

**New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau**

TSB-M-78 (1)M
Truck Mileage Tax
August 14, 1978

Subject: Actual Mileage - Basis for Audit

The Court of Appeals upheld a determination of additional tax due made by our examiners subsequent to an audit of the records of A.R. Gundry Inc.

The taxpayer compiled the taxable mileage reported on his tax returns based on tariff schedules and mileage used for billing purposes. The audit of his records, including tachograph readings, disclosed that the reported miles were understated. An assessment was issued for the additional tax and penalty and interest due on the difference between the reported miles and the audited miles. The taxpayer protested the assessment contending that the method used by him is stipulated in the regulations as one of the acceptable bases upon which to calculate taxable mileage.

The decision of the Court of Appeals contained the following statements, " For present purposes, the statute imposes the tax on 'the number of miles operated on the public highways' (T.L. s 503(1)), and the related regulation provides that 'mileage within this State shall be computed on the basis of the actual mileage traveled by each motor vehicle' (Reg. s 418.12). The regulation then prescribes five different methods on which mileage calculations may be based, two of which are 'tariff schedules' and 'mileage used for billing purposes' and one of which is 'speedometer readings'. No express right of election is given either the taxpayer or the Commission as to which method may or shall be used, and it is conceded that none of the five methods will produce precisely accurate results. It is apparent, however, that the objective is determination of actual mileage traveled ". The Court concluded that the use of the tachograph readings, which were part of the taxpayer's records, was justified.

On the basis of this decision, in auditing a taxpayer's account, any records maintained by him may be considered in determining the actual miles traveled, regardless of the method used to compile the miles reported on his tax returns. Such records include odometer readings, hubometer and any similar readings, fuel consumption records, map mileage from the point of origin to the point of destination, tariff schedules and mileage used for billing purposes, and any other evidence of such actual mileage available.

Ref - A.R. Gundry vs. New York State Tax Commission
TSB-H-78(1)M, Truck Mileage Tax, July 11, 1978