

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Transamerican Freight Lines, Inc.	:	
for Redetermination of a Deficiency or a Revision	:	AFFIDAVIT OF MAILING
of a Determination or a Refund of Motor Fuel &	:	
Highway Use Tax under Article 21 of the Tax Law	:	
for the Period 10/10/75-9/30/78.	:	

State of New York
County of Albany

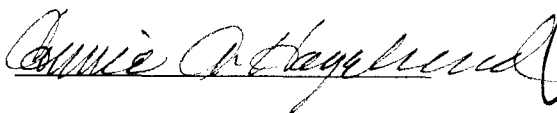
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 4th day of August, 1982, he served the within notice of Decision by certified mail upon Transamerican Freight Lines, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

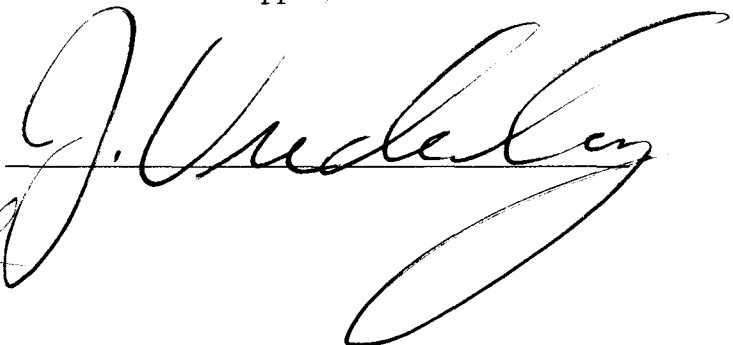
Transamerican Freight Lines, Inc.
P.O. Box 2388
2843 E. Paris Rd. S.E.
Grand Rapids, MI 49501

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
4th day of August, 1982.





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

August 4, 1982

Transamerican Freight Lines, Inc.
P.O. Box 2388
2843 E. Paris Rd. S.E.
Grand Rapids, MI 49501

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 4 months 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
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
TRANSAMERICAN FREIGHT LINES, INC.
for Redetermination of a Deficiency or for
Refund of Highway Use Tax and Fuel Use
Tax under Article 21 of the Tax Law
for the Period October 10, 1975 through
September 30, 1978.

DECISION

Petitioner, Transamerican Freight Lines, Inc., P.O. Box 2388, 2843 East Paris Road S.E., Grand Rapids, Michigan, 49501, filed a petition for redetermination of a deficiency or for refund of highway use tax and fuel use tax under Article 21 of the Tax Law for the period October 10, 1975 through September 30, 1978 (File No. 28244).

Petitioner has waived a formal hearing and submits its case for decision by the State Tax Commission based on the record as it exists. After due consideration of the record the Commission renders the following decision.

ISSUE

Whether interest charges assessed against petitioner may be waived.

FINDINGS OF FACT

1. On December 28, 1979 petitioner, Transamerican Freight Lines, Inc., ("Transamerican") was issued an Assessment of Unpaid Fuel Use Tax in the amount of \$3,288.70 plus penalty and interest of \$656.10 for a total due of \$3,944.80. On the same date petitioner was also issued an Assessment of Unpaid Truck Mileage Tax (highway use tax) in the amount of \$29,666.66 plus penalty and interest of \$5,918.50 for a total due of \$35,585.16. These assessments,

covering the period October 10, 1975 through September 30, 1978, were issued as the result of a field audit of petitioner's tax records.

2. By a letter dated January 18, 1980 the Audit Division advised petitioner that amounts of penalty and interest shown on the above assessment notices did not include any penalty charges, but rather were computed as minimum interest charges only (at 8.4 percent) and were inadvertantly classified on the assessments as including both penalty and interest.

3. Petitioner has paid the amounts of tax shown as due on the above assessments and does not contest these amounts. However, petitioner has not paid the minimum interest charges as assessed and in its petition seeks waiver of these charges.

4. On October 10, 1975 petitioner was placed in the hands of and has since been operated by a receiver pursuant to petitioner's entry into Chapter XI bankruptcy (arrangement proceedings; 11 U.S.C. §701 et seq.).

CONCLUSIONS OF LAW

A. That the taxes assessed pursuant to the audit, and later paid by petitioner, were not taxes due for periods prior to petitioner's entry into Chapter XI arrangement proceedings. Rather these taxes were incurred and were payable after the date of petitioner's entry into the period of arrangement under Chapter XI of the Bankruptcy Act.

B. That "[w]here ... the taxes have been incurred in the Chapter XI proceeding itself, application of the principle enunciated in Sexton and Saper permits interest to accrue throughout the arrangement proceedings; the principle requires only that the accumulation of interest be suspended once

a petition in bankruptcy is filed." Nicholas v. United States, 384 U.S. 678 at 686. See also 13 A.L.R. Fed. 877 at 883, and 9 Am Jur 2d §1314.¹


C. That there is no evidence that a petition in bankruptcy for liquidation of petitioner was filed prior to petitioner's payment of these taxes (or at any time thereafter). Accordingly, interest was properly assessed by the Audit Division on the unpaid taxes incurred and payable during the Chapter XI arrangement proceeding until the time of their payment by petitioner. Such interest is not waived and remains due and owing.

D. That the petition of Transamerican Freight Lines, Inc., is hereby denied and the unpaid assessments of interest are sustained.


DATED: Albany, New York

AUG 04 1982

STATE TAX COMMISSION


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER

¹ The filing of a bankruptcy petition for liquidation stops the accrual of interest on taxes incurred and payable during the preceding period of a Chapter XI arrangement proceeding. Such charges are not thereafter waived, but become claims governed as to their payment by applicable bankruptcy priority rules.