

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Quality Egg Co., Inc. :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Highway Use Tax :
under Article 21 of the Tax Law for the Period :
10/1/72 - 3/31/75. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 23rd day of October, 1981, he served the within notice of Decision by certified mail upon Quality Egg Co., Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Quality Egg Co., Inc.
U.S. 130 & Stults Rd., P.O. Box 409
Dayton, NJ 08810

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
23rd day of October, 1981.

Annice P. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Quality Egg Co., Inc. :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Highway Use Tax :
under Article 21 of the Tax Law for the Period :
10/1/72 - 3/31/75.

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 23rd day of October, 1981, he served the within notice of Decision by certified mail upon Moses Fuchs the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Moses Fuchs
1910 Avenue J
Brooklyn, NY 11230

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
23rd day of October, 1981.

Annie A. Haglund

Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

October 23, 1981

Quality Egg Co., Inc.
U.S. 130 & Stults Rd., P.O. Box 409
Dayton, NJ 08810

Gentlemen:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 510 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 30 Days from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Moses Fuchs
1910 Avenue J
Brooklyn, NY 11230
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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| In the Matter of the Petition | : | |
| | : | |
| of | : | |
| | : | |
| QUALITY EGG CO., INC. | : | DECISION |
| | : | |
| for Revision of a Determination or for Refund | : | |
| of Highway Use Tax under Article 21 of the | : | |
| Tax Law for the Period October 1, 1972 through | : | |
| March 31, 1975. | : | |

Petitioner, Quality Egg Co., Inc., U.S. 130 and Stults Road, P.O. Box 409, Dayton, New Jersey 08810, filed a petition for revision of a determination or for refund of highway use tax under Article 21 of the Tax Law for the period October 1, 1972 through March 31, 1975 (File No. 16057).

A formal hearing was held before Harry Issler, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 17, 1978 at 9:35 A.M. Petitioner appeared by Moses Fuchs, CPA. The Audit Division appeared by Peter Crotty, Esq. (Paul Lefebvre and Francis Cosgrove, Esqs., of counsel).

ISSUE

Whether the additional tax determined by the Audit Division is actually due and owing.

FINDINGS OF FACT

1. On January 16, 1976, the Audit Division issued an Assessment of Unpaid Truck Mileage Tax against Quality Egg Co., Inc. for the period October 1, 1972 through March 31, 1975. The assessment was issued as a result of a field audit asserting a tax due of \$1,176.26 plus penalties and interest. Prior to this hearing the tax due was adjusted to \$1,028.30.

2. Also, on January 16, 1976, the Audit Division issued an Assessment of Unpaid Fuel Use Tax against Quality Egg Co., Inc. for the period October 1, 1972 through March 31, 1975. This assessment was issued as a result of a field audit asserting a tax due of \$946.29 plus penalties and interest.

3. On audit, the auditor found that the petitioner did not keep detailed records of mileage traveled in New York State but rather used a percentage of the total miles traveled as New York State miles. The percentage used was 3.51 percent.

The auditor selected the third quarter of 1974 as a test quarter. Sales invoices which showed delivery and destination points, but no vehicle identification, were examined for the test quarter. Odometer readings and rental invoices were also examined. From this test quarter the auditor determined that ten percent of the total miles traveled were traveled in New York State and allocated these miles as fifty percent laden and fifty percent unladen. Vehicle weights were accepted as shown on the Truck Mileage Tax application and permits.

4. The additional New York State miles determined from the Truck Mileage Tax audit were then used to determine the amount of fuel used in the State. To compute the fuel usage the auditor used the rate of five miles per gallon.

5. The petitioner presented an affidavit from the company's dispatcher which stated that a company owned 1971 White tractor bearing serial number 74438 was never used in New York State.

6. The petitioner also presented an affidavit from Juluis Lederer, Vice President in charge of operations for Quality Egg Co., Inc., stating that the petitioner made two trips a week into Brooklyn, New York and that each trip constituted 32 New York State miles of which only 50 percent were laden.

7. The test quarter used by the auditor revealed that two trips were made to Toronto, Canada and one trip was made to Weedsport, New York.

8. The petitioner contended that the registered gross weights (MGW) used for the trailers on the Truck Mileage Tax Permits were incorrect. These errors were made by adding the true MGW to the unloaded weight rather than the maximum load to the unloaded weight.

9. The petitioner offered no other evidence.

CONCLUSION OF LAW

A. That although the petitioner offered proof that one of its tractors was not used in New York State, the non use of that vehicle did not effect the additional miles determined by the Audit Division.

B. That the petitioner offered no other evidence that would reduce the additional miles or the additional fuel used as determined by the Audit Division.

C. That the rate of tax for a tractor-trailer combination is based on the unloaded weight of the tractor plus the maximum gross weight of the trailer as set forth in its permit [20 NYCRR 481.4(c)].

D. That the Assessment of Unpaid Truck Mileage Tax dated January 16, 1976, as adjusted and the Assessment of Unpaid Fuel Tax dated January 16, 1976 are sustained and the petition of Quality Egg Co., Inc. is hereby denied.

DATED: Albany, New York

OCT 23 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER