

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

September 28, 1983

Yellow Freight Systems, Inc.
Attn: Mr. William F. Martin, Esq.
10990 Roe Ave.
Overland Park, KS 66207

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 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	:	
YELLOW FREIGHT SYSTEM, INC.	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Fuel Use Tax under Article 21 of the	:	
Tax Law for the Period October 1, 1978 through	:	
December 31, 1980.	:	

Petitioner, Yellow Freight System, Inc., 10990 Roe Avenue, Overland Park, Kansas 66207, filed a petition for redetermination of a deficiency or for refund of fuel use tax under Article 21 of the Tax Law for the period October 1, 1978 through December 31, 1980 (File No. 35744).

A formal hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on June 18, 1982 at 9:00 A.M. Petitioner appeared by William F. Martin, Esq. The Audit Division appeared by Paul B. Coburn, Esq. (Anne W. Murphy, Esq., of counsel).

ISSUES

I. Whether application of credits by the Commonwealth of Virginia against tax owed for the consumption in Virginia of New York purchased fuel is in fact a "payment" of tax to another state maintaining a tax "similar in effect" to the tax imposed by §503-a of the Tax Law, entitling Yellow Freight System, Inc. to the refund provided by §503-a(3).

II. Whether application of credits by the Commonwealth of Pennsylvania against tax owed for the consumption in Pennsylvania of New York purchased fuel is in fact a "payment" of tax to another state maintaining a tax "similar in

effect" to the tax imposed by §503-a of the Tax Law, entitling Yellow Freight System, Inc. to the refund provided by §503-a(3).

FINDINGS OF FACT

1. On December 17, 1981 the Audit Division issued an Assessment of Unpaid Fuel Use Tax for the period October 1, 1978 through December 31, 1980 to petitioner, Yellow Freight System, Inc. The Assessment stated that a field audit of petitioner's fuel use tax records disclosed that additional tax was due on refund claims which had been paid. The total additional tax asserted to be due was \$43,907.50, plus penalty and interest of \$14,269.93, for a total amount of \$58,177.43. The Proposed Audit Adjustment of Tax Due under Article 21 of the Tax Law stated that petitioner's fuel use tax refund records for the period October 1, 1978 through December 31, 1980 disclosed that additional tax was due on claims for refunds which had been paid for the period October 1, 1978 through March 31, 1980 as a result of a reallocation of fuel consumption by the various states and due to additional miles travelled by petitioner in New York State.

2. On August 27, 1981 petitioner consented to an extension of the statute of limitations for assessment of Truck Mileage Tax and Fuel Use Tax for the periods July 1, 1977 through December 31, 1980 to on or before June 30, 1982.

3. On June 18, 1982 the Audit Division and petitioner stipulated to the following facts:

(a) The matter in controversy concerns petitioner's claim for fuel use tax refunds, as contemplated by §503-a(3), Chapter 60, Article 21 of the New York Tax Law, for the period October 1, 1978 through December 31, 1980.

(b) For the period in question, for purposes of computation of petitioner's fuel use tax liability under §503-a, Chapter 60, Article 21 of the

Tax Law, petitioner had purchased more gallons of fuel in New York, for which it had paid the applicable tax rate per gallon imposed on such fuel under Article 12(a) of Chapter 60, for use in petitioner's operations either within or without New York State, than gallons it had consumed within New York and upon which gallons petitioner was subject to the fuel use tax imposed by §503-a of Chapter 60.

(c) In this "over purchase" situation, petitioner would be entitled to claim a refund of fuel use tax liability under the following circumstances:

"If proof satisfactory to the tax commission is submitted showing that a carrier has paid to another state under a lawful requirement of such state a tax, similar in effect to the fuel tax component in the tax imposed by this section, on the use or consumption in such state of motor fuel or diesel motor fuel purchased in this state and on which the taxes imposed by article 12-a of this chapter have been paid and, if a claim for refund is filed within one year from the end of any calendar quarter, such excess for such quarter shall be refunded, but only to the extent of such payment to such other state and in no case to exceed the applicable rate per gallon in effect under article 12-a of this chapter." [Chapter 60, Article 21, §503-a(3)]

(d) Based upon the above-quoted language of §503-a(3), petitioner made timely applications for refund of fuel use tax paid on purchases made between October 1, 1978, through December 31, 1980.

(e) The Audit Division issued pro forma refund checks in the following amounts: For the fourth quarter 1978 = \$13,012.27; for the first and second quarters 1979 = \$27,327.46; for the third quarter 1979 through the first quarter 1980 = \$29,860.26.

(f) Subsequent to the issuance of the aforementioned refund checks, an audit was undertaken by the Audit Division pursuant to which audit the Audit Division denied petitioner's right to certain of the fuel use tax refunds claimed for the period in question, and asserted against petitioner an additional tax liability of \$43,907.50.

(g) Based on the aforementioned audit, the Audit Division further asserted an adjustment of petitioner's refund claims for the period extending from the second quarter of 1980 through the fourth quarter of 1980, issued January 22, 1982, and based on the Audit Division's position concerning the claimed refunds, petitioner's refund claims were reduced for this period from \$30,236.05 to \$11,484.58, thus disallowing \$18,751.47 in refunds claimed by petitioner.

(h) The present dispute between petitioner and the Audit Division relates solely to the Audit Division's disallowance of refunds claimed by petitioner for the period in question, for fuel purchased in New York on which the tax imposed by Article 12-a of Chapter 60 had been paid by petitioner to New York State, and which had been consumed by petitioner in Pennsylvania and Virginia.

(i) For the purposes of this hearing, petitioner and the Audit Division accepted as correct the audit figures produced by the Audit Division with respect to the over-purchased New York gallons which were consumed in Pennsylvania and Virginia during the period in question.

(j) Based upon the Audit Division's audit figures, it was determined that the net over-purchased New York gallons which were consumed by petitioner in other states for the period in question amounted to 958,754.¹

(k) Based upon the Audit Division's audit figures, 450,806 of these New York purchased gallons were consumed in Pennsylvania during the period in question.

¹ It is noted that the stipulation originally pertained to additional states. Accordingly, it is assumed that this figure reflects, in part, gallons which are no longer in issue.

(l) During the period in question, the Commonwealth of Pennsylvania imposed a road tax calculated on the amount of motor fuel used in Pennsylvania at the following rates:

Fourth Quarter 1978 through Second Quarter 1979	\$.09/gal.
Third Quarter 1979 through Fourth Quarter 1980	\$.11/gal.

(m) Based upon the applicable Pennsylvania road tax rates set forth above, the amount of refund which petitioner requested for New York purchased gallons consumed in Pennsylvania for the period in question, and which the Audit Division has denied, amounts to \$43,240.43.

(n) Based upon the Audit Division's audit figures, 575 of the New York purchased gallons were consumed in Virginia during the period in question.

(o) During the period in question, the Commonwealth of Virginia imposed a motor fuel road tax on motor carriers, calculated on the amount of fuel used within Virginia, at the following rates:

Fourth Quarter 1978 through Second Quarter 1980	\$.09/gal.
Third Quarter 1979 through Fourth Quarter 1980	\$.11/gal.

(p) The Audit Division denied petitioner's refund request with respect to New York purchased gallons consumed in Virginia only with respect to the gallons consumed in fourth quarter 1978 through second quarter 1979.

(q) During those three quarters, based upon the Audit Division's figures, 235 gallons purchased in New York were consumed within the State of Virginia.

(r) Based upon an adjustment by the Audit Division of the applicable Virginia road tax rate of \$.11 per gallon to \$.09 per gallon in the period fourth quarter 1978 through second quarter 1979, the amount of refund which petitioner requested for New York purchased gallons consumed in Virginia for the period in question, and which the Department has denied, amounts to \$21.15.

(s) The total of refunds requested by petitioner for the period in question for New York purchased gallons consumed in Pennsylvania and Virginia, and which have been disallowed by the Audit Division, amounts to \$45,201.00.

(t) Virginia and Pennsylvania both impose a tax "similar in effect" to the tax imposed by §503-a on the consumption in those states of motor fuel or diesel motor fuel purchased in the State of New York, as set forth in §503-a(3) of Chapter 60, Article 21.

(u) In Pennsylvania during the period in question, petitioner was in an "over-purchase" situation similar to that existing within New York, in that petitioner's liability for road use taxes for gallons consumed within Pennsylvania was satisfied through application, against the Pennsylvania road use tax, of credits for taxes paid on the purchase of fuel within the State of Pennsylvania.

(v) In Virginia during the period fourth quarter 1978 through second quarter 1979, petitioner was in an "over-purchase" situation similar to that existing within New York, in that petitioner's liability for road use taxes for gallons consumed within Virginia was satisfied through application, against Virginia road use tax, of credits for taxes paid on the purchase of fuel within Virginia.

(w) The request of petitioner for refund of New York fuel use tax on New York purchased gallons consumed within Pennsylvania during the period in question, and within Virginia during the period fourth quarter 1978 through

second quarter 1979, was denied by the Audit Division upon the ground that, in view of petitioner's credit situation in both Pennsylvania and Virginia during those periods, petitioner had not "paid" to another state a tax "similar in effect" to the tax imposed by §503-a on these New York gallons, as required by §503-a(3) of Chapter 60, Article 21.

4. When the refund claim noted in Finding of Fact "3(d)" was submitted, the tax returns from Pennsylvania and Virginia were not submitted. Therefore, the Audit Division was not aware that Yellow was entitled to tax credits from other states.

5. The credits which petitioner received from Pennsylvania and Virginia were reduced by the amount of fuel which Yellow purchased in New York and consumed in Pennsylvania and Virginia.

CONCLUSIONS OF LAW

A. That subdivision 3 of section 503-a of the Tax Law provides, in part:

"...If proof satisfactory to the tax commission is submitted showing that a carrier has paid to another state...a tax, similar in effect to the fuel tax component in the tax imposed by this section, on the use or consumption in such state of motor fuel or diesel motor fuel purchased in this state and on which the taxes imposed by article twelve-a of this chapter have been paid, and if a claim for refund is filed within one year from the end of any calendar quarter, such excess for such quarter shall be refunded but only to the extent of such payment to such other state and in no case to exceed the applicable rate per gallon in effect under article twelve-a of this chapter..."

B. That at the time section 503-a of the Tax Law was enacted, it was expected that this section would produce a small increase in revenue (N.Y. Legis. Ann., 1968, p. 398). However, a more important motivation for enactment of this section was to encourage the purchase of fuel in New York (supra). It was contemplated that truck owners who purchased all or most of their fuel in New York and traveled extensively outside New York would be relieved of some

of their tax liability (supra). The legislative history of section 503-a of the Tax Law further establishes that the legislature anticipated that "[t]ruckers would owe a fuel use tax only on that portion of the fuel used in New York on which they had not paid the New York tax at the time of purchase... [and that] ...since credits are provided for any tax paid in New York on fuel used in other states, all possibility of double taxation is eliminated." (N.Y. Legis. Ann., 1968, p. 400).

C. That a "payment" to another state may be made within the meaning and intent of subdivision 3 of section 503-a of the Tax Law through the application of a credit arising from a prior period. (Matter of Greyhound Lines, Inc., State Tax Commission, October 30, 1981). In this instance, petitioner applied a portion of its credit from a prior period in payment of its tax liability to Pennsylvania and Virginia. The application of this credit is reflected by the amount that petitioner's credit was reduced from Pennsylvania and Virginia due to the fuel which petitioner purchased in New York and consumed in Pennsylvania and Virginia. Accordingly, petitioner made a "payment" within the meaning of subdivision 3 of section 503-a of the Tax Law (see Commonwealth v. Baltimore Tank Lines, 272 S.E.2d 220 [Va. Sup. Ct. 1980]).


D. That since the Virginia motor fuel road tax and the Pennsylvania Motor Carrier's road tax were paid to, respectively, the Commonwealth of Virginia and the Commonwealth of Pennsylvania, within the meaning and intent of subdivision 3 of section 503-a of the Tax Law, petitioner is entitled to a refund.

E. That the petition of Yellow Freight System, Inc. is granted.

DATED: Albany, New York

STATE TAX COMMISSION

SEP 28 1983


PRESIDENT


COMMISSIONER


COMMISSIONER