

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MAX GONSENHAUSER

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
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 April, 1969
through September, 1970.

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 24th day of September, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Max Gonsenhauser

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Max Gonsenhauser

1575 Winton Road
Rochester, New York 14618

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

24th day of September, 1974

Janet Mack

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MAX GONSENHAUSER

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
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 April, 1969
through September, 1970.

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 24th day of September , 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Roy Colicchio, Esq.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Roy Colicchio, Esq.
Cucci, Welch, Colicchio & Weinstein
300 Central Trust Building
44 Exchange Street, Rochester, N.Y. 14614
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

24th day of September , 1974.

Janet MacL...

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

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

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

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

Dated: Albany, New York

September 24, 1974

Mr. Max Gonsenhauser
1575 Winton Road
Rochester, New York 14618

Dear Mr. Gonsenhauser:

Please take notice of the **DETERMINATION**
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.

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

Enc.

HEARING OFFICER

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

| | | |
|---|---|---------------|
| In the Matter of the Petition | : | |
| of | : | |
| MAX GONSENHAUSER | : | DETERMINATION |
| for a Redetermination of a Deficiency | : | |
| or for Refund of Truck Mileage Taxes | : | |
| under Article 21 of the Tax Law for | : | |
| the Period April, 1969 through September, | : | |
| 1970. | : | |

Max Gonsenhauser petitioned for a redetermination of deficiencies in Truck Mileage taxes under Article 21 of the Tax Law for the period April, 1969 through September, 1970. A formal hearing was held at the offices of the State Tax Commission, Rochester, New York, on November 10, 1971, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Roy Colicchio, Esq., and the Income Tax Bureau was represented by Edward H. Best, Esq., (Alexander Weiss, Esq., of counsel).

ISSUE

Where the taxpayer used his own trucks to transport his livestock from one farm to another or to or from auctions and markets, was he exempt from highway use taxes under section 504 of the Tax Law?

FINDINGS OF FACT

1. A Notice of assessment in truck mileage taxes for the period April, 1969 through September, 1970 against Max Gonsenhauser was issued on August 15, 1966, under File No. B-88969. The taxpayer

petitioned for redetermination of the deficiencies. The Miscellaneous Tax Bureau disallowed petitioner's claimed exemption, asserting that taxpayer not only raised cattle but he also used his trucks to bring back calves he had purchased, and later to take these animals to market a year or two later when they had matured. The Bureau asserted all the cattle must be bred on the petitioner's farm.

2. The petitioner keeps about a thousand head of cattle at all times. He bought approximately twenty-five hundred heifers and cows in 1970. The heifers are raised until maturity when they are sold. The petitioner also breeds a large number of cattle and raises them to maturity. The petitioner also developed and operated three dairy herds. Petitioner had two farms in Scottsville, five farms in Bloomfield, one farm in Victor, one farm in Avon, and four farms in Brighton. Petitioner also rented a farm of 230 acres in Victor, and additional acreage elsewhere which amounted to 1,500 acres of rental farms. Between the farms he owned or rented, the petitioner operated about 3,500 or 4,000 acres. Many of the farms in the same townships were contiguous or relatively close to each other and all of the farms were within a 30 or 40 mile circle. The trucks were used by the petitioner to move the cattle from one farm to another, and from one herd to the other and to take the cattle to and from auctions, stockyards, slaughterhouses and

to and from farms of other farmers. The petitioner's trucks were owned and operated by him and were only used to transport cattle. All of the cattle transported were owned by the petitioner. The petitioner was a dairy and cattle farmer.

CONCLUSIONS OF LAW

A. The petitioner was a farmer within the meaning of section 504 of the Tax Law, operating dairy and beef livestock farms.

B. The trucks were owned and operated by the petitioner, a farmer, and the trucks were used exclusively in transporting petitioner's own livestock to and from his farms within the terms of section 504 of the Tax Law.

C. The petitioner's trucks were exempt from the truck mileage tax by reason of section 504 of the Tax Law.

D. There is no deficiency in truck mileage tax against the petitioner.

DATED: Albany, New York
September 24, 1974

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

Commissioner Koerner dissents from the above determination on the grounds that the petitioner is not a farmer, but a dealer in cattle.

DATED: Albany, New York


COMMISSIONER