

STATE OF NEW YORK
STATE TAX COMMISSION

Application

In the Matter of the ~~Deficiency~~

of

DRUM OIL, INC.

For a Redetermination of a Deficiency or
a Refund of Truck Mileage
Taxes under Article ~~(s)~~ 21 of the
Tax Law for the ~~Year(s)~~ Period 10/67 -
12/69.

AFFIDAVIT OF MAILING
OF NOTICE OF ~~Deficiency~~ Determination
BY (~~CERTIFIED~~) MAIL

State of New York
County of Albany

Martha Funaro , 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 23rd day of December , 19 74, she served the within
Notice of ~~Deficiency~~ (or Determination) by (~~CERTIFIED~~) mail upon Drum Oil, Inc.

(~~representative of~~) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Drum Oil, Inc.
State Street
Gasport, New York 14067

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (~~representative~~
~~of~~) 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

23rd day of December , 1974

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

Application

In the Matter of the ~~Petition~~

of

DRUM OIL, INC.

AFFIDAVIT OF MAILING
OF NOTICE OF ~~Decision~~ Determination
BY (~~CERTIFIED~~) MAIL

For a Redetermination of a Deficiency or
a Refund of Truck Mileage
Taxes under Article(s) 21 of the
Tax Law for the ~~Year(s)~~ Period 10/67-
12/69.

State of New York
County of Albany

Martha Funaro , 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 23rd day of December , 19 74, she served the within
Notice of ~~Decision~~ (or Determination) by (~~certified~~) mail upon Stephen A. Sacca, Esq.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Stephen A. Sacca, Esq.
Lockport Law Building
102 East Avenue
Lockport, New York 14094
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

23rd day of December , 1974.

Martha Funaro

James W. Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

Dated: Albany, New York
December 23, 1974

Drum Oil, Inc.
State Street
Gasport, New York 14067

Gentlemen:

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

Please take further notice that pursuant to
Section (8) **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.

Any 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.
These will be referred to the proper party for
reply.

Very truly yours,

L. Robert Leisner
L. Robert Leisner

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
DRUM OIL, INC.	:	DETERMINATION
for a Revision of a Determination	:	
or for Refund of Truck Mileage under	:	
Article 21 of the Tax Law for the	:	
Period 10/67 - 12/69.	:	

Applicant, Drum Oil, Inc., applied for a revision of a determination or for refund of truck mileage taxes under Article 21 of the Tax Law for the period 10/67 - 12/69.

A formal hearing was held at the offices of the State Tax Commission, State Office Building, Buffalo, New York, on Tuesday, February 6, 1973, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Stephen A. Sacca, Esq., and the Miscellaneous Tax Bureau was represented by Saul Heckelman, Esq., (Francis X. Boylan, Esq., of counsel).

ISSUE

Whether applicant, Drum Oil, Inc., should be held to its election to report truck mileage tax on the unladen method.

FINDINGS OF FACT

1. The taxpayer, Drum Oil, Inc., timely filed New York State truck mileage tax returns for the period 10/67 - 12/69.
2. An assessment of unpaid truck mileage tax and penalties for the period 10/67 - 12/69 was issued on August 16, 1971, against Drum Oil, Inc., under Notice No. B-92292.
3. The taxpayer applied for a revision of the assessment of the deficiencies in truck mileage tax.

4. Applicant, Drum Oil, Inc., owns a filling station. It also operates a 1965 Ford tank truck which is used to haul fuel oil to customers within a 25 mile radius of Gasport, New York. There were also three other vehicles not registered by this carrier with unladen weights of 8400 pounds.

5. In 1967, applicant, Drum Oil, Inc., was audited by the Miscellaneous Tax Bureau. Errors were found in some of its calculations which resulted in additional tax which was paid. In the course of the audit, the auditor for the Miscellaneous Tax Bureau made a suggestion that Drum Oil, Inc. could save money if it switched its method of reporting from laden weight to the unladen weight method. Acting on said advice, Drum Oil, Inc. changed its method of reporting to unladen weight in 1968. It did not include the weights of the three tank trucks not used, in its calculations under this method.

6. In 1969, applicant, Drum Oil, Inc. was again audited by the Miscellaneous Tax Bureau. Agents of the applicant were advised that reports on the unladen weight method should have included the weights of the trucks not in use in its calculations. They were also advised that it would have to pay the extra tax plus penalty and interest. In 1970, it switched back to the laden weight method of reporting. The taxpayer asserted that it should not be charged for the weight of trucks not used because it relied on the auditor's advice.

CONCLUSIONS OF LAW

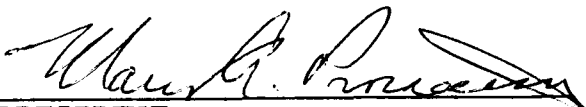
A. The taxpayer's agents, having elected to report on the unladen method, were bound to so report for at least one full calendar year after the making of said choice under section 503(3) of the Tax Law.


B. The application is denied and the assessment of unpaid truck mileage tax issued on August 16, 1971, is sustained.


C. Pursuant to the Tax Law, interest shall be added to the total amount due until the date of payment

DATED: Albany, New York
September 24, 1974

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER