

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Yankee Trails, Inc. :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Personal Income :
Tax under Article 22 of the Tax Law for the Years :
1979 & 1980. :
_____ :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 10th day of November, 1983, she served the within notice of Decision by certified mail upon Yankee Trails, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Yankee Trails, Inc.
Attn: John Tobin, Pres.
Third Ave.
Rensselaer, NY 12144

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
10th day of November, 1983.

Martha L. Brunelle

Connie A. Hagelund

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

November 10, 1983

Yankee Trails, Inc.
Attn: John Tobin, Pres.
Third Ave.
Rensselaer, NY 12144

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) 690 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 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
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	:	
	:	
YANKEE TRAILS, INC.	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Years 1979 and 1980.	:	

Petitioner, Yankee Trails, Inc., Attention: John Tobin, President, Third Avenue, Rensselaer, New York 12144, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1979 and 1980 (File No. 37539).

A formal hearing was held before Dennis M. Galliher, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Office Campus, Albany, New York, on May 10, 1983 at 9:15 A.M. Petitioner appeared by its president, John Tobin. The Audit Division appeared by John P. Dugan, Esq. (Harry Kadish, Esq., of counsel).

ISSUE

Whether a refund of penalties and interest assessed against and paid by petitioner for late filing and payment of amounts due for withholding taxes should have been allowed by the Audit Division.

FINDINGS OF FACT

1. On October 6, 1981, petitioner, Yankee Trails, Inc., filed an Application for Refund of Overpayment of Tax on Employer's Withholding Tax Return in the aggregate amount of \$14,761.99 for the years 1979 and 1980. The amount of petitioner's refund claim is equal to the sum of penalties and interest assessed

against (and subsequently paid by) petitioner on the basis of late filing of withholding tax returns and late payment of amounts due thereon.

2. By a notice dated December 28, 1981, the Audit Division advised petitioner that the above refund claim was denied. Thereafter, petitioner timely filed a petition contesting the denial of its claim.

3. Petitioner is engaged in the business of providing charter bus services. In addition to other commitments during the years in issue, petitioner was under a three year contract with the New York State Office of General Services ("O.G.S."), commencing in or about September of 1977, to provide transportation service to the Empire State Plaza (in Albany, New York) from various outlying peripheral parking lots.

4. Petitioner admits that withholding tax returns and withholding taxes due were not filed and paid on a timely basis during the years at issue.

5. Petitioner asserts, in support of its claim for refund of penalties and interest paid, that in 1978 its insurance costs increased by thirty percent and it was also faced with sharply increased fuel prices. Petitioner points out that these events were beyond its control and occurred while petitioner was bound by the terms of the O.G.S. contract (see Finding of Fact "3"), and thus petitioner was faced with a serious cash flow and profit problem until the expiration of the O.G.S. contract (apparently in or about September of 1980). Petitioner further asserts its cash flow and profit problem was compounded as the result of consistently late payments by New York State on amounts due of approximately \$50,000.00 per month under the O.G.S. contract. In this regard, petitioner alleges consistent time lapses of up to forty-five days before payment by the State, and asserts more extended delays occurred each April due ostensibly to delays in passing the State budget. Finally, petitioner notes

that even in the face of these increased costs and payment delays, it neither reneged on furnishing transportation services under the O.G.S. contract, nor did it attempt to renegotiate the terms of that contract.

6. Petitioner asserts that, in addition to the O.G.S. contract, it performed other (transportation) services for New York State, but that the amount of such other work was small by comparison. Petitioner also performed work for parties other than New York State, including Rensselaer County and the Federal government, but did not specify the amount of such work performed.

CONCLUSIONS OF LAW

A. That petitioner has not shown that its failure to make timely filings and remittances with regard to withholding taxes during the years at issue was due to reasonable cause rather than willful neglect. Although petitioner was faced with unanticipated increases in operating expenses while at the same time it was bound by the terms of the three year contract, such is a risk of doing business. Furthermore, although the O.G.S. contract constituted the bulk of petitioner's work for New York State, petitioner did perform work for entities other than New York State and, although payment was alleged to have been consistently late (both by the State and by others), such does not excuse petitioner's tardiness in filings and remittances (see, Matter of M. Scher and Son, Inc., State Tax Comm., February 5, 1981).

B. That Article 22 of the Tax Law does not provide for the suspension, waiving or abatement of interest properly imposed.


C. That the petition of Yankee Trails, Inc. is hereby denied and the Audit Division's December 28, 1981 denial of petitioner's claim for refund of penalties and interest paid is sustained.

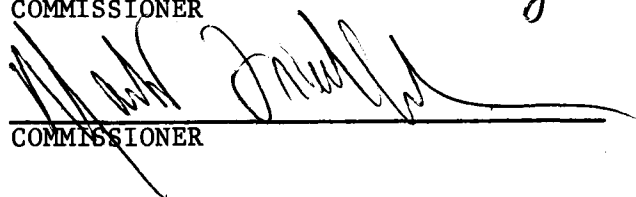
DATED: Albany, New York

STATE TAX COMMISSION

NOV 10 1983


PRESIDENT


COMMISSIONER


COMMISSIONER