

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JET SANITATION SERVICE CORP.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Highway Use :
Taxes under Article (X) 21 of the :
Tax Law for the ~~XXXX(X)XX~~ Period(s) :
January 1, 1973 through September 30, 1974.

State of New York
County of Albany

Marsina Donnini, 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 30th day of June, 19 77, she served the within
Notice of Decision by ~~(certified)~~ mail upon Jet Sanitation Service Corp.

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Jet Sanitation Service Corp.
228 Blydenburgh Road
Central Islip, New York 11722

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

30th day of June, 19 77

Marsina Donnini

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JET SANITATION SERVICE CORP.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Highway Use :
Taxes under Article ~~(X)~~ 21 of the :
Tax Law for the ~~Year(s)~~ Period ~~(s)~~ :
January 1, 1973 through September 30, 1974

State of New York
County of Albany

Marsina Donnini, 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 30th day of June, 1977, she served the within

Notice of Decision by ~~(certified)~~ mail upon Ronald Lipshie, Esq.

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Ronald Lipshie, Esq.
444 Fourth Avenue
Bayshore, New York 11706

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

30th day of June, 1977.

Marsina Donnini

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

June 30, 1977

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

TELEPHONE: (518) ~~457-1723~~

Jet Sanitation Service Corp.
228 Blydenburgh Road
Central Islip, New York 11722

Gentlemen:

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

Please take further notice that pursuant to
Section(§) **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	:	
JET SANITATION SERVICE CORP.	:	DECISION
for Revision of an Assessment or for Refund	:	
of Highway Use Tax under Article 21 of the	:	
Tax Law for the Period January 1, 1973	:	
through September 30, 1974.	:	

Applicant, Jet Sanitation Service Corp., 228 Blydenburgh Road, Central Islip, New York 11722 (hereinafter "Jet") applied for revision of an assessment or for refund of highway use tax under Article 21 of the Tax Law for the period January 1, 1973 through September 30, 1974. (File No. 00628)

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 25, 1976 at 1:30 p.m. The applicant, Jet, appeared by Ronald Lipshie, Esq. The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Arnold Dorman, Esq. of counsel).

ISSUES

I. Whether the written request of applicant for a formal hearing dated March 7, 1975, and received by the Miscellaneous

Tax Bureau in an envelope postmarked Selden, New York on April 24, 1975, and received at the Miscellaneous Tax Bureau April 28, 1975, was timely.

II. Whether the petitioner is entitled to a refund of truck mileage tax paid under protest, upon what petitioner claimed was an erroneous assessment by the Miscellaneous Tax Bureau.

III. Whether the use of an assumed weight per cubic yard of hauled garbage by the Miscellaneous Tax Bureau was proper on audit to determine the amount by which the truck mileage tax had been understated by applicant, Jet.

IV. Whether the penalties assessed against applicant, Jet, were proper.

FINDINGS OF FACT

1. Applicant, Jet, timely filed truck mileage tax returns for the periods January 1, 1973 through September 30, 1974, and paid the tax shown to be due thereon.

2. Applicant, Jet, elected to compute the truck mileage tax on the basis of maximum gross weight during the period January 1, 1973 through September 30, 1974.

3. After audit of applicant's books and records for the entire period from January 1, 1973 through September 30, 1974, the Miscellaneous Tax Bureau issued an "Assessment of Unpaid

Truck Mileage Tax" No. B-12498 dated February 20, 1975, showing additional tax due of \$1,873.22, plus penalty and interest of \$295.47, for a total of \$2,168.69.

4. In a letter dated March 7, 1975, and addressed to the Albany, New York office of the Miscellaneous Tax Bureau, applicant, Jet, expressed disagreement with the assessment and requested a hearing. The letter was received by the Miscellaneous Tax Bureau on April 28, 1975, in an envelope postmarked at Selden, New York on April 24, 1975.

5. By a letter dated May 8, 1975, the Miscellaneous Tax Bureau advised the applicant, Jet, that applicant's letter had not been received within the prescribed 30 days of the assessment and, therefore, the assessment was final.

6. In a letter dated September 29, 1975, Jeremiah J. Doran, Jr., C.P.A., the accountant for applicant, Jet, stated that the applicant's letter dated March 7, 1975 had been mailed from the accountant's office in Selden, New York on March 11, 1975. The letter dated September 29, 1975 was stamped as received by the Miscellaneous Tax Bureau on October 1, 1975.

7. On October 6, 1975, the Miscellaneous Tax Bureau advised the applicant, Jet, that as stated in its letter dated May 8, 1975, since a request for a hearing was not received within 30

days of the assessment, the assessment was final. Payment of the tax due was demanded.

8. In a letter dated October 17, 1975, the applicant, Jet, paid under protest the tax assessed, with penalties and interest. Applicant formally requested information as to procedures for filing a claim for refund and obtaining a hearing.

9. Petitioner, Jet, was a haulage contractor for the pick-up and disposal of garbage from households and businesses in the Town of Islip, Long Island, New York. The petitioner, Jet, owned and operated 28 vehicles, including three different types of trucks. These were front loader, rear loader and roll-off. Garbage was loaded in the front end and dumped in the rear of the front loader. For the average household pick up, the garbage was loaded at the back of the rear loader and moved mechanically within the truck to the front. The roll-off was a chassis and body unit upon which filled containers were placed at the pick-up point, and the container rolled off at the dumping terminal. Roll-offs were used for commercial service, largely for supermarkets. The containers used by the petitioner, Jet, were of different cubic capacities. A fifteen-yarder would hold fifteen cubic yards of garbage. Similarly, the petitioner, Jet, used twenty-yarders, thirty-yarders and forty-two-yarders.

10. Petitioner, Jet, bid for contracts to haul garbage for the Town of Islip, New York in several of the many garbage districts. These contracts specified the quantity of garbage and the frequency of removal thereof from the premises of each household in each garbage district. The contracts were based on an estimated weight of 160 pounds for 1 3/4 cubic yards of household garbage, about 91.5 pounds per cubic yard.

11. The actual weight of a cubic yard of garbage hauled by the petitioner, Jet, was between 450 and 500 pounds.

12. Petitioner, Jet, picked up garbage from households in a given garbage district, sending the empty truck from the garage to the furthest pick-up point and progressing toward the dump until the truck was full. That full truck then proceeded to the dump. Having been emptied, the truck would go unladen to the furthest pick-up point and work its way toward the dump again. In the course of the 40 to 50 miles spent hauling garbage each day, petitioner's trucks were empty at least fifty percent of the time on the road.

13. Petitioner, Jet, under protest on October 17, 1975, paid the truck mileage tax assessment dated February 20, 1975. Petitioner paid \$1,873.22 as tax due, plus penalty and interest of \$445.33, for a total of \$2,318.55.

Petitioner, Jet, disagreed with the findings of the Miscellaneous Tax Bureau as to the assessment but knowingly paid the assessment, albeit under protest.

CONCLUSIONS OF LAW

A. That the written application of applicant, Jet Sanitation Service Corp., for revision or for refund of highway use tax under Article 21 of the Tax Law was not timely filed within 30 days after the assessment of the tax due.

B. That the application for refund of the truck mileage tax paid under protest on October 17, 1975 is denied. The refund of taxes paid under Article 21 is limited to those paid in error, in accordance with section 513 of the Tax Law.

C. That since Jet Sanitation Corp.'s application for revision of the determination of the Miscellaneous Tax Bureau was not timely, the State Tax Commission does not at this time have to pass upon Issues "III" and "IV".

D. That the application of Jet Sanitation Service Corp. for revision of an assessment or for refund of highway use tax is in all respects denied.

DATED: Albany, New York
June 30, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER