

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
AXE & ARTHUR MOTOR EXPRESS, INC.:

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or  
a Refund of Sales and Use :  
Taxes under Article(s) 28 & 29 of the  
Tax Law for the ~~(year(s))~~ period August 1, 1965  
through February 28, 1969.

State of New York  
County of Albany

Rae Zimmerman, being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 6th day of April , 1972 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon Axe & Arthur  
Motor Express Inc. (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Axe & Arthur Motor Express, Inc.  
651 Genant Drive  
Syracuse, N.Y. 13204  
Attention: Donald Axe, Vice-President  
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) petitioner herein and that the address set forth on said wrapper is the last  
known address of the (representative of the) petitioner.

Sworn to before me this

6th day of April , 1972

Martha Furda

Rae Zimmerman



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

HEARING UNIT

EDWARD ROOK

SECRETARY TO  
COMMISSION

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York  
April 6, 1972

Axe & Arthur Motor Express, Inc.  
651 Genant Drive  
Syracuse, N.Y. 13204

Attention Donald Axe, Vice-President

Gentlemen:

Please take notice of the **Determination** of  
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to **sections 1138 & 1243** of  
the Tax Law any proceeding in court to review an adverse decision  
must be commenced within **4 months** after  
the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed  
in accordance with this decision or concerning any other matter relat-  
ing hereto may be addressed to the undersigned. These will be referred  
to the proper party for reply.

Very truly yours,

**L. Robert Leisner**

HEARING OFFICER

cc Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
AXE & ARTHUR MOTOR EXPRESS, INC.	:	DETERMINATION
for Revision of a Determination or for	:	
Refund of Sales and Use Taxes under	:	
Articles 28 and 29 of the Tax Law for	:	
the Period August 1, 1965 through	:	
February 28, 1969.	:	

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Axe & Arthur Motor Express Inc. applied for a redetermination of sales and use taxes under Articles 28 and 29 of the Tax Law for the period August 1, 1965 through February 28, 1969.

A formal hearing was held at the offices of the State Tax Commission, Syracuse, New York, on March 30, 1971, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Donald Axe, its vice-president, and the Income Tax Bureau was represented by Edward H. Best, Esq. (Alexander Weiss, Esq., of Counsel).

#### ISSUE

Where the corporate taxpayer, headquartered in Onondaga County, purchased and paid sales tax on four trucks in Onondaga County, which trucks were then used in Monroe County which has a higher sales and use tax, is the taxpayer liable for the difference of the higher sales and use tax of Monroe County?

#### FINDINGS OF FACT

1. The taxpayer timely filed New York State sales tax returns for the periods in issue.

2. A Notice of Determination of deficiencies in sales and use tax for the periods in question was issued on November 7, 1968, against the taxpayer under File No. 90,756,620.

3. The taxpayer petitioned for redetermination of the deficiencies.

4. The taxpayer was headquartered in Onondaga County. It purchased four trucks in Onondaga County and paid the sales tax in Onondaga County.

5. The taxpayer regularly used the four trucks at its terminal in Monroe County which has a higher sales and use tax rate.

6. The taxpayer asserted that because it was headquartered in Onondaga County it was a nonresident of Monroe County and that it could not legally be charged for the additional difference of the higher Monroe County tax.

CONCLUSIONS OF LAW

A. Monroe County Local Law Section 4, July 20, 1965, imposes a compensating use tax on the taxpayer. Section 11(2) does not exempt the applicant. Section 11(6) specifically provides for the difference between the sales tax and the higher compensating use tax.

B. The application of the taxpayer is denied and the determination of the Sales Tax Bureau is sustained.

C. Pursuant to the Tax Law, interest shall be added to the total amount due until paid.

DATED: Albany, New York

*April 6, 1972*

STATE TAX COMMISSION

*Norman Gallivan*  
\_\_\_\_\_  
COMMISSIONER

*Bruce Minley*  
\_\_\_\_\_  
COMMISSIONER

*Walter Kraus*  
\_\_\_\_\_  
COMMISSIONER

April 13, 1972

Mr. John E. Weeks, President  
Axe & Arthur Motor Express, Inc.  
651 Genant Drive  
Syracuse, New York 13204

Dear Mr. Weeks:

Thank you for your letter of April 10, 1972 and the enclosed check for \$502.08.

The check is being deposited for application to the Axe & Arthur Motor Express, Inc. sales tax liability.

You will be notified in due course by the Sales Tax Bureau of the balance of the liability for interest.

Very truly yours,

L. Robert Leisner  
Hearing Officer

LRL/z

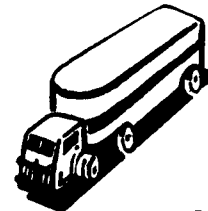
cc: Commissioners Gallman  
Manley  
Koerner  
Law Bureau

To Mr. Rook

4/12/72  
From Norman Gallman  
Acting Commissioner

# Axe & Arthur Motor Express, Inc.

*John Weeks*



MAIN OFFICE AND TERMINAL

651 GENANT DRIVE

PHONE: 422-0173 - SYRACUSE, N. Y. 13204

ROCHESTER TERMINAL

WELLS STREET

PHONE: 436-3900

APRIL 10, 1972

L. ROBERT LEISNER  
DEPARTMENT OF TAXATION AND FINANCE  
BUILDING 9, ROOM 214A  
STATE CAMPUS  
ALBANY, NEW YORK 12226

DEAR SIR:

ATTACHED IS OUR CHECK FOR \$502.08 FOR ADDITIONAL MONROE COUNTY SALES TAX ON FOUR TRAILERS WE PURCHASED IN 1967. DETERMINATION 890,756,620.

WE HAVE BEEN TRYING TO GET A DETERMINATION ON ABOVE SINCE NOVEMBER 1968. YOU HAVE MADE THE DETERMINATION BASED ON 4 TRUCKS AND SINCE THERE WAS NO TRUCKS INVOLVED, I DO NOT BELIEVE ANY OUR PRESENTATION ON THIS CASE COULD HAVE BEEN CONSIDERED.

RESPECTFULLY YOURS,  
AXE & ARTHUR MOTOR EXPRESS INC.

*John E Weeks*  
JOHN E WEEKS, PRESIDENT

CC NORMAN F GALLMAN  
A BRUCE MANLEY  
MILTON KOERNER

