' unique type of business, trips through New York State from New Jersey to Massachusetts indicate that the trailers would spend only part of one day going through the State for the fifty miles and another day on its return for another fifty miles (as listed on form TMT-4). A recomputation of truck mileage tax and fuel use tax therefore is as follows:

Truck Mileage Tax (Belgian Lines, Inc.)

*19 taxable trips at 50 miles in State (standard)	950 miles
15 quarters in audit period	x 15
Total mileage in State	14,250
Unidentified tax rate	.03
Truck mileage due for period	\$427.50

Fuel Use Tax (Belgian Lines, Inc.)

Mileage per Truck Mileage Tax Audit (last quarter)	950 miles
8 quarters in audit period	x 8
Total mileage	<u>7,600</u>
At 5 miles to gallon	1520
Tax rates (.09 per gallon)	<u>.09</u>
Fuel tax due	\$136.80

Truck Mileage Tax (Dart Containerline, Inc.)

47 taxable trips at 50 miles	2,350
(trips as per audit - 11 per quarter)	
Total mileage for audit period (as per audit)	8,225
Unidentified tax rate	<u>.0325</u>
Truck mileage due for period	\$267.31

Fuel Use Tax (Dart Containerline, Inc.)

7/1/70 to January 31, 1972 - 19 periods x $\frac{2350}{12}$ = 3724 monthly average in miles

3724 divided by 5 miles to gallon = 745 gallons x .09 = \$67.03

2/1/72 to 3/31/73 - 23 periods x $\frac{2350}{12}$ = 4508 monthly average in miles

4508 divided by 5 miles to gallon = 902 gallons x .10 = \$90.20

Total Tax Due \$157.23

CONCLUSIONS OF LAW

A. That section 508 of the Tax Law provides that in those instances where the carrier is not the owner of the vehicular unit, the owner may file the return and maintain the record required by sections 505 and 507 of the Tax Law, and that it shall be jointly and severally liable with the carrier for payment of the tax required under section 506 of said Law.

B. That section 510 of the Tax Law provides that in case any (Highway Use Tax) return filed shall be insufficient or unsatisfactory to the Tax Commission, the Commission shall determine the amount of tax due from such information as is available.

C. That section 503 of the Tax Law imposes a highway use tax for the privilege of operating any vehicular unit on the public highways of the State.

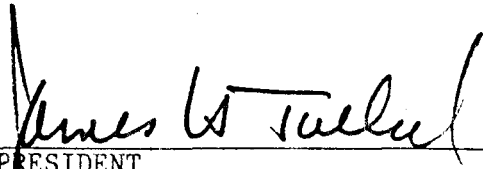
D. That 20 NYCRR 490.4 (Liability for tax; lessor - lessee operations) provides that the fuel use tax is imposed on the carrier; however, where the carrier is not the owner of the motor vehicle, the tax shall be a joint and several liability upon both, and the lessor and lessee of a leased motor vehicle subject to tax are jointly and severally liable for the fuel use tax.

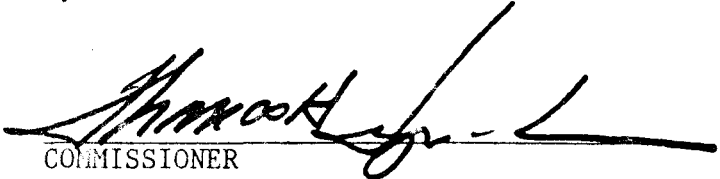
E. That the Miscellaneous Tax Bureau audited applicant, Belgian Lines, Incorporated, pursuant to statutory authority and determined that additional taxes were due. However, said applicant properly showed a more accurate amount due.

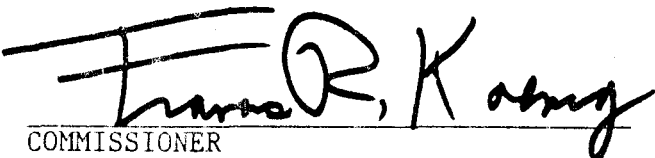
F. That the applications of Belgian Lines, Incorporated and Dart Containerline, Inc. are granted to the extent as reflected in the recomputation of Truck Mileage and Fuel Use Tax shown in Finding of Fact "5" above, together with such interest as may be lawfully owing; and that, except as so granted, the application of Belgian Lines, Inc. and Dart Containerline, Inc. is in all other respects denied.

DATED: Albany, New York
JUL 18 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER