

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
L Truck Stop & Service 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 12/1/71-8/31/74.	:	

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 29th day of December, 1982, he served the within notice of Decision by certified mail upon L Truck Stop & Service Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

L Truck Stop & Service Inc.
Att: John Leogrande, Pres.
Route 5A
Yorkville, NY 13495

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
29th day of December, 1982.

Kathy Pfaffenbach
AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

J. Vredenburg

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

December 29, 1982

L Truck Stop & Service Inc.
Att: John Leogrande, Pres.
Route 5A
Yorkville, NY 13495

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 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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE TAX COMMISSION

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 March 18, 1982 at 2:30 P.M. Petitioner appeared by John Leogrande, President. The Audit Division appeared by Ralph J. Vecchio, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUES

I. Whether the application by petitioner for refund for overpayment of sales tax was timely.

II. Whether the State is estopped from denying a refund for overpayment of sales tax by action of the Audit Division.

FINDINGS OF FACT

1. On September 29, 1977, the Audit Division received an application from L Truck Stop & Service, Inc. for a refund in the amount of \$10,938.19 for the period December 1, 1971 through May 31, 1977 on the grounds that it was incorrectly

reporting taxable sales and that excess sales tax paid be refunded. Said claim was later amended to \$11,780.71.

The Audit Division had approved and refunded \$4,255.04 of the claim for the periods of September, 1974 through May, 1977. For the periods prior to September, 1974 the refund was denied because the application was not submitted within three years after the tax was payable. Since the refund claim was postmarked on September 22, 1977 only the tax remitted for quarterly periods after September 1, 1974 was deemed refundable. The petition therefore is for a refund of \$7,525.67 for the periods of December 1, 1971 to and including the period ending August 31, 1974.

2. On July 28, 1972, petitioner signed a Consent to Fixing of Tax Not Previously Determined and Assessed and paid \$603.59 for sales tax found to be due as the result of an audit. Petitioner claimed that "we were told that we were making computations and doing our sales tax correctly and coming some years later, we found out that we weren't making these computations correctly." According to the Audit Division the transactions involved in the audit were for sales of motor vehicles made in higher tax rate jurisdictions outside of petitioner's county. An adjustment had to be made for the higher taxes which should have been collected.

CONCLUSIONS OF LAW

A. That section 1139(a) requires that an application for refund be filed with the Tax Commission within three years after the date when the tax was payable. Petitioner's application for the period December 1, 1971 through August 31, 1974 was late filed on September 22, 1977.

B. That an estoppel may not be invoked to prevent the State from collecting taxes lawfully imposed and remaining unpaid in the absence of statutory authority.


McMahon v. State Tax Commission, 45 A.D.2d 624. The Tax Commission is not by its prior actions estopped from correcting a mistake of law nor precluded from assessing tax due. Southern Hardwood Traffic Association v. United States, 411 F2d 563; Freuhauf Corporation v. Commission of Internal Revenue, 356 F2d 975.

C. That the petition of L Truck Stop & Service, Inc. for a refund is denied.

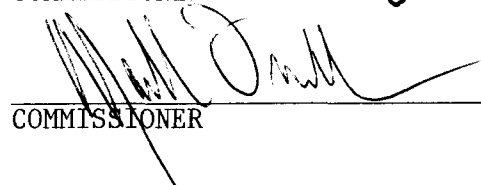
DATED: Albany, New York

DEC 29 1982

STATE TAX COMMISSION


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER