STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Car Rentals, 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 1/1/71-12/31/75. :

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 31st day of October, 1980, he served the within notice of Decision by mail upon Car Rentals, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Car Rentals, Inc.
1570 S. Washington Ave.
Piscataway, NJ 08854

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
31st day of October, 1980.

Deborah A Bank

STATE OF NEW YORK
STATE TAX COMMISSION

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of
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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 31st day of October, 1980, he served the within notice of Decision by mail upon Stuart E. Rickerson 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. Stuart E. Rickerson
McCarter & English
550 Broad St.
Newark, NJ 07102

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
31st day of October, 1980.

Deborah A Bank

STATE OF NEW YORK
STATE TAX COMMISSION

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of
Car Rentals, 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 1/7/71 - 12/31/72. :

State of New York
County of Albany

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Deborah A Bank

Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
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State of New York
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J. Vredenburg

Sworn to before me this
31st day of October, 1980.

Deborah A Bank

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

October 31, 1980

Car Rentals, Inc.
1570 S. Washington Ave.
Piscataway, NJ 08854

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
Stuart E. Rickerson
McCarter & English
550 Broad St.
Newark, NJ 07102
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
CAR RENTALS, INC.	:	DECISION
for Revision of a Determination or for Refund of Highway Use Tax under Article 21 of the Tax Law for the Period January 1, 1971 through December 31, 1975.	:	

Applicant, Car Rentals, Inc., 1570 South Washington Avenue, Piscataway, New Jersey 08854, filed an application for revision of a determination or for refund of highway use tax under Article 21 of the Tax Law for the period January 1, 1971 through December 31, 1975 (File Nos. 00148 and 14921).

A formal hearing was held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 7, 1976 at 1:20 P.M. Applicant appeared by McCarter and English, Esqs. (Stuart E. Rickerson, Esq., of counsel). The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUES

I. Whether the highway use tax audits conducted by the Miscellaneous Tax Bureau provided a proper basis for the Assessment of Unpaid Truck Mileage Tax and the Assessment of Unpaid Fuel Use Tax, which were issued to applicant for the periods in question.

II. Whether three fuel use tax returns which applicant filed with the Department of Taxation and Finance were timely.

FINDINGS OF FACT

1. Applicant, Car Rentals, Inc., filed truck mileage tax returns for all quarters of the period in question, and attached thereto reports of equipment leased during such quarters. Said reports indicated the permit number of the truck leased, the type of truck, its unloaded weight, its maximum gross weight, the name and address of the lessee, the month in which the truck was rented, and the number of days for which it was rented. All the returns showed that there was no tax due, which was based on applicant's contention that the lessee had the liability therefor.

2. Applicant, Car Rentals, Inc., filed New York State fuel use tax returns for the period in question, on which applicant computed the miles traveled in New York State by taking 7 percent of the total miles traveled everywhere. Applicant computed the fuel used by using the consumption figure of 3 miles for every gallon of fuel.

3. The Miscellaneous Tax Bureau conducted a highway use tax field audit of applicant for the period January 1, 1971 to December 31, 1972. As a result of this audit, an Assessment of Unpaid Truck Mileage Tax (Number B-5312) dated November 13, 1973 was issued to applicant for the four quarters in 1971 and in 1972, and totaled $1,048.94, plus penalty and interest of $215.99. The assessment was based on applicant's failure to pay tax for vehicles which were leased to customers and reported on Reports of Equipment Interchanged or Leased (TMT-4). These reports were attached to the truck mileage tax returns and indicated that no tax was due. In the absence of available records for New York State, the assessment contained a statement to the effect that the audit used 7 percent of total mileage everywhere as New York State mileage (in accordance with a prior audit), and that applicant's mileage was treated as 50 percent laden and 50 percent unladen for both tractors and trucks.

An assessment (Number F-6187) was also sent to applicant for the period January 1, 1971 to December 31, 1972, for fuel use tax of $1,573.00, plus penalty and interest of $320.77. The assessment contained a statement to the effect that in the absence of records to substantiate purchases reported, credit for some of such purchases was disallowed.

4. The Miscellaneous Tax Bureau conducted another highway use tax audit of applicant's records for the period January 1, 1973 through December 31, 1975. Pursuant thereto, an Assessment of Unpaid Truck Mileage Tax (B-19011) dated May 5, 1976 was issued to applicant for that period in the sum of $2,606.12 in additional tax due, plus penalty and interest of $552.53, which amount was based on unreported truck mileage. An Assessment of Unpaid Fuel Use Tax (F-11530) dated May 5, 1976 was also issued to applicant for additional tax due of $2,127.36, plus penalty and interest of $450.82. Said assessment was based on audit findings of unreported taxable gallonage and of overstated New York State fuel purchases.

5. Applicant, Car Rentals, Inc., is a licensee of Avis Rent-A-Car System, and is engaged in the rental of cars and trucks. Applicant has 40 business locations, all but one of which are located in New Jersey. The one location in New York does not rent trucks, nor does it accept the return of trucks.

6. All rentals which are made by applicant are done so pursuant to written agreement, and the lessee is required to return the vehicle to the location from which it was rented. The gas and diesel tractors of applicant all have New York State TMT plates. Applicant does not operate any of the trucks.

7. Applicant receives no records from lessees as to their destination, fuel purchased or disbursements. The rental agreement does not provide for fuel purchased in the course of the operation of the leased vehicle. The operator is responsible for expenses so incurred.

8. When leased, the truck is delivered to the lessee with a full tank of fuel, and must be returned to applicant the same way. If it is not, applicant fills the tank of the returned truck and charges the lessee for the fuel.

9. Applicant prepared its quarterly fuel use tax returns by taking the difference in the vehicle's odometer readings at the time of rental and at the time of its return from rental agreements, in order to determine the total miles traveled everywhere for the quarter. To arrive at New York State miles for the quarter, applicant arbitrarily used 7 percent to determine total miles everywhere. The resultant quotient was then divided by three, which figure represented the miles per gallon of fuel consumed, based on applicant's experience and on the manufacturer's information. (No documentation of such experience or information was proffered at the hearing.) The resultant figure was entered on the return as the gallons of fuel consumed in New York. Applicant then subtracted a varying number of gallons for fuel consumed in New York. This figure was predicated strictly on assumption, and no documentation of any such fuel purchase in New York was proffered.

10. Applicant prepared the quarterly fuel use tax returns for the period July to September of 1974 on October 21, 1974, for October to December of 1974 on January 30, 1975, and for April to June of 1975 on July 28, 1975. Two of the returns did not have an "in-date" stamp indicating their date of receipt by the Department of Taxation and Finance. The return for the period October to December of 1974 was received on February 4, 1974. All three returns were accepted as being filed timely.

11. For the period April 1968 through December 1970, applicant was audited for truck mileage tax. Accordingly, an assessment was issued for $2,477.84, plus penalty and interest of $555.46, for a total due of $3,033.30. Pursuant to a telephone conversation on June 12, 1972, a settlement was reached.

By a letter dated June 13, 1972, applicant forwarded a check for $1,256.00, in full payment of this assessment. The basis for the settlement was payment of truck mileage tax on 3 1/2 percent of total mileage, as well as the waiver of all penalty and interest. The letter further provided that applicant agreed to report 3 1/2 percent of total mileage as New York mileage in future periods.

12. In a subsequent telephone communication, applicant was advised that it could not use the 3 1/2 percent figure in future returns. Consequently, applicant continued to use the 7 percent figure.

13. Applicant does not contest the findings of additional unreported mileage.

CONCLUSIONS OF LAW

A. That the liability for highway use taxes, where the carrier and the owner are not the same person, is joint and several, and the tax may be collected from either one (sections 503, 503-a and 508 of the Tax Law, and 20 NYCRR 480.1, 490.4).

B. That applicant, Car Rentals, Inc., filed their truck mileage tax returns in compliance with the Tax Commission's regulations when they properly prepared and attached forms TMT-4 (Equipment Interchanged or Leased) to the tax returns (20 NYCRR 484.3).

C. That the auditor did not find that any of the lessees who might incur New York taxable miles were not listed on the forms TMT-4. The auditor also did not find any instance where the lessees failed to pay the truck mileage tax.

D. That although an owner is jointly and severally liable for highway use taxes, the auditor's findings were arbitrary in that the auditor failed to find that any liability existed. Therefore, the assessments relating to truck mileage tax are cancelled.

E. That invoices for fuel purchases constitute "such other information as the tax commission may require," pursuant to section 507 of the Tax Law and 20 NYCRR 493.3; therefore, in the absence of applicant's invoices, the credit which was taken cannot be allowed.

F. That section 503-a provides that the amount of fuel used in New York shall be such proportion of the total amount of such fuel used in the entire operations within and without New York, as the total number of miles traveled within New York bears to the total number of miles traveled within and without New York; however, the Tax Commission is empowered to allow (by regulation) the use of a miles-per-gallon factor in computing fuel used in lieu of the above formula, where evidence satisfactorily establishes that such a substituted method will not result in a loss of revenue. Where records are inadequate, vehicular units are deemed to have consumed one gallon of motor fuel for every five miles traveled, unless substantial evidence discloses a different rate of consumption [section 503-a, Subd. 2 of the Tax Law and 20 NYCRR 491.2(c)].

G. That there is no substantial evidence which establishes a rate of gallons-consumed-for-miles-traveled, other than that deemed to have been consumed where records are inadequate.

H. That all returns, including the three returns questioned as to timeliness, were filed timely.

I. That the application of Car Rentals, Inc. is granted to the extent of Conclusion of Law "D"; that the fuel use tax (pursuant to section 503-a of the Tax Law) shall be computed using one gallon for every five miles traveled in New York; that all penalty and interest are waived and the Miscellaneous Tax Bureau is directed to so compute the tax due; and that, except as so granted, the assessments are otherwise sustained.

DATED: Albany, New York

OCT 31 1980

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER