

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
747 Trucking Co., 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 1/1/73-8/31/76.

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 5th day of June, 1981, he served the within notice of Decision by mail upon 747 Trucking Co., Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

747 Trucking Co., Inc.
Bingham Rd.
Marlboro, NY 12542

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
5th day of June, 1981.

Annex A. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
747 Trucking Co., 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 1/1/73-8/31/76.

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 5th day of June, 1981, he served the within notice of Decision by mail upon Robert O. Weltzien 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. Robert O. Weltzien
26 West St., P.O. Box 2038
Newburgh, NY 12550

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
5th day of June, 1981.

Connie P. Hagelund

J. Vredenburg

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

June 5, 1981

747 Trucking Co., Inc.
Bingham Rd.
Marlboro, NY 12542

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) 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
Robert O. Weltzien
26 West St., P.O. Box 2038
Newburgh, NY 12550
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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| In the Matter of the Petition | : | |
| of | : | |
| 747 TRUCKING CO., INC. | : | DECISION |
| 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 January 1, 1973 through | : | |
| August 31, 1976. | : | |

Petitioner, 747 Trucking Co., Inc., Bingham Road, Marlboro, New York 12542, filed a petition 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 January 1, 1973 through August 31, 1976 (File No. 20053).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Campus, Albany, New York, on January 10, 1980 at 1:15 P.M. Petitioner appeared by Robert O. Weltzien, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Harry Kadish, Esq., of counsel).

ISSUES

- I. Whether a use tax is due on vehicles purchased by petitioner.
- II. Whether a use tax is due on diesel fuel purchased by petitioner.

FINDINGS OF FACT

1. On May 18, 1977, as a result of a field audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against 747 Trucking Co., Inc. for the period January 1, 1973 through August 31, 1976 in the amount of \$2,728.20 tax plus penalties and interest.

2. Petitioner did not file New York State and local sales and use tax returns for the period in issue.

3. Petitioner operated a trucking company which delivered produce from Ulster County to various points throughout New York State. Petitioner's truck terminal and fuel tanks were located in Orange County which did not impose a local sales tax. Petitioner maintained an office in Marlboro, Ulster County, for paperwork and all mailing purposes.

4. On audit, the Audit Division found that petitioner purchased vehicles on which the New York State tax rate of 4 percent was paid. It determined that an additional 1 percent was due Ulster County and assessed an additional tax of \$299.95. The Audit Division also found that petitioner purchased diesel fuel for use in its vehicles without payment of sales tax. It determined use tax of \$2,428.25 on the diesel fuel at the combined New York State and Ulster County rate of 5 percent.

5. Petitioner contended that since the vehicles were garaged at the terminal located in Orange County, New York, the proper amount of sales tax had been paid.

6. Petitioner contended that any sales tax due on the diesel fuel delivered to Orange County should have been included in the amount billed by the supplier. No evidence was submitted to show that the sales tax was paid to the supplier.

7. Petitioner offered no evidence to show that reasonable cause existed for not paying over any of the tax asserted due.

CONCLUSIONS OF LAW

A. That the vehicles purchased by petitioner, 747 Trucking Co., Inc., were garaged at its terminal in Orange County; therefore, the proper amount of tax at the New York State rate of 4 percent had been paid at the time of

purchase. Matter of Xerox Corporation v. State Tax Commission, 71 A.D.2d 177; 422 N.Y.S.2d 493. The additional tax of \$299.95 at the Ulster County rate of 1 percent is hereby cancelled.

B. That the purchase of diesel fuel delivered to Orange County was a purchase at retail as defined by section 1101(b) (1); that there is due a compensating use tax imposed by section 1110(A) at the New York State rate of 4 percent only.

C. That the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued May 18, 1977 as noted in Conclusions "A" and "B" above, with applicable penalties and interest thereon; and that, except as so granted, the petition of 747 Trucking Co., Inc. is in all other respects denied.

DATED: Albany, New York

JUN 5 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER