

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Bendix Home Systems 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 Years 1973 & 1975. :

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 6th day of June, 1980, he served the within notice of Decision by mail upon Bendix Home Systems Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Bendix Home Systems Inc.  
61 Perimeter Park  
Atlanta, GA 30341

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  
6th day of June, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Bendix Home Systems 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 Years 1973 & 1975. :

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 6th day of June, 1980, he served the within notice of Decision by mail upon Donald E. Orr 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. Donald E. Orr  
The Bendix Corporation  
Exec. Offices, Bendix Center  
Southfield, MI 48076

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  
6th day of June, 1980.

Joanne Knapp

J. Vredenburg

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

June 6, 1980

Bendix Home Systems Inc.  
61 Perimeter Park  
Atlanta, GA 30341

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  
Donald E. Orr  
The Bendix Corporation  
Exec. Offices, Bendix Center  
Southfield, MI 48076  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Application	:	
of	:	
BENDIX HOME SYSTEMS, INC.	:	DECISION
for a Hearing to Review a Determination	:	
or for Refund of Highway Use Tax under	:	
Article 21 of the Tax Law for the Years	:	
1973, 1974 and 1975.	:	

---

Applicant, Bendix Home Systems, Inc., 61 Perimeter Park, Atlanta, Georgia 30341, filed an application for a hearing to review a determination or for refund of highway use taxes under Article 21 of the Tax Law for the years 1973, 1974 and 1975 (File No. 16124).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on March 29, 1978 at 9:15 A.M. Applicant appeared by Donald E. Orr, Tax Specialist, The Bendix Corporation. The Audit Division appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether mobile units manufactured and transported by applicant over New York State highways are exempt from highway use (truck mileage) tax.

FINDINGS OF FACT

1. On June 29, 1976, the Audit Division issued an Assessment of Unpaid Truck Mileage Tax against Bendix Home Systems, Inc., in the amount of \$2,055.79, plus penalty and interest of \$461.56, for a total due of \$2,517.35. A field audit disclosed that State thruway mileage (exempt from truck mileage tax) was

overstated, resulting in understated taxable mileage. Also, additional tax was assessed to cover mileage incurred in transporting double-wide mobile home units over State highways.

2. Applicant, Bendix Home Systems, Inc., agreed that the assessment with respect to the understated taxable State highway mileage was correct, resulting in additional tax of \$1,708.12 plus penalty and interest.

3. Applicant, Bendix Home Systems, Inc., is a manufacturer of single-wide and double-wide mobile home units. These are built at its plants in Clarion, Pennsylvania, Middleburg, Pennsylvania, and Marlette, Michigan. These mobile home units are transported over New York State highways to applicant's dealers. The frames and chassis of both types are constructed out of welded steel. Axles and a tongue (movable and non-movable types) are welded to the frame, to which wheels are attached. These single and double-wide units are mobile and are not designed to be put on a foundation. The units are transported by a tractor to various destinations; namely, applicant's dealers. The axles and wheels, which are permanently attached, stay with the unit, and are not removed nor returned to the manufacturer. No dolly is needed or used in transportation, nor are there any supplies carried on the units.

4. The weights of the mobile home units are not at issue, however, they are below eighteen thousand pounds.

#### CONCLUSIONS OF LAW

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

B. That section 501.3 of the Tax Law defines vehicular unit as a motor vehicle or any combination of motor vehicles operated as a unit.

C. That section 501.2 of the Tax Law provides in part as follows:

"Motor vehicle" shall include any automobile, truck, tractor or other self-propelled device, having a gross weight, alone, or in combination with any other motor vehicle, in excess of eighteen thousand pounds, and any trailer, semi-trailer, dolly, or other device drawn thereby and having a gross weight, alone, or in combination with any other motor vehicle, in excess of eighteen thousand pounds, or any truck having an unloaded weight in excess of eight thousand pounds, or any tractor, having an unloaded weight in excess of four thousand pounds, which is used upon the public highways otherwise than upon fixed rails or tracks."

D. That, mobile home units as transported by petitioner, Bendix Home Systems, Inc., are not motor vehicles as defined above and are not subject to the imposition of truck mileage tax.

E. That the petition of Bendix Home Systems, Inc., is granted to the extent indicated above; that the Audit Division is hereby directed to accordingly modify the assessment of unpaid truck mileage tax issued June 29, 1976; and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York

JUN 6 1980

STATE TAX COMMISSION

  
RESIDENT

  
COMMISSIONER

  
COMMISSIONER