

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Farrell Lines, 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 10/71 - 6/74. :

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 22nd day of February, 1980, he served the within notice of Decision by mail upon Farrell Lines, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

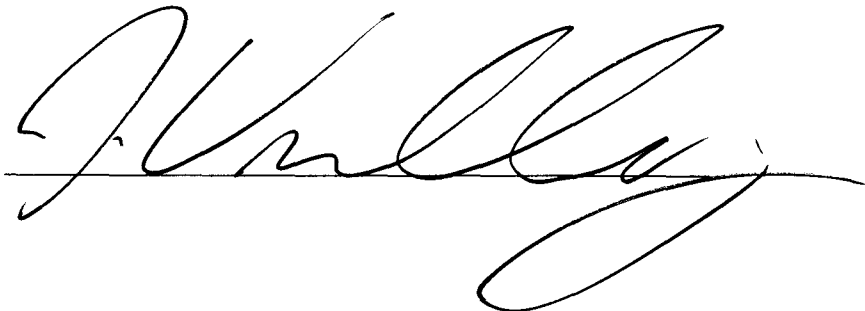
Farrell Lines, Inc.
One Whitehall St.
New York, NY 10004

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
22nd day of February, 1980.

Joanne Knapp



STATE OF NEW YORK
STATE TAX COMMISSION

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of
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Highway Use Tax :
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for the Period 10/71 - 6/74. :

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 22nd day of February, 1980, he served the within notice of Decision by mail upon the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

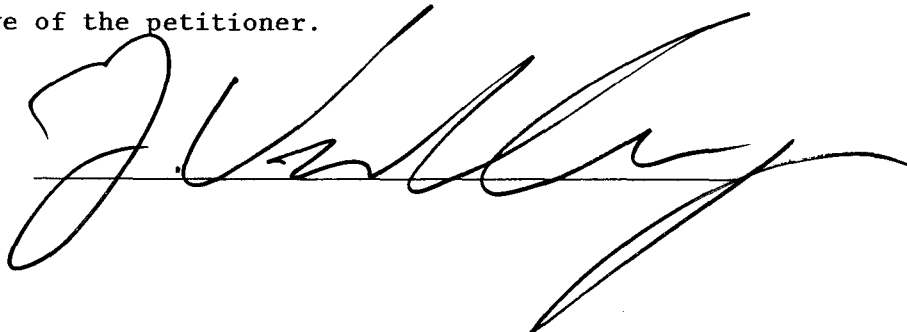
Sirs
Kirlin, Campbell & Keating
120 Broadway
New York, NY 10005

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
22nd day of February, 1980.

Joanne Knapp



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

February 22, 1980

Farrell Lines, Inc.
One Whitehall St.
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
Kirlin, Campbell & Keating
120 Broadway
New York, NY 10005
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :

of :

FARRELL LINES, INC. :

DECISION

For a Hearing to Review a Determination or :
for Refund of Fuel Use Taxes under Article :
21 of the Tax Law for the Tax Periods :
October, 1971 through June, 1974.

Applicant, Farrell Lines, Inc., One Whitehall Street, New York, New York 10004, filed an application for a hearing to review a determination or for refund of fuel use taxes under Article 21 of the Tax Law for the periods October, 1971 through June, 1974 (File No. 14794).

A formal hearing was held before Armando Montano, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 1, 1977 at 3:00 P.M. Applicant appeared by Kirlin, Campbell & Keating, Esqs. (William F. Fallon, Esq., of counsel). The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Francis Cosgrove, Esq., of counsel).

ISSUES

I. Whether the trailers owned by applicant and leased to others constituted "vehicular units".

II. Whether applicant is liable for fuel use taxes on trailers leased to carriers who operated vehicular units on New York State highways.

FINDINGS OF FACT

1. Applicant, Farrell Lines, Inc., operated ships transporting freight between the United States, Africa and Asia. Container boxes which were used therein were put on a "chassis" or "trailer" which was not self-propelled. The trailers were owned by applicant and were leased to carriers or truckers who attached same to tractors and operated the combinations as tractor-trailers on New York State highways. Applicant registered the trailers with the Truck Mileage Tax Unit of the Miscellaneous Tax Bureau.

2. On November 25, 1975, the Miscellaneous Tax Bureau issued an assessment of Unpaid Fuel Use Tax against applicant for the tax periods October, 1971 through June, 1974 in the amount of \$2,141.82, plus penalty and interest of \$492.59, for a total of \$2,634.41.

3. The assessment was based on an audit. Applicant was charged for diesel fuel usage with respect to four trailers which it leased to carriers who attached same to tractors operated by them. The operators of the tractors could not be located. Neither the operators of the aforementioned tractors nor applicant filed fuel use tax reports with respect to the aforementioned vehicular units. The trailers leased by applicant were not self-propelled.

4. Applicant is not disputing the computation of tax as prepared by the Truck Mileage Tax Unit of the Miscellaneous Tax Bureau, and does not claim that applicant's trailers have a gross weight of eighteen thousand pounds or less, but rather contends that applicant is not subject to fuel use tax because its trailers are not self-propelled, citing 20 NYCRR 490.3(b).

CONCLUSIONS OF LAW

A. That Section 503-a of the Tax Law imposes an additional tax on highway use ("the fuel use tax") which is in addition to the highway use tax imposed by Section 503 of the Tax Law. The fuel use tax is for the privilege of operating any vehicular unit on the public highways of New York State. The tax is on the carrier "...except that where the carrier is not the owner of such vehicular unit, the tax shall be a joint and several liability upon both." (Section 503-a.1 of the Tax Law).

B. That the term "vehicular unit" is defined by Section 501.3 of the Tax Law as "a motor vehicle or any combination of motor vehicles operated as a unit". The term "motor vehicle" as defined in Section 501.2 of the Tax Law includes:

"...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,... which is used upon the public highways..." (emphasis added).

Accordingly, the trailers owned by applicant, Farrell Lines, Inc., constituted vehicular units within the meaning of Section 503-a of the Tax Law and applicant is jointly and severally liable with the carriers for fuel use tax due from the operations thereof on the public highways of New York State.

C. That while "vehicles which are not self-propelled" are not subject to the record keeping provisions of the fuel use tax regulations and such vehicles need not be reported on the fuel use tax return [20 NYCRR 490.3(b)], any vehicle which constitutes a "vehicular unit", as defined in Section 501.3 of the Tax Law, is deemed to be excluded from the term "vehicles which are not self-propelled" as

used in said regulation. Although the carrier is required to maintain records and file returns (Sections 507 and 505 of the Tax Law), the owner of a vehicular unit may maintain the records and file returns (Section 508 of the Tax Law).

D. That the application of Farrell Lines, Inc. is denied.

DATED: Albany, New York

FEB 22 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER