STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SHELL TRANSPORTATION 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(s) 21 of the Tax Law for the ~~Year(s)~~ Period(s) April, 1971 through June, 1974

State of New York
County of Albany

John Huhn, being duly sworn, deposes and says that ~~she~~ he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 13th day of September, 1978, ~~she~~ he served the within Notice of Decision by ~~(certified)~~ mail upon Carmin Libroia, vice-pres. Shell Transportation Corp. ~~(representative of)~~ the petitioner in the within proceeding,

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

Carmin Libroia, Vice-President
Shell Transportation Corp.
899 Meeker Avenue
Brooklyn, NY 11222

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
13th day of September, 1978.

John Huhn

TA-3 (2/76)

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

September 13, 1978

Carmin Libroia, Vice-President
Shell Transportation Corp.
899 Meeker Avenue
Brooklyn, NY 11222

Dear Mr. Libroia:

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) x 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

Michael Alexander
Supervising Tax Hearing Officer

cc: xxxxxxxxxxxxxxxxxxxxx

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application of SHELL TRANSPORTATION CORP. for Revision of a Determination or for Refund of Highway Use Tax under Article 21 of the Tax Law for the Periods April, 1971 through June, 1974.	:	DECISION

Applicant, Shell Transportation Corp., 899 Meeker Avenue, Brooklyn, New York 11222, filed an application for revision of a determination or for refund of highway use tax under Article 21 of the Tax Law for the periods April, 1971 through June, 1974 (File No. 14354).

A formal hearing was held before Solomon Sies, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 16, 1978 at 2:45 P.M. Applicant appeared by Carmin Libroia, vice-president. The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether an applicant who reports laden mileage for unidentified leased vehicles is liable for highway use tax at the rate applicable to the laden maximum gross weight of the tractor/trailer combination.

FINDINGS OF FACT

1. Applicant, Shell Transportation Corp., is a common carrier transporting general cargo. It maintains its principal place of business at 899 Meeker Avenue, Brooklyn, New York.

2. On January 24, 1975, the Miscellaneous Tax Bureau issued an Assessment of Unpaid Truck Mileage Tax against applicant, Shell Transportation Corp., for the tax periods April, 1971 through June, 1974, in the amount of $240.04, plus penalty and interest of $44.80, for a total of $284.84. Applicant timely filed an application for a formal hearing with respect to the aforesaid assessment.

3. On December 1, 1975, the Miscellaneous Tax Bureau issued an adjusted assessment of truck mileage tax against applicant for the periods April, 1971 through June, 1974, in the amount of $474.96, plus penalty and interest of $143.69, for a total of $618.65. This was done to reflect an increase in tax for the period still within the statute of limitations. The adjusted tax superseded the assessment referred to in Finding of Fact "2", *supra*. The tax for the second and third quarters of 1971 was unchanged because it was beyond the statutory time period.

4. On its returns for the tax periods in issue, applicant reported on the basis of "combination weights" and computed its laden tax based on the maximum gross weight of 65,000 lbs. Applicant claimed that this figure was used because 65,000 lbs. was the maximum combination weight which could be hauled by its single-axle tractors, without obtaining a "permit" (evidently a reference to a "special hauling permit").

5. On its returns, applicant included the laden miles for unidentified leased trailers in the computation of tax, but did not allow for certain laden leased trailers with maximum gross weights which would have increased the maximum combination gross weight to an excess of 65,000 lbs.

6. TMT-4 forms (Report of Equipment Interchanged or Leased) filed by the lessors of trailers interchanged or leased by applicant disclosed the maximum gross weight as indicated on their registered permits. The increase in applicant's tax resulted from an audit and was primarily based on the permitted weights of said leased or interchanged trailers. For example, applicant's laden computation for the quarter ended December 31, 1972 reported a maximum gross weight of 65,000 lbs. for 2,142 miles, at a rate of .0255, for a tax of $54.62. On audit, it was determined from the reports of equipment interchanged or leased that six of the trailers interchanged or leased during that period had a maximum gross weight of 60,000 lbs. In view of this, the rate was increased to .0325 (based on 12,220 lbs. for tractors and 60,000 lbs. for trailers), resulting in a laden tax of $69.51 and a deficiency of $14.89 for the quarter.

CONCLUSIONS OF LAW

A. That a carrier who elects to report on the basis of "combination weight" and who operates with a load is required to report the maximum gross weight for each trailer interchanged or leased by it, plus the actual weight of the heaviest tractor for which a permit is required during the period covered by the return. Thus, since applicant failed to report the mileage separately for

each tractor-trailer, it was required to report the mileage for the heaviest tractor-trailer combination owned or leased. It is to be noted that the permitted weights of applicant's own vehicles would also have resulted in additional tax over and above that which had been reported.

B. That applicant is liable for truck mileage tax at the rate applicable to the laden maximum gross weight of the tractor-trailer combination, within the intent and meaning of subdivision 2, section 503 of the Tax Law (20 NYCRR §481.5 and 20 NYCRR §481.4(c)).

C. That the application of Shell Transportation Corp. be and the same is hereby denied.

DATED: Albany, New York

September 13, 1978

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER