

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
A. R. GUNDRY, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Highway Use :
Taxes under Article(s) 21 of the :
Tax Law for the ~~Year(s)~~ Period(s) :
May, 1970 through March, 1974.

State of New York
County of Albany

Janet Mack , 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 22nd day of October , 1976 , she served the within
Notice of Decision by ~~(certified)~~ mail upon A. R. Gundry, Inc.

(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: A. R. Gundry, Inc.
85 Stanton Street
Rochester, NY 14611

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 October , 1976.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

A. R. GUNDRY, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Highway Use :
Taxes under Article(s) 21 of the :
Tax Law for the ~~Year(s)~~ or Period(s) :
May, 1970 through March, 1974.

State of New York
County of Albany

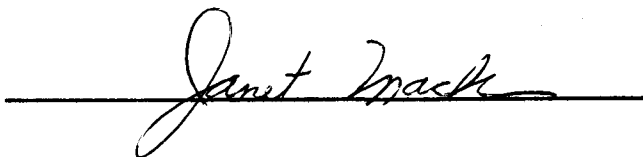
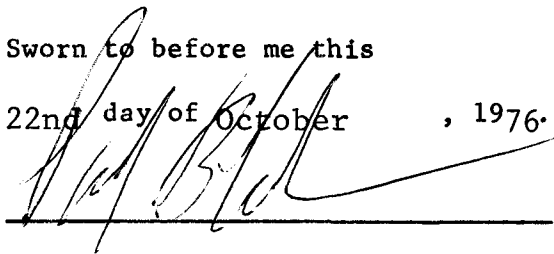
Janet Mack , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 22nd day of October , 1976, she served the within
Notice of Decision by ~~(certified)~~ mail upon Robert E. Brown, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Robert E. Brown, Esq.
Middleton - Wilson
900 Midtown Tower
Rochester, NY 14604
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 October , 1976.





STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

October 22, 1976

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

A. R. Cundry, Inc.
85 Stanton Street
Rochester, NY 14611

Gentlemen:

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

Please take further notice that pursuant to
Section ~~(s)~~ **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
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 :
A. R. GUNDRY, INC. : DECISION
for Revision or for Refund of Highway Use :
Taxes under Article 21 of the Tax Law :
for the Period from May, 1970 through :
March, 1974. :
:

Applicant, A. R. Gundry, Inc., 85 Stanton Street, Rochester, New York 14611, filed an application for revision of highway use taxes under Article 21 of the Tax Law for the period from May, 1970 through March, 1974.

In lieu of a hearing the applicant, A. R. Gundry, Inc., and the Miscellaneous Tax Bureau, represented by Peter Crotty, Esq., submitted the case to the State Tax Commission on a Stipulation of Facts dated October 8, 1976, and the information contained in the Miscellaneous Tax Bureau file.

The State Tax Commission has reviewed the entire file, and upon due deliberation, issues the following decision.

ISSUE

Whether the Miscellaneous Tax Bureau in conducting its audit was authorized to determine number of miles traveled on public highways by the applicant, A. R. Gundry, Inc., by a method other than that used by applicant which determined the miles traveled by use of tariff schedules and mileage used for billing purposes.

FINDINGS OF FACT

1. Applicant, A. R. Gundry, Inc., in connection with the transportation of petroleum products, incurred New York State highway use tax and filed monthly returns for truck mileage taxes, (Form TMT-3) paying the tax computed thereon for the period from May, 1970 through March, 1974. Applicant, A. R. Gundry, Inc., used the gross weight method. The mileage traveled on public highways for that period was determined by applicant, A. R. Gundry, Inc., by use of tariff schedules and mileage used for billing purposes. Applicant, A. R. Gundry, Inc., had employed this method of determining mileage traveled on public highways since 1951.

2. On August 5, 1974, an Assessment of Unpaid Truck Mileage Tax was issued by the Miscellaneous Tax Bureau to applicant, A. R. Gundry, Inc., assessing additional tax liability of \$39,829.48, plus interest, which assessment was subsequently reduced to \$32,104.58, plus interest.

3. The audit of the Miscellaneous Tax Bureau was conducted by sampling fifty tractors for the month of July, 1973, by taking from tachograph readings, the actual miles traveled based on daily odometer readings. This audit indicated a percentage error in the mileage as reported on applicant, A. R. Gundry, Inc.'s return for that month which percentage error was applied to the entire period from May, 1970 through March, 1974.

4. Applicant, A. R. Gundry, Inc., stipulates that the tachograph readings, and the tax assessed thereon, are not inaccurate but contends that the Bureau cannot employ an audit method other than the tariff schedules and mileage used for billing purposes which applicant employed.

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 New York State and affords three alternative methods upon which to base the tax due. All three methods require the use of the number of miles operated on the public highways of or in this state.

B. That the Regulations of the State Tax Commission regarding the computation of truck mileage tax (20NYCRR Part 481), provide, in section 481.12 thereof, that the determination of mileage "...shall be computed on the basis of the actual mileage traveled by each motor vehicle." Thereafter, section 481.12 enumerates a number of measures of mileage traveled to be employed in determining the actual mileage traveled in this State, including speedometer [odometer] readings and tariff schedules or mileage used for billing purposes. All such measurements are stated to be subject to audit by the State Tax Commission.

C. That the Regulations of the State Tax Commission regarding the records a carrier must maintain (20 NYCRR Part 483), enumerate, in section 483.2(b), a number of daily records of operations to be contained in a daily manifest or trip record which shall show each trip for the day and reflect all of the enumerated and required information.

D. That 20 NYCRR 483.4 requires every carrier to "...keep available speedometer readings, fuel consumption records, maps, mileage or tariff schedules or record of mileage used for billing purposes and used to compute the taxable mileage. The mileage shown in the daily mileage, manifest or trip records for each vehicle shall be totaled at the end of each month. This total shall be entered on the monthly tax return (form TMT-3)...". (underlining supplied for emphasis).

E. That the Miscellaneous Tax Bureau properly audited the records of the applicant, A. R. Gundry, Inc., pursuant to statutory authority, and determined the actual mileage traveled in New York State on a reasonable basis, which determination is not contested by the applicant as to its accuracy.

F. That the usage of tariff schedules or records of mileage used for billing purposes by applicant, A. R. Gundry, Inc., does not estop the Miscellaneous Tax Bureau from auditing the records of that carrier and determining the actual mileage to be employed in imposing the highway use tax; and that the fact that prior returns, filed on the basis of tariff schedules and mileage used for billing purposes, were not the subject of an assessment of additional tax due does not bear on a proper audit and assessment for the period May, 1970 through March, 1974.

G. That the Assessment of Unpaid Truck Mileage Tax dated August 5, 1974, as revised, is sustained.

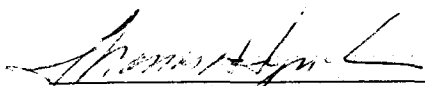
DATED: Albany, New York

October 22, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER