

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
W. T. Byrns Motor Express, Inc. :
and Trailer Rentals, Inc. : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Sales & Use Tax :
under Article 28 & 29 of the Tax Law :
for the Period 8/1/65 - 2/28/66. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 11th day of January, 1980, he served the within notice of Determination by mail upon W. T. Byrns Motor Express, Inc., and Trailer Rentals, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

W. T. Byrns Motor Express, Inc.
and Trailer Rentals, Inc.
646 Coffeen St.
Watertown, NY 13601

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
11th day of January, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
W. T. Byrns Motor Express, Inc. :
and Trailer Rentals, Inc. : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Sales & Use Tax :
under Article 28 & 29 of the Tax Law :
for the Period 8/1/65 - 2/28/66. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 11th day of January, 1980, he served the within notice of Determination by mail upon Anderson H. Wise the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Anderson H. Wise
Heim, Koldin & Canter
216 Washington St.
Watertown, NY 13601

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 representative of the 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
11th day of January, 1980.

Joanne Knapp

J. Vredenburg

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

January 11, 1980

W. T. Byrns Motor Express, Inc.
and Trailer Rentals, Inc.
646 Coffeen St.
Watertown, NY 13601

Gentlemen:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1138 & 1243 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 Laws 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
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Anderson H. Wise
Heim, Koldin & Canter
216 Washington St.
Watertown, NY 13601
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Applications :
of :
W.T. BYRNS MOTOR EXPRESS, INC. : DETERMINATION
and :
TRAILER RENTALS, INC. :
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, 1966. :
:

Applicants, W.T. Byrns Motor Express, Inc. and Trailer Rentals, Inc., 646 Coffeen Street, Watertown, New York 13601, filed applications 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, 1966 (File Nos. 01398 and 01036).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Utica, New York, on July 21, 1976 and was continued on October 13, 1976. Applicant appeared by Anderson Wise, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUES

I. Whether applicant Trailer Rentals, Inc. is liable for the Jefferson County sales tax on the rental of trucks, tractors and trailers to applicant W.T. Byrns Motor Express, Inc.

II. Whether applicant W.T. Byrns Motor Express, Inc. is liable for the Jefferson County sales or use tax on leases of tractors from owner-operators.

III. Whether applicant W.T. Byrns Motor Express, Inc. is entitled to a refund on the overpayment of State sales tax paid on leases from owner-operators.

FINDINGS OF FACT

1. On September 12, 1968, as the result of a field audit on applicant Trailer Rentals, Inc., the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Tax Due for the period August 1, 1965 through February 28, 1966 in the sum of \$1,232.82, plus penalty and interest of \$452.50, for a total of \$1,685.32.

2. On September 13, 1968, as the result of a field audit of applicant W.T. Byrns Motor Express, Inc., the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due for the period August 1, 1965 through February 28, 1966 in the sum of \$774.93, plus penalty and interest of \$280.75, for a total of \$1,055.68.

3. During the periods in issue, applicant Trailer Rentals, Inc. was located at 646 Coffeen Street, Watertown, New York. Applicant Trailer Rentals, Inc. rented motor vehicles consisting of trucks, tractors, and trailers to W.T. Byrns Motor Express, Inc., the parent corporation. Applicant Trailer Rentals, Inc. also ran a marina and operated a trailer park.

4. Applicant Trailer Rentals, Inc. timely filed New York State and local sales and use tax returns for periods ended August 31, 1965, November 30, 1965 and February 28, 1966.

5. On field audit of applicant Trailer Rentals, Inc., the Sales Tax Bureau's auditor verified the following records: The rentals to W.T. Byrns Motor Express, Inc., the sales journal and the general ledger. The purchase journal and purchase invoices were spot checked. The auditor determined Trailer Rental, Inc.'s motor vehicle rentals were taxable at 82 percent of the total rental charge since registration fees, insurance and other nontaxable charges were paid by said applicant. The auditor adjusted the rentals accord-

ingly and found that the adjusted total taxable rentals for the periods in question amounted to \$64,173.20. The auditor determined that said rentals were subject to State and Jefferson County sales tax in the amount of \$2,566.92. After deduction of the \$1,334.10 tax paid with applicant's return, a tax deficiency of \$1,232.82 was determined.

6. During the periods in issue, applicant W.T. Byrns Motor Express, Inc. was a motor common carrier engaged in the transportation of property for hire in interstate and intrastate commerce. It had terminal facilities in Massena, New York, Watertown, New York, Utica, New York, Chatham, New York, Springfield Massachusetts, Boston, Massachusetts, Secaucus, New Jersey and Philadelphia, Pennsylvania. W.T. Byrns Motor Express, Inc. leased some forty-two tractors from owner-operators, and also rented motor vehicles from the subsidiary corporation, Trailer Rentals, Inc. The leases with owner-operators were continuous and automatically renewed unless a thirty-day notice was given.

7. On field audit of applicant W.T. Byrns Motor Express, Inc., the Bureau auditor verified the following records: payroll manifests of each leased owner, cancelled and current leases, and the rentals from Trailer Rentals, Inc. The purchase journals, purchase invoices and trip manifests were spot-checked. The auditor found that applicant W.T. Byrns Motor Express, Inc. had paid the State sales tax on their rentals of motor vehicles from trailer Rentals, Inc. and on leases from owner-operators. The tax paid was on 100 percent of the charge, minus separately stated charges for drivers, instead of on 82 percent. The rentals from Trailer Rentals, Inc. were separated from the leases of owner-operators. The leases of owner-operators were separated into the following categories: "Subject to State Tax only," "Subject to State and Jefferson County sales and use tax" and "Exempt from tax". The total

amount of the leases subject to State sales and use tax was determined as was the leases subject to State and Jefferson County sales and use tax. These figures were adjusted by deducting the drivers' fees and then by 18 percent since the registration fees, insurance fees and other non-taxable charges were being paid by the lessors. The respective rates of tax were applied, payments made to lessors/owner-operators deducted, and a tax (plus penalty and interest) of \$774.93 determined to be due.

8. A review of the manifests of applicant W.T. Byrns Motor Express, Inc. for January and February 1966 indicated that 484,111 miles were traveled and that 26,132 or 5.39 percent were traveled within Jefferson County. Said percentage accurately reflected overall miles traveled during the periods in issue.

CONCLUSIONS OF LAW

A. That on February 2, 1966, Counsel to the Department of Taxation and Finance issued an opinion which provides:

"Rental of vehicles: Where a lease is entered into either in or outside of New York State for a vehicle to be used to transport persons or property for hire and such vehicle is delivered to the lessee in New York State, even though the vehicle will be used in interstate or foreign commerce, the rentals will be subject to the State and local sales taxes. In case of short-term rentals, the required tax rate will be the combined State and local rates applicable at the point in this State where the vehicle is delivered to the lessee. In the case of long-term rentals, the tax rate shall be the combined State and local rates applicable at the point in this State where the vehicle is regularly garaged, kept or stored, except in unusual circumstances where practically all of the use of the vehicle occurs in another jurisdiction.

Where a lease for such a vehicle is entered into either in or outside of New York State and the vehicle is delivered to the lessee outside New York State, if the vehicle enters this State while in use in interstate or foreign commerce and thereafter is continually used in interstate or foreign commerce, no tax will apply."

Since practically all the use of the vehicles applicant W.T. Byrns Motor Express, Inc. rented or leased occurred outside Jefferson County, applicant W.T. Byrns Motor Express, Inc. has no liability for the Jefferson County sales

and use tax with regard to their lease of tractors from owner-operators. Applicant Trailer Rentals, Inc., therefore, also has no liability for the collection of Jefferson County sales tax with respect to the rental of the trucks, tractors and trailers to applicant W.T. Byrns Motor Express, Inc.

B. That section 1139(a) of the Tax Law provides, in pertinent part, for a refund of tax erroneously, illegally or unconstitutionally paid a vendor if an application therefore is filed within three years from payment of the tax by the vendor to the State Tax Commission.

That applicant W.T. Byrns Motor Express, Inc. failed to file an application for refund and is, therefore, not entitled to a refund on the overpayment of the State sales tax paid owner-operators.

C. That the applications of W.T. Byrns Motor Express, Inc. and Trailer Rentals, Inc. are granted to the extent indicated in Conclusion of Law "A" above. The Sales Tax Bureau is hereby directed to cancel the Notices of Determination and Demand for Payment of Sales and Use Taxes Due issued September 12, 1968 and September 13, 1968 respectively. Except as so granted, the applications are in all other respects denied.

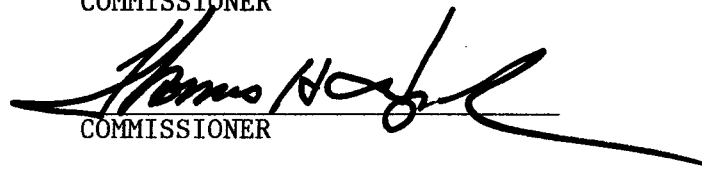
DATED: Albany, New York

JAN 11 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER