

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

AFFIDAVIT OF MAILING

MIKE NASTI SAND CO. INC.

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 ~~XXXXXX~~ Period(s) :  
October 1, 1968 - March 31, 1971

State of New York  
County of Albany

Violet Walker, 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 14th day of June, 1977, she served the within

Notice of Determination by ~~(certified)~~ mail upon Pitaro, Digangi &  
Gallagher, Esqs.  
(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Pitaro, Digangi & Gallagher, Esqs.  
107-21 Queens Boulevard  
Forest Hills, New York

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

14th day of June, 1977





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

MIKE NASTI SAND CO., 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)~~ :  
10/1/68 - 3/31/71

State of New York  
County of Albany

Violet Walker, 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 14th day of June, 1977, she served the within  
Notice of Determination by ~~(certified)~~ mail upon Mike Nasti Sand 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: Mike Nasti Sand Co., Inc.  
180 Town Line Road  
Kings Park, New York 11754

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

14th day of June, 19 77

Janet Mack

Violet Walker



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU

STATE CAMPUS  
ALBANY, N.Y. 12227

June 14, 1977

ADDRESS YOUR REPLY TO

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

Mike Nasti Sand Co., Inc.  
180 Town Line Road  
Kings Park, New York 11754

Gentlemen:

Please take notice of the **Notice of 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.

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 S. Coburn**  
**Supervising Tax Hearing Officer**

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
MIKE NASTI SAND CO., INC.	:	DETERMINATION
to Review a Determination or for Refund	:	
of Highway Use Taxes under Article 21	:	
of the Tax Law for the periods October 1,	:	
1968 through March 31, 1971.	:	

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Mike Nasti Sand Co., Inc., 180 Town Line Road, Kings Park,  
New York 11754, filed an application to review a determination or for  
refund of highway use taxes under Article 21 of the Tax Law for the periods  
October 1, 1968 through March 31, 1971. (File No. 0-0001345).

A formal hearing was held at the offices of the State Tax Commission,  
Two World Trade Center, New York, New York, before Solomon Sies,  
Hearing Officer, on November 17, 1976 at 1:15 P.M.

The applicant appeared by Pitaro, Digangi & Gallagher. (Vincent L.  
Pitaro, Esq., of counsel). The Miscellaneous Tax Bureau appeared by  
Peter Crotty, Esq., (James A. Scott, Esq. and Louis Senft, Esq., of  
counsel).

ISSUES

I. Whether or not the overweight violations by the applicant in 1970 were properly projected for periods prior to 1970 and subsequent thereto.

II. Whether or not the Miscellaneous Tax Bureau presented proof with respect to alleged understated mileage on applicant's fleet of trucks during the audit period, assessed in the amount of \$3,078.50, as adjusted.

FINDINGS OF FACT

1. On February 17, 1972, the Miscellaneous Tax Bureau issued an Assessment of Unpaid Truck Mileage Tax against the applicant, Mike Nasti Sand Co., Inc., for the period October 1968 through March 1971, in the amount of \$8,778.29, plus penalty and interest of \$1,962.90, for a total of \$10,741.19. The applicant filed a timely request for a hearing.

2. On July 17, 1972, the Miscellaneous Tax Bureau adjusted the original assessment as a result of informal conferences held on June 1 and June 23, 1972. The adjusted additional tax amounted to \$7,599.26, with penalty and interest of \$1,721.36, for a total of \$9,320.62. The applicant filed a timely request for a hearing with respect to the adjusted assessment.

3. The applicant, Mike Nasti Sand Co., Inc., is a domestic corporation organized under the laws of the State of New York, maintaining its principal place of business in Farmingdale, New York. The applicant is a carrier engaged in the hauling of sand, gravel, etc., primarily in Nassau and Suffolk counties, New York State.

4. The original assessment included additional truck mileage tax in the amount of \$4,506.76, based on overweight violations by the applicant in 1970. It also included alleged understated mileage, based on repair bills. The revised assessment gave the applicant credit for 36,000 off-road miles.

5. The examiner who conducted the audit on the original assessment did not appear at the hearing. Her work sheets were not available. They were apparently lost and could not be produced. There was insufficient evidence adduced at the hearing to warrant a finding that there was an omission of approximately 130,000 miles. Testimony was adduced on behalf of the applicant to the effect that some of the repair bills indicated erroneous mileage. The applicant was not given full credit for off-road highway use mileage. The original examiner refused to take a reading of the odometers of the trucks. A witness on behalf of the applicant testified that the odometers were read every day and that a check on the mileage was made by a reading of the Sinclair pump meters as to the fuel consumed. Notebooks were presented to indicate the diesel fuel used during the periods under audit, and the off-road mileage of the trucks.

6. The examiner projected the overweight violations for the entire audit period, namely, for the year 1970 and for the periods prior to 1970, and also subsequent thereto covering a thirty month period.

7. The applicant conceded the overweight violations in 1970.

8. The applicant contends that it filed amended returns claiming a refund of \$781.76 on June 26, 1974, covering the audit period involved. Such amended returns were not offered in evidence, nor was there any testimony presented in connection with the aforesaid allegation.

CONCLUSIONS OF LAW

A. That the applicant's claim for a refund of \$781.76 be and the same is hereby denied.

B. That the adjusted mileage error in the amount of \$3,078.50 be and the same is hereby cancelled.

C. That the projection with respect to the overweight violations for periods other than the calendar year 1970 is erroneous.

D. That in accordance with Conclusion "C" supra, the amount of \$2,643.07, representing overweight violations for periods other than the calendar year 1970, plus penalty and interest of \$422.89 for a total of \$3,065.96, be and the same is hereby cancelled.

E. That there is due as additional truck mileage tax the amount of \$1,440.80, together with statutory interest thereon to the date of payment.

F. That the application of Mike Nasti Sand Co., Inc., except as indicated above, is in all other respects denied.

DATED: Albany, New York  
June 14, 1977

STATE TAX COMMISSION

  
\_\_\_\_\_  
PRESIDENT

  
\_\_\_\_\_  
COMMISSIONER

  
\_\_\_\_\_  
COMMISSIONER