

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Consolidated Freightways Corp. of Delaware :
: 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 :
1969 - 1973.

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 3rd day of July, 1981, he served the within notice of Decision by mail upon Consolidated Freightways Corp. of Delaware, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

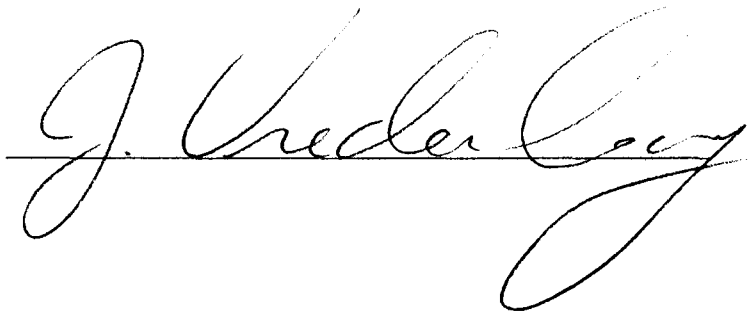
Consolidated Freightways Corp. of Delaware
P.O. Box 4121
Portland, OR 97208

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
3rd day of July, 1981.


Anne D. Hagelund


Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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of :
Consolidated Freightways Corp. of Delaware :
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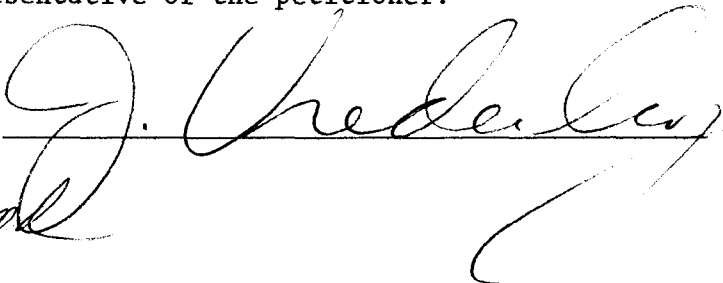

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 3rd day of July, 1981, he served the within notice of Decision by mail upon Eberhard Schmoller the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Eberhard Schmoller
Consolidated Freightways Corp.
175 Linfield Dr.
Menlo Park, CA 94025

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
3rd day of July, 1981.

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

July 3, 1981

Consolidated Freightways Corp. of Delaware
P.O. Box 4121
Portland, OR 97208

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
Eberhard Schmoller
Consolidated Freightways Corp.
175 Linfield Dr.
Menlo Park, CA 94025
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
CONSOLIDATED FREIGHTWAYS CORPORATION	:	DECISION
OF DELAWARE	:	
for Revision of a Determination or for Refund	:	
of Highway Use Tax under Article 21 of the Tax	:	
Law for the Period August 1, 1969 through	:	
April 30, 1973.	:	

Petitioner, Consolidated Freightways Corporation of Delaware, P.O. Box 4121, Portland, Oregon 97208, filed a petition for revision of a determination or for refund of highway use tax under Article 21 of the Tax Law for the period August 1, 1969 through April 30, 1973 (File No. 12834).

A formal hearing was held before Louis Klein, Hearing Officer, at the offices of the State Tax Commission, Building No. 9, Room 107, State Campus, Albany, New York, on September 7, 1977 at 9:15 A.M. Petitioner appeared by Eberhard G.H. Schmoller, Assistant General Counsel. The Audit Division appeared by Peter Crotty, Esq. (Andrew Haber, Esq., of counsel).

ISSUE

Whether the unloaded weight of a vehicle includes full fuel tanks.

FINDINGS OF FACT

1. Petitioner, Consolidated Freightways Corporation of Delaware, is a common carrier having terminals throughout the continental United States excluding Maine, Vermont, Louisiana and Florida. Terminals in New York State are located in Buffalo, Rochester, Syracuse, Albany, Utica, Elmira, Binghamton, Jamestown, Poughkeepsie and Long Island.

2. Petitioner filed Truck Mileage Tax Returns for the period August 1, 1969 through April 30, 1973. All mileage was reported utilizing the unloaded weight method. Under this method the rate per taxable mile is determined by the unloaded weight of the vehicle.

3. On audit, the Audit Division had several of the petitioner's vehicles weighed to verify the registered unloaded weight. The Audit Division insisted that the vehicles fuel tanks be filled before weighing. This technique resulted in an increase in the vehicle's unloaded weight substantial enough to place the vehicle in a higher tax rate bracket.

4. On August 29, 1973, as a result of this audit, the Audit Division issued an Assessment of Unpaid Truck Mileage Tax against the petitioner for the period August 1, 1969 through April 30, 1973 for tax due of \$7,899.18, plus interest of \$554.46, for a total of \$8,453.64. A petition protesting this assessment was timely filed.

5. Truck manufacturers offer several fuel tank options to buyers. These options are relative to the capacity of the fuel tanks and are ordered depending on the buyer's individual operation. The standard size of a fuel tank is 50 or 60 gallons. Optional fuel tanks can hold as much as 230 gallons.

6. The weight of diesel motor fuel is approximately seven pounds per gallon.

CONCLUSIONS OF LAW

A. That the Truck Mileage Tax Regulations provide that the unloaded weight of a vehicle includes the actual weight of the vehicle plus equipment. During the period at issue, said regulations provided that "equipment" included oil, gasoline and water in attached receptacles ordinarily provided by the manufacturer for such purpose (20 NYCCR 472.6).

B. That the optional fuel tanks made available by manufacturers constitute equipment that is ordinarily provided.

C. That although the regulations did not specifically mention diesel fuel during the period at issue, the term "unloaded weight", as it appears in subdivision 7 of section 501 of the Tax Law, is deemed to include diesel fuel. (It is noted that 20 NYCRR 472.6(c)(5) was amended effective December 18, 1979 to specifically include diesel fuel.)

D. That the phrase "...all equipment necessary for the performance of the function of the vehicle as a vehicle..." includes a full tank of diesel fuel. This position is consistent with a similar Federal regulation. See: 26 CFA 41.4482(b)-1(b)(2)(i).

E. That the petition of Consolidated Freightways Corporation of Delaware is denied and the Assessment of Unpaid Truck Mileage Tax is sustained, together with such additional interest as may be lawfully due.


DATED: Albany, New York

JUL 03 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER