

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Wingate Trucking Co., Inc. : AFFIDAVIT OF MAILING  
for a Hearing to Review a Determination of :  
Truck Mileage Tax under Article 21 of the Tax :  
Law for the Period January 1, 1980 through :  
December 31, 1983. :  
:

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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 13th day of March, 1987, he/she served the within notice of Decision by certified mail upon Wingate Trucking Co., Inc. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

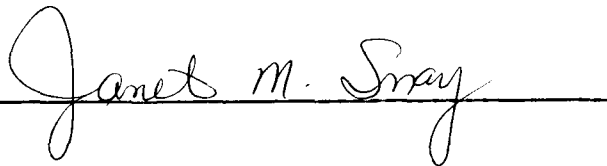
Wingate Trucking Co., Inc.  
P.O. Box 645  
Albany, GA 317030645

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  
13th day of March, 1987.

  
Authorized to administer oaths  
pursuant to Tax Law section 174



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

March 13, 1987

Wingate Trucking Co., Inc.  
P.O. Box 645  
Albany, GA 317030645

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  
Audit Evaluation Bureau  
Assessment Review Unit  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
WINGATE TRUCKING CO., INC.	:	DECISION
for a Hearing to Review a Determination of	:	
Truck Mileage Tax under Article 21 of the Tax	:	
Law for the Period January 1, 1980 through	:	
December 31, 1983.	:	

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Petitioner, Wingate Trucking Co., Inc., P.O. Box 645, Albany, Georgia 31703-0645, filed a petition for a hearing to review a determination of truck mileage tax under Article 21 of the Tax Law for the period January 1, 1980 through December 31, 1983 (File No. 57587).

On July 22, 1986, petitioner, by W.D. Wingate, its president, waived a hearing before the State Tax Commission and requested the Commission to render its decision based on the Department of Taxation and Finance file. After due consideration of the file, the Commission hereby renders the following decision.

ISSUE

Whether an assessment of truck mileage tax based on a field audit was correct.

FINDINGS OF FACT

1. Petitioner, Wingate Trucking Co., Inc., is based in Albany, Georgia and operates a large fleet of tractor-trailers which are used to deliver freight throughout the United States and Canada.

2. Petitioner files New York State truck mileage tax returns on the maximum gross weight method. During the period at issue, petitioner paid truck mileage tax at the rates of .0255 laden and .0095 unladen, which rates indicate weights of 64,001 to 66,000 pounds laden and 26,001 to 28,000 pounds unladen.

The Audit

3. Petitioner executed a consent agreeing to a test period audit method. Accordingly, the auditor selected the fourth quarter of 1983 as a test period and examined petitioner's records for said period in detail. Drivers' trip envelopes filed by tractor were used to prepare a trip summary. New York State Thruway receipts were checked for routing and proper credit. Trip miles were compared to map miles and laden/unladen miles were checked. Available load weights were also checked.

4. As a result of the examination, the 8,406 reported laden miles for the test period were increased to 11,803 miles, an increase of 40.41 percent. Unladen miles for the same period were reduced from 9,187 to 8,108 miles, a decrease of 11.74 percent. No thruway credits were disallowed. Actual thruway miles allowed were 138 miles more than petitioner had claimed. The percentage of thruway mileage allowed compared to audited mileage was less than the percentage of thruway mileage allowed compared to the reported mileage because of the increase in total miles.

5. Petitioner's application for Tenth Series permits dated November 13, 1978, shows that 59 out of 62 permitted trailers had maximum gross weights of 32,500 pounds, two had maximum gross weights of 36,000 pounds and one had a maximum gross weight of 55,000 pounds. Petitioner's application for Eleventh Series permits dated December 1, 1981, was incorrectly completed in that it showed the maximum gross weights of all tractors at 80,000 pounds and listed three out of 150 trailers at 80,000 pounds maximum gross weight with no maximum gross weight listed for the remaining 147 trailers. The three trailers listed at 80,000 pounds weighed 20,000 pounds unloaded, while the other 147 weighed from 10,000 to 11,000 pounds. Upon receipt of the Eleventh Series application,

a Department of Taxation and Finance employee attempted to remedy the incorrect filing by striking out the 80,000 pounds attributed to the tractors and listed the 147 smaller trailers at the same 80,000 pounds reported for the three larger trailers.

6. The auditor, unaware that the changes in weight had been made by a Department employee and not by petitioner, assumed that petitioner's intent was to apply for permits for gross combinations of 80,000 pounds. Accordingly, the auditor applied the .039 laden rate rather than the .0255 laden rate used by petitioner. The auditor's calculations of truck mileage tax were as follows:

Laden Tax

Reported Miles	78,978	
Additional Miles		
(Reported Miles x 40.41% margin of error)	<u>31,915</u>	
Total audited miles	110,893	
Times tax rate	<u>\$ .039</u>	
Audited tax due	<u>\$4,324.83</u>	
Paid with return	<u>2,088.68</u>	
Additional laden tax		\$2,236.15

Unladen Tax

Reported Miles	62,553	
Overreported miles		
(Reported miles x 11.74% margin of error)	<u>(7344)</u>	
Adjusted miles	55,209	
Times tax rate	<u>\$ .0095</u>	
Audited tax due	<u>\$ 524.49</u>	
Paid with return	<u>608.66</u>	
Overpaid unladen tax		<u>(84.17)</u>
Additional Truck Mileage Tax Due		\$2,151.98

7. On October 5, 1984, the Audit Division issued an assessment of unpaid truck mileage tax to petitioner for the period January 1, 1980 through December 31, 1983 for \$2,152.98 in tax due, plus interest.<sup>1</sup>

8. Petitioner contends that, with one exception, all loads out of Baldwinsville, New York, were dunnage loads consisting of empty containers weighing less than 24,000 pounds and that it is entitled to use a rate of .0255, since the gross combination weight was 65,000 pounds or less. Two shipping orders submitted to the State Tax Commission by petitioner show that beer kegs and pallets were shipped by Anheuser-Busch, Inc. in Baldwinsville, New York to a consignee in Green Bay, Wisconsin. The orders indicate that the shipments were being returned and the stated reason for each return was "to be repaired". The auditor had used these two shipments, among others, in a test of estimated load weights using 158 pounds for  $\frac{1}{2}$  kegs and 79 pounds for  $\frac{1}{4}$  kegs with 10 pounds each for pallets and had arrived at net load weights of 66,126 pounds for one of the shipments and 65,484 pounds for the other. (Contrary to petitioner's assertions, there is nothing in the record to indicate that the auditor misread the bill of lading numbers as the weights of the shipments.) Although not directly so stated in the record, petitioner apparently contends that the kegs were empty and that the estimated load weights were thus incorrect. Trip summaries as per petitioner's records for the test quarter showed three trips from Baldwinsville to Green Bay with loads of 42,653 pounds, 44,893 pounds and 44,453 pounds, and other trips with no load weights.

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1 Additional fuel use tax of \$971.63, plus interest, was also asserted against petitioner and has apparently been paid. It is not at issue herein.

CONCLUSIONS OF LAW

A. That Tax Law § 503 provides that a carrier may calculate its truck mileage tax by electing one of two methods: The maximum gross weight method or the unloaded weight method.

B. That petitioner elected the maximum gross weight method. Tax Law § 503.1, which sets forth the maximum gross weight election, provided, during the periods at issue, in pertinent part, as follows:

"Such tax shall be based upon the gross weight of each vehicular unit and the number of miles it is operated on the public highways in this state.... The tax for each such vehicular unit shall be computed by multiplying the number of miles operated on the public highways in this state by the appropriate weight group tax rate.... When a vehicular unit is operated without any load whatsoever, the carrier shall pay the tax imposed by this section only upon the unloaded weight of the vehicular unit for the mileage such unit is operated without load or cargo, computed at the appropriate weight group tax rate...."

C. That 20 NYCRR 481.4 provides, in pertinent part, as follows:

"(c) 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.

Example: If the unloaded weight of a tractor is 12,000 pounds and it is operated in combination with a laden trailer having a maximum gross weight of 48,000 pounds, the tax is based on 60,000 pounds and the applicable tax rate is \$.022. If it travels 100 miles the tax is computed as follows:  $100 \times \$.022 = \$2.20$

(d) The rate of tax on a laden motor vehicle is always based on its maximum gross weight, irrespective of the actual weight of the load it may be carrying at any particular time. Accordingly, a decrease in the weight of the load, for example by deliveries along its route, has no effect on the applicable rate of tax.

Example: If a laden tractor-trailer combination has a maximum gross weight of 45,000 pounds, the applicable tax rate is \$.015. If it travels 100 miles within the State actually carrying only 10,000 pounds, the tax is computed as follows:  $100 \times \$.015 = \$1.50$ "

D. That the audit properly determined additional laden miles as set forth in Finding of Fact "4". However, the auditor improperly utilized the maximum gross weight of 80,000 pounds to establish the rate of tax. As noted in the Regulations (see Conclusion of Law "C", above), 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 the permit. The permit weights for the Eleventh Series were erroneous, as the Department's own employee improperly ascribed the 80,000 pound weights of the three large trailers to the 147 other much smaller trailers. Accordingly, the maximum gross weights reported by petitioner in its returns are deemed correct.

E. That the auditor incorrectly concluded that the shipments from Baldwinsville to Green Bay were shipments of full kegs of beer, rather than empty kegs which were being returned for repair. Thus, the weights determined by the auditor for such shipments are incorrect. It is not clear whether petitioner, by claiming that these loads were "dunnage", is contending that such trips should be treated as unladen. If so, petitioner is mistaken, since the laden rate is to be used for such trips and the rate of tax on a laden vehicle is always based on maximum gross weight irrespective of any lower actual weight the vehicle may be carrying at a particular time (20 NYCRR 481.4[d], supra).




F. That the petition of Wingate Trucking Co., Inc. is granted to the extent indicated in Conclusions of Law "D" and "E" and the assessment of truck mileage tax is to be modified accordingly.

DATED: Albany, New York

STATE TAX COMMISSION

MAR 13 1987

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER