

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the ~~Petition~~ Application

of

WALSH TRUCKING SERVICE, INC.

AFFIDAVIT OF MAILING
OF NOTICE OF ~~DEFICIENCY~~ DETERMINATION
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 ~~XXXXXX~~ Period from
3/1/70 through 11/30/72.

State of New York
County of Albany

JANET MACK

, 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 29th day of March , 1976 , she served the within
Notice of ~~Deficiency~~ (or Determination) by ~~(certified)~~ mail upon Walsh Trucking
Service, Inc. ~~(representative of)~~ the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Walsh Trucking Service, Inc.

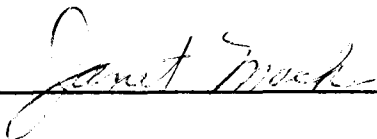
50 Burney Avenue
Massena, New York 13662

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)~~
~~XX~~ 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

29th day of March , 1976



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the ~~Decision~~ Application

of

WALSH TRUCKING SERVICE, INC.

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 ~~XXXXXX~~ Period from
3/1/70 through 11/30/72.

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

State of New York
County of Albany

JANET MACK, 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 29th day of March, 1976, she served the within
Notice of ~~Decision~~ (or Determination) by ~~(certified)~~ mail upon Whalen, Davey and
Looney (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Whalen, Davey and Looney
414 Jay Street
Ogdensburg, New York 13669
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

29th day of March, 1976.



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 107
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER

(518) 457-3850

DATED: Albany, New York
March 29, 1976

Walsh Trucking Service, Inc.
50 Burney Avenue
Massena, New York 13662

Gentlemen:

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

Please take further notice that pursuant to
Section(s) **1139 and 1243** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from 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 relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,


Paul B. Coburn
Supervising Tax
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

TA-1.12 (12/75)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
WALSH TRUCKING SERVICE, INC.	:	DETERMINATION
for a Revision of a Determination or	:	
for a Refund of Sales and Use Taxes	:	
under Articles 28 and 29 of the Tax Law	:	
for the Period from March 1, 1970	:	
through November 30, 1972.	:	

Applicant, Walsh Trucking Service, Inc., 50 Burney Avenue, Massena, New York 13662, has filed an application for revision of a determination or for refund of sales tax of \$3,876.44 paid as the result of a 1973 audit for the period from March 1, 1970 through November 30, 1972. (File No. 15-0527366.) A formal hearing was scheduled for July 8, 1975, at 3:45 P.M., at the offices of the State Tax Commission in the State Office Building at 207 Genesee Street, Utica, New York. Prior to the formal hearing, applicant advised the State Tax Commission, in writing, that it waived a formal hearing and requested that the State Tax Commission decide the case on the entire record in the file. The State Tax Commission renders the following decision after due consideration of the entire record.

ISSUE

Does a trip-lease of a tractor-trailer by a common carrier, applicant, Walsh Trucking Service, Inc., from an I.C.C. licensed trucker constitute a taxable rental by the lessee?

FINDINGS OF FACT

1. Applicant, Walsh Trucking Service, Inc., was a common carrier licensed by the Interstate Commerce Commission to do general commodity trucking over irregular routes during the periods ending May 31, 1970 through November 30, 1972.

2. Applicant, Walsh Trucking Service, Inc., filed timely sales tax reports, ST-100, for the periods ending May 31, 1970 through November 30, 1972. Those returns indicated no taxable sales.

3. In 1973, the applicant, Walsh Trucking Service, Inc., was audited by the Sales Tax Bureau. As a result of that audit, it was determined that the trip-leases by which it rented trucks from other I.C.C. common carriers during the periods ending May 31, 1970 through November 30, 1972, constituted taxable rentals. It had no taxable sales other than the disputed rentals.

4. The form of trip-lease used by applicant, Walsh Trucking Service, Inc., stated:

"Lessee hereby: (13) agrees that during the term of this lease, the said vehicle shall be under its exclusive possession, control and use..."

5. Applicant, Walsh Trucking Service, Inc., submitted no documentary or other sufficient evidence to establish that the lessor rather than the lessee exercised dominion and control of the trucking equipment leased.

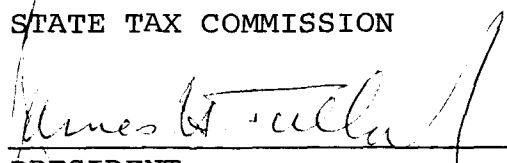
CONCLUSIONS OF LAW

A. That the burden of proof rests with applicant, Walsh Trucking Service, Inc., which is seeking a redetermination or refund of the tax. Here the applicant had to prove that the lessor controlled the trucks leased to applicant under the executed leases. Applicant has failed to submit documentary or other sufficient evidence to show that any lessor exercised any control of leased trucking equipment and/or its driver in this case. Under these circumstances, the applicant has failed to meet its burden of proof.

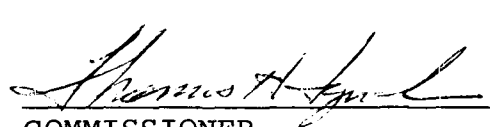
B. That the application of Walsh Trucking Service, Inc. is denied.

DATED: Albany, New York
March 29, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER