

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Ard Rental Corp.

:

:

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision
of a Determination or Refund of Highway Use Tax
under Article 21 of the Tax Law for the Period
10/31/71 - 12/31/75.

:

:

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 5th day of October, 1984, he served the within notice of Decision by certified mail upon Ard Rental Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ard Rental Corp.
264 North Henry St.
Brooklyn, NY 11222

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
5th day of October, 1984.

David Parchuck

James A. Haselwood
Authorized to administer oaths
pursuant to Tax Law section 174

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

October 5, 1984

Ard Rental Corp.
264 North Henry St.
Brooklyn, NY 11222

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, 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
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

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	:	
ARD RENTAL CORP.	:	DECISION
for Revision of a Determination or for Refund	:	
of Highway Use Tax under Article 21 of the Tax	:	
Law for the Period October 31, 1971 through	:	
December 31, 1975.	:	

Petitioner, ARD Rental Corp., 264 North Henry Street, Brooklyn, New York 11222, 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 31, 1971 through December 31, 1975 (File No. 22981).

A formal hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on May 25, 1984 at 9:15 A.M. Petitioner appeared by Arthur Arnold, Secretary-Treasurer. The Audit Division appeared by John P. Dugan, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether petitioner, a lessor of trailers, is liable for truck mileage taxes on trailers leased to carriers which operated vehicular units on New York State highways.

II. Whether the utilization by the Audit Division of a test period in calculating the truck mileage tax due was proper.

FINDINGS OF FACT

1. On April 15, 1976 the Audit Division, as the result of a field audit, issued an Assessment of Unpaid Truck Mileage Tax to petitioner ARD Rental Corp.

("ARD Rental") in the amount of \$36,299.25 plus penalty and interest of \$7,259.75 and permit fees of \$60.00 for a total due of \$43,619.00.

2. The assessment of truck mileage tax was calculated by examining petitioner's records during the third quarter of 1974 in order to ascertain whether ARD Rental's customers had truck mileage tax permits and paid truck mileage tax. The auditor proceeded by attributing fifty miles of travel per day to each trailer which did not have a permit. The mileage was then multiplied by the average number of working days per quarter and by the tax rate in order to ascertain the amount of tax due during the third quarter of 1974. The amount of tax found due was then multiplied by the number of quarters during the audit period resulting in the assessment of \$36,299.25.

3. Petitioner's records were sufficient to determine the actual amount of its truck mileage tax liability.

4. As the result of a series of conferences, wherein additional information was submitted, the amount of truck mileage tax asserted to be due was reduced to \$4,314.25 plus permit fees of \$60.00 and simple interest.

5. During the periods in issue, ARD Rental was in the business of leasing trailers.

6. At the hearing, petitioner submitted a series of equipment lease agreements in an attempt to establish that additional carriers had truck mileage tax permits. None of the equipment lease agreements pertained to the third quarter of 1974 which was the quarter examined by the Audit Division.

7. At the hearing, petitioner argued that there is no practical way for it to verify whether a customer has a proper permit. Some of its customers sign leases using a name which is different from the name under which the

customer's permit was issued. Lastly, petitioner argued that it was prejudiced by the delay in conducting the audit.

CONCLUSIONS OF LAW

A. That section 503 of the Tax Law imposes a highway use tax for the privilege of operating any vehicular unit upon the public highways of New York State. The tax is imposed upon the carrier "...except that where the carrier is not the owner of such vehicular unit, the tax shall be a joint and several liability upon both." (Section 503 of the Tax Law). Since petitioner leases the trailers involved herein, the Audit Division properly concluded that petitioner was liable for the highway use tax at issue (see Matter of Farrell Lines, Inc., State Tax Commission, February 22, 1980).

B. That the use of a one quarter test period to determine petitioner's tax liability over a period of seventeen quarters, when petitioner's records were sufficient to determine the exact amount of tax due, was improper (see Matter of Babylon Milk & Cream Co. v. Bragalini 5 A.D.2d 712, 713, aff'd. 5 N.Y.2d 736; Matter of Evans Trucking Co., State Tax Commission, July 26, 1983; see also Matter of Chartair, Inc. v. State Tax Comm., 65 A.D.2d 44). Therefore, only that portion of the assessment based on an actual audit of petitioner's records, that is, the third quarter of 1974, can be sustained. In accordance with Finding of Fact "6", it is noted that no adjustment to the tax found due during the third quarter of 1974 is warranted since none of the documents produced by petitioner at the hearing pertained to the third quarter of 1974. The remaining portion of the assessment, with the exception of simple interest based upon the tax found due during the third quarter of 1974 and permit fees, is cancelled.

C. That the petition of ARD Rental Corp. is granted only to the extent of Conclusion of Law "B" and is, in all other respects, denied.

DATED: Albany, New York

OCT 05 1984

STATE TAX COMMISSION

Frederick W. Clem
PRESIDENT

Francis R. Koenig
COMMISSIONER

Mark S. Davis
COMMISSIONER