

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
FORT EDWARD EXPRESS CO., INC. :
and
NORTHERN MOTOR CARRIERS, INC. :
For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Highway Use :
Taxes under Article ~~XX~~ 21 of the :
Tax Law for the ~~Year(s)~~ Period ~~(s)~~ :
October 1970 through June 1974.

AFFIDAVIT OF MAILING

State of New York
County of Albany

Catherine Steele, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 20th day of August, 1976, she served the within Notice of Decision by ~~(certified)~~ mail upon Fort Edward Express Co., Inc. ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Fort Edward Express Co., Inc.
Route 9, Saratoga Road
Fort Edward, New York 12828
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

20th day of August, 1976.

Catherine Steele

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
FORT EDWARD EXPRESS CO., INC. : AFFIDAVIT OF MAILING
and
NORTHERN MOTOR CARRIERS, INC. :
For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Highway Use :
Taxes under Article ~~XX~~ 21 of the :
Tax Law for the ~~Year(s)~~ Period ~~(s)~~ :
October 1970 through June 1974.

State of New York
County of Albany

Catherine Steele, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 20th day of August, 1976, she served the within Notice of Decision by ~~certified~~ mail upon Northern Motor Carriers, Inc. ~~(representative of the)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Northern Motor Carriers, Inc.
Route 9, Saratoga Road
Fort Edward, New York 12828
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.

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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
FORT EDWARD EXPRESS CO., INC. : AFFIDAVIT OF MAILING
and
NORTHERN MOTOR CARRIERS, INC. :
For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Highway Use :
Taxes under Article ~~XX~~ 21 of the :
Tax Law for the ~~XXXXXXX~~ Period ~~XX~~ :
October 1970 through June 1974.

State of New York
County of Albany

Catherine Steele, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 20th day of August, 1976, she served the within Notice of Decision by ~~(certified)~~ mail upon J. Fred Relyea (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed J. Fred Relyea, Executive Vice-President as follows: Fort Edward Express Co., Inc. and Northern Motor Carriers, Inc. Route 9, Saratoga Road Fort Edward, New York 12828 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

20th day of August, 1976.

Janet Mack

Catherine Steele



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

August 20, 1976

TELEPHONE: (518) **457-3850**

Fort Edward Express Co., Inc.
Route 9, Saratoga Road
Fort Edward, New York 12828

Gentlemen:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section ~~50~~ **510** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **30 days**
from the date of this notice.

Inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned. They
will be referred to the proper party for reply.

Very truly yours,

Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

August 20, 1976

TELEPHONE: (518) ~~457-3850~~

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Northern Motor Carriers, Inc.
Route 9, Saratoga Road
Fort Edward, New York 12828

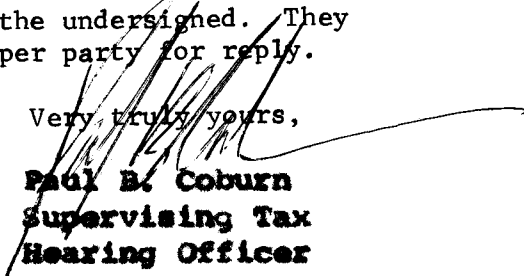
Gentlemen:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section ~~105~~ **510** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **30 days**
from the date of this notice.

Inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned. They
will be referred to the proper party for reply.

Very truly yours,


Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
FORT EDWARD EXPRESS CO., INC.	:	
and	:	DECISION
NORTHERN MOTOR CARRIERS, INC.	:	
for a Hearing to Review a Determination of	:	
Highway Use Taxes due under Article 21 of	:	
the Tax Law for the Period October 1970	:	
through June 1974.	:	

Fort Edward Express Co., Inc. and Northern Motor Carriers, Inc., Route 9, Saratoga Road, Fort Edward, New York 12828, joined in an application under section 510 of the Tax Law for a hearing to review a determination against each for highway use tax due under Article 21 of the Tax Law for the period October 1970 through June 1974. The determination under review was asserted on November 15, 1974 by an assessment of unpaid truck mileage tax. Said assessment against Fort Edward Express Co., Inc. is in the amount of \$21,187.46, plus interest of \$1,818.74, for a total of \$23,006.20. On June 25, 1975, this was increased to \$23,152.22, plus interest of \$1,987.40, for a total of \$23,139.62. Additional interest of \$1,620.66 was added for a total of \$26,760.28. On September 11, 1975, this assessment was again revised to \$22,839.43, plus interest

of \$1,959.25, for a total of \$24,798.68, and further accrued interest of \$2,168.30, for a new total of \$26,966.98. Said assessment against Northern Motor Carriers, Inc. is in the amount of \$5,785.25, plus interest of \$547.40, for a total of \$6,332.65. This was reduced on June 25, 1975 to \$1,757.39, plus interest of \$166.28 for a total of \$1,923.67. Additional interest of \$123.02 was imposed for a total of \$2,046.69.

A hearing was duly held on January 21, 1976 at the offices of the State Tax Commission, Building 9, State Office Building Campus, Albany, New York, before Nigel G. Wright, Hearing Officer. The applicants were represented by J. Fred Relyea, the Executive Vice-President of both companies. The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq. and Richard M. Kaufman, Esq. of counsel). The record of said hearing has been duly examined and considered.

ISSUES

I. Whether the applicants' tax may be computed on the basis of trip miles computed from reference books used for tariff and other purposes, rather than on actual miles traveled.

II. Whether the applicants have been illegally prejudiced by the fact that an audit and assessment was made more than one year but less than four years after the tax periods in question.

III. Whether the applicants have been prejudiced by the use of only one month, rather than a longer time interval, as a test period in an audit of the four year period under review.

IV. Whether applicants have been illegally prejudiced when held liable for highway use taxes for which another carrier would be primarily liable.

V. Whether interest on the assessments is computed in accordance with standards set by the State Tax Commission.

FINDINGS OF FACT

1. Fort Edward Express Co., Inc. has its principal office in Fort Edward, New York. It is a common carrier with terminals located in Albany, Fort Edward and Plattsburgh. It transports liquid products in bulk.

2. Northern Motor Carriers, Inc. is owned by the same interests as own Fort Edward Express Co., Inc. and has the same principal office. It is a common carrier transporting dry commodities in bulk. Effective January 1, 1974, Northern merged into Fort Edward.

3. Fort Edward and Northern interchanged equipment during the period under review.

4. The drivers of applicants would often use routes and incur taxable mileage which was not reported to applicants. Apparently applicants did not know of this practice. This occurred with

greater frequency after July 28, 1972 when a section of Interstate Route 90 was opened in Albany and Rensselaer Counties which paralleled the New York State Thruway and which was used by applicants' drivers in lieu of the Thruway.

5. The books and records of applicants and tax returns are based upon routes and mileage reported to applicants by their drivers.

6. From August through October 1973, applicants hauled goods for R. Comeau, Inc. of North Adams, Massachusetts. A New York tax was incurred on this mileage and R. Comeau, Inc. has not paid such tax.

7. The assessments under review are based upon an audit of applicant's books for the month of September 1973 and the projection of the results of that audit to the entire period under review.

8. The applicants have not come forward at the hearing with books and records for any other month on which a test could be made.

CONCLUSIONS OF LAW

A. That the tax due under Article 21 of the Tax Law is to be computed on the actual mileage incurred by applicants' vehicles. Applicants are not relieved of this liability merely because they

did not know exactly where the vehicles were in fact used. They cannot substitute tariff mileage taken from reference books.

B. That the statute allows an audit and assessment within four years from the taxable periods involved. (Tax Law, section 510). The State Tax Commission rejects the applicants' claim that the long interval between the audit period and the audit itself prejudices the applicants because they cannot "recoup" the additional taxes assessed. Applicants have not explained how their own failure to pay taxes can be "recouped" from any of their customers. In any event, it is the applicants who are responsible for preventing errors in their own bookkeeping and they have no right to rely on the State Tax Commission to prevent such errors.

C. That the applicants have not shown or even asserted that the use of a test period of longer than one month would show a different result in total mileage traveled or a different ratio of taxable to non-taxable mileage. They have failed to produce at the hearing any books or records or other evidence from which the State Tax Commission may arrive at a more accurate result.

D. That the highway use tax is a joint and several liability of both the owner of the vehicles and the carrier operating them. (Tax Law, section 503 subd. 1). Applicants are therefore liable for the mileage incurred on behalf of R. Comeau, Inc. Applicants

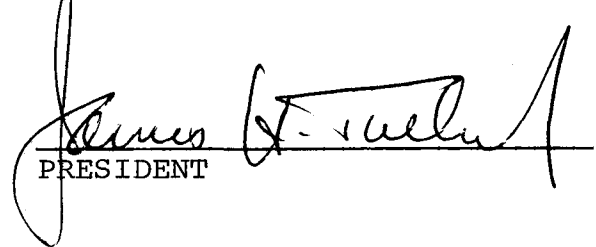
of course are not prevented from seeking reimbursement from R. Comeau, Inc.

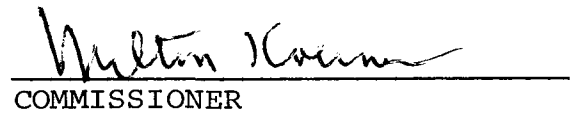
E. That the penalty and interest which may be charged by the State Tax Commission for delay in filing a return or paying the tax is governed by section 512 subd. 3 of the Tax Law. Returns for each calendar month are due on the 20th day of the following month. Any delay beyond the said 20th day may justify the five percent penalty. Any delay of one additional full month or more may justify interest of one percent a month or part thereof. In this case, interest has been reduced to the minimum charged by the Commission, .5% a month (6% annually), for elapsed months prior to October 1973. From October 1973, the Commission has been guided by the Rules of the Banking Board 3 NYCRR 4.1 and has charged .7% a month (8.4% annually) for each elapsed month. In addition, in this case the assessments under review charge interest for each calendar month in the audit period only for a maximum elapsed time of eighteen months. Applicants have shown no reason for any further reduction of interest and shall be charged interest from the date of the assessments at statutory rates.

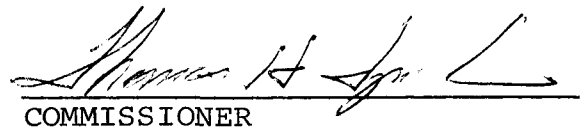
F. That the assessments under review are correct and are due together with such interest as may be computed under section 512 subd. 3 of the Tax Law.

DATED: Albany, New York
August 20, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER