

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Mathew Andruk : AFFIDAVIT OF MAILING
d/b/a Matty's Trucking Co. :
:
for Revision of Determinations or for Refund :
of Highway Use Tax under Article 21 of the :
Tax Law for the Period October 1979 through :
September 1982. :

State of New York :

ss.:

County of Albany :

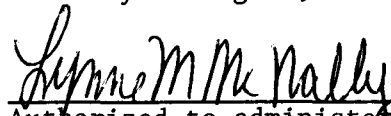
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 31st day of August, 1987, he/she served the within notice of Decision by certified mail upon Mathew Andruk, d/b/a Matty's Trucking Co. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mathew Andruk
d/b/a Matty's Trucking Co.
86 Malba Drive
Malba, NY 11357

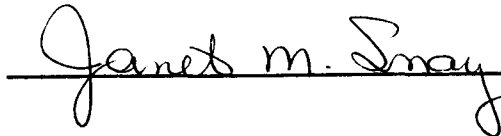
and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

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
31st day of August, 1987.



Authorized to administer oaths
pursuant to Tax Law section 174



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

August 31, 1987

Mathew Andruk
d/b/a Matty's Trucking Co.
86 Malba Drive
Malba, NY 11357

Dear Mr. Andruk:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law 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
Audit Evaluation Bureau
Assessment Review Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 453-4301

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MATHEW ANDRUK	:	DECISION
D/B/A MATTY'S TRUCKING CO.	:	
for Revision of Determinations or for Refund	:	
of Highway Use Tax under Article 21 of the Tax	:	
Law for the Period October 1979 through	:	
September 1982.	:	

Petitioner, Mathew Andruk d/b/a Matty's Trucking Co., 86 Malba Drive, Malba, New York 11357, filed a petition for revision of determinations or for refund of highway use tax under Article 21 of the Tax Law for the period October 1979 through September 1982 (File No. 52998).

A hearing was held before Frank A. Landers, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on June 18, 1986 at 10:45 A.M. and continued on June 10, 1987 at 10:45 A.M. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Mark F. Volk, Esq. and Michael Alexander, Esq. of counsel).

ISSUE

Whether assessments of truck mileage tax and fuel use tax issued to petitioner and based on a field audit, were correct.

FINDINGS OF FACT

1. Petitioner, Mathew Andruk d/b/a Matty's Trucking Co., operates a trucking business, delivering lumber to retailers in the Metropolitan New York City area, including portions of New York, New Jersey and Connecticut.
2. A truck mileage tax audit of petitioner was performed in conjunction with the audit of an affiliated carrier, Timber Transport Corp. Petitioner had

permits for seven tractors and eight trailers, however not all tractors and trailers were used during the audit period.

3. The auditor found that petitioner did not keep odometer or hubometer readings. Petitioner recorded mileage based on distances computed from a moving industry guide. The guide calculated mileage from one location to another based on the shortest mileage from point to point. It did not allow for the use of expressways which would require less driving time but would result in greater mileage.

4. The auditor found toll receipts which he could not match to recorded trips and also found that some fuel purchases were made on days when no trips were recorded.

5. In view of the above, the auditor found that mileage records were unreliable and decided to use 1980 as a test year to determine if additional truck mileage tax and fuel use tax were due.

6. Mileage was determined as follows: Total fuel expense from petitioner's Federal tax return for the year 1980 was used as a starting point. From this, the auditor deducted all non-diesel fuel purchases to allow for vehicles which did not have truck mileage tax permits, resulting in net diesel fuel purchases of \$19,428.00. This was divided by the average estimated retail price of \$1.35 per gallon to arrive at 14,391 gallons. Next, the auditor computed the number of miles traveled by using a factor of five miles per gallon, due to a lack of fuel consumption records. This resulted in 71,955 audited miles. After deducting miles reported on petitioner's Combined Truck Mileage and Fuel Use Tax Return, Form MT-903 (30,049), reported out-of-state miles (5,137) and New York State Thruway credit miles (2,057), net additional New York State miles were found to be 34,712.

7. Calculation of Truck Mileage Tax

Petitioner reported on the maximum gross weight basis with 50% of mileage treated as laden and 50% as unladen.

a. Since petitioner did not retain records as to which tractor was pulling which trailer on a particular trip, the auditor could not use the weight stated on the permit to calculate the exact mileage via the chart on the back of the tax return. Therefore, the auditor used the unidentified rate of .0325 per mile multiplied by 17,356 laden miles (50% of 34,712 audited additional mileage) and calculated an additional laden tax of \$564.07.

b. Petitioner's heaviest tractor weighed 12,000 pounds and his heaviest trailer weighed 10,500 pounds, a total of 22,500 pounds. Accordingly, the auditor used the rate of .008 per mile multiplied by 17,356 unladen miles and calculated additional unladen tax of \$138.85.

c. Total additional truck mileage tax due for 1980 was \$702.92. Truck mileage tax paid for 1980 was \$546.98, resulting in an error ratio of 128.51%.

d. The truck mileage tax error ratio of 128.51% was applied to the truck mileage tax paid for the period October 1, 1979 through December 31, 1982 of \$1,647.41, resulting in additional audited truck mileage tax of \$2,117.09.

e. An assessment of unpaid truck mileage tax of \$2,117.09, plus penalty and interest, was issued to petitioner on March 30, 1984.

8. Calculation of Fuel Use Tax

a. The auditor added back the New York State Thruway mileage of 2,057 to the additional audited miles of 34,712 to find additional audited fuel use tax miles of 36,769 for 1980.

b. Since reported New York State fuel use tax mileage for 1980 was 32,105, this resulted in an error ratio of 114.53%.

c. New York State purchases claimed on petitioner's original return were recomputed using the error ratio of 114.53% and a consumption factor of 5 miles per gallon, resulting in additional fuel use tax due of \$2,146.42.

d. On March 30, 1984 the Audit Division issued an assessment of unpaid fuel use tax against petitioner for the period October 1979 through September 1982 of \$2,146.42, plus penalty and interest.

CONCLUSIONS OF LAW

A. That petitioner failed to keep accurate records as required by Tax Law § 507 and 20 NYCRR 483.1 et seq. Accordingly, pursuant to Tax Law § 510, it was proper for the Audit Division to estimate truck mileage tax and fuel use tax from such information as was available. (Lionel Leasing Industries Co., Inc. v. State Tax Commission, 105 AD2d 581.)

B. That the audit methods utilized were proper and petitioner has failed to show that the audit was erroneous.

C. That the petition of Mathew Andruk d/b/a Matty's Trucking Co. is denied and the assessments of truck mileage tax issued under Tax Law § 503 and fuel use tax issued under Tax Law § 503-a are sustained.

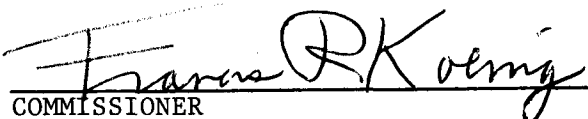
DATED: Albany, New York

STATE TAX COMMISSION

AUG 31 1987



PRESIDENT



COMMISSIONER



COMMISSIONER