STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
STORM ASSET MANAGEMENT, INC.	:	DECISION DTA NO. 821586
for Revision of a Determination or for Refund of Highway Use Tax under Article 21 of the Tax Law for the Period December 1, 2001 through June 30, 2005.	:	

Petitioner, Storm Asset Management, Inc., filed an exception to the determination of the Administrative Law Judge issued on November 13, 2008. Petitioner appeared by Frank G. Meanor, Jr., Esq. The Division of Taxation appeared by Daniel Smirlock, Esq. (Michele Helm, Esq., of counsel).

Petitioner filed a brief in support. The Division of Taxation filed a brief in opposition. Petitioner filed a reply brief. Oral argument, at the request of petitioner, was heard on July 15, 2009 in Troy, New York.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUE

Whether the Division of Taxation properly determined additional highway use tax due from petitioner based upon the weights of petitioner's vehicles as reflected on highway use tax permits issued to and held by petitioner during the period in issue.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge except for finding of fact "6" which has been modified. The Administrative Law Judge's findings of fact and the modified finding of fact are set forth below.

Petitioner, Storm Asset Management, Inc., is engaged in the business of trucking and hauling various types of fuel, construction materials and heavy equipment. Petitioner operates a fleet of tractors and trailers carrying goods throughout the Northeast and beyond, including the public roads of New York State. It is undisputed that petitioner is subject to the highway use tax imposed pursuant to Tax Law Article 21, and is required to file New York State highway use tax returns (Form MT-903).

Petitioner elected to file its highway use tax returns using the gross weight method for the period spanning October 1, 2001 through June 30, 2005. The Instructions for Form MT-903 (Form MT-903-I) specify that in preparing its return, the carrier is to enter the gross weight shown on the highway use tax permit for each vehicle. On each of its highway use tax returns for the period spanning October 1, 2001 through June 30, 2005, petitioner reported on a single line that the loaded gross weight of all of its vehicles traveling in New York State was 80,000 pounds and that the unloaded weight of such vehicles was 32,000 pounds.

By a letter dated July 1, 2005, the Division of Taxation (Division) notified petitioner that a field audit covering the period October 1, 2001 through June 30, 2005 would commence on August 22, 2005, and requested that petitioner have available for review all books, records,

worksheets, and other documents pertaining to petitioner's tax returns for the entire audit period.[1] As pertinent to this matter, an attached document entitled Books and Records Needed at the Start of the Audit specified that petitioner's truck mileage tax returns mileage records (ICC logs, odometer readings, trip sheets), fueling records (bulk fueling and retail fuel receipts), records pertaining to laden and unladen weight of vehicles, New York State Thruway receipts and statements, and a list of all equipment were to be made available for the entire period at issue.

A number of audit issues were discussed during the August 22, 2005 initial audit meeting, including the accuracy of the mileage reported on petitioner's highway use tax returns, the absence of New York State Thruway miles on such returns, the total number of petitioner's vehicles that held permits allowing travel on New York State highways versus the lesser number of vehicles (13) that were reported as having actually traveled on such highways, the accuracy of the ratio of laden to unladen miles reported, incorrect rate calculations, and the fact that petitioner did not report and pay highway use tax based upon the rates applicable to the permitted weights for its vehicles. Most of the foregoing issues were addressed and resolved during the audit, with the main unresolved issue being that petitioner did not calculate its highway use tax liability based upon the gross weights of its vehicles as listed on its New York State highway use tax permits pertaining to such vehicles.

During the period under audit, petitioner held a number of New York State highway use tax permits for its vehicles. Petitioner maintained that only 13 of the permitted vehicles traveled into New York State during the audit period, and furnished the Division's auditor with copies of the 13 permits pertaining to those particular vehicles. These permits reflect, for each vehicle, the

---

[1] The audit was to encompass truck mileage and fuel use taxes, bulk diesel, and corporation franchise taxes. This proceeding concerns only highway use tax (also referred to as truck mileage tax).

specific permit number, vehicle identification number, vehicle year, type of fuel (gas or diesel), category (truck or tractor), unloaded weight and gross vehicle weight. The permits also reflected a handwritten number, which was an internal unit number assigned by petitioner to its vehicles for tracking purposes. The permitted gross weight for each of the 13 vehicles, by unit number, follows:

UNIT NUMBER	PERMITTED WEIGHT
17012	80,000 pounds
16052	160,000 pounds
16057	160,000 pounds
17017	160,000 pounds
17015	160,000 pounds
17018	160,000 pounds
17009	160,000 pounds
17019	160,000 pounds
17020	160,0000 pounds
17033	165,000 pounds
17029	165,000 pounds
17031	165,000 pounds
17030	165,000 pounds

We have modified finding of fact "6" to read as follows:

> As set forth above, one vehicle had a permitted maximum weight of 80,000 pounds, eight vehicles had a permitted maximum weight of 160,000 pounds, and four vehicles had a permitted maximum weight of 165,000 pounds. Petitioner predominantly hauls and delivers petroleum products but, as noted, also hauls and delivers construction materials and heavy equipment. Petitioner's witness estimated that 95% of its work involved hauling petroleum products, while the remaining 5% of its work involved heavy hauling, i.e., hauling construction materials and heavy equipment. According to petitioner, approximately 84% of its mileage was driven using tractor-trailer units hauling petroleum products at a

> weight level of approximately 80,000 to 85,000 pounds, with approximately 16% of its mileage driven using five of its tractor (or head) units, which were built specifically to be capable of heavy hauling. Petitioner's witness admitted that all of its tractor units were capable of hauling loads in excess of 80,000 pounds, but alleged that hauling loads much in excess of such weight would have potential negative safety implications.[2]

The parties, after discussion, agreed that the auditor would undertake a review of the three-month period spanning April, May and June of 2005. Petitioner provided documentation to the Division's auditor for such period consisting of paper copies of the Xatanet satellite information used for tracking petitioner's vehicles, including trip reports for such vehicles, daily driver ICC log reports, delivery sheets and weekly trip sheets indicating where petitioner's vehicles picked up fuel or equipment and where the same was delivered. Petitioner provided the Division with documents labeled Monthly Mileage Report, which set forth information for 12 of the 13 vehicles that traveled into New York State during the three-month period, including the number of miles each vehicle traveled each month by state, by odometer reading, and a segregation of the laden and unladen (empty) miles traveled by each vehicle for each month.[3]

The Division's auditor used the foregoing information to determine the routes traveled and locations visited by petitioner's vehicles, and then utilized the same to make a point-to-point calculation of the mileage for such trips.[4] The results of this review revealed that some miles

---

[2] We modify finding of fact "6" to more accurately reflect the record.

[3] While petitioner provided highway use tax permits for 13 vehicles that traveled into New York State during the full audit period, petitioner advised the Division that only 12 of such vehicles traveled into New York State during the three-month review period since one of the vehicles was either being repaired or otherwise did not move during those three months.

[4] Petitioner's GPS (Xatanet) tracking software apparently calculated mileage based on the nearest city. Thus, for example, a trip north from Albany, New York, to a point in Vermont might register almost entirely as Vermont mileage notwithstanding that a portion of such trip actually traversed northward and parallel to Vermont upon Interstate Route 787 or Interstate Route 87 in New York prior to crossing into Vermont. The Division's mileage calculations, in contrast, were made on a point-to-point (or stop-to-stop) basis using the mapping software system known as Rand McNally Intelliroute Deluxe.

traveled in New York State were not, in fact, reported on petitioner's highway use tax returns. Ultimately, this review and comparison of records to tax returns filed revealed a discrepancy calculated as a 7.47% mileage underreporting error rate. On its highway use tax returns, petitioner reported the ratio of laden to unladen miles traveled in New York State at approximately 50%, and the Division's auditors accepted this ratio as reported.

Petitioner did not track the specific weights of its vehicles traveling into and about New York State on a regular basis, did not provide weight slips or other information to indicate when its vehicles were empty or unloaded during the audit period, and did not provide any weight slips for the 13 vehicles with New York State highway use tax permits that traveled into New York State during the audit period. Petitioner's witness explained that, at least with regard to the business of petroleum transport, it is not industry custom to have weight slips on shipments since such shipments are based on volume (gallonage) as opposed to weight.

No adjustments (credits) were given for any Thruway mileage (Thruway miles are treated as nontaxed miles) since petitioner provided no receipts or other documents to establish that any such mileage was traveled during the audit period.

The Division's auditor calculated additional tax due from petitioner for the audit period by first using the described 7.47% mileage error rate determined above to increase both the laden and unladen New York miles reported by petitioner. Thereafter, the auditor calculated the amount of tax due by utilizing the higher tax rate applicable to the particular weights listed for petitioner's vehicles on its highway use tax permits for petitioner's laden miles, and the lower tax rate applicable to petitioner's vehicles for petitioner's unladen miles. After allowing credit for the amount of tax paid by petitioner with the filing of its returns, the Division calculated additional tax due for the audit period in the amount of $28,997.55.

On January 23, 2006, based on the foregoing audit review and calculations, the Division issued to petitioner a Notice of Determination assessing additional highway use tax due for the period October 1, 2001 through June 30, 2005 in the amount of $28,997.57, plus penalty and interest.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

In his determination, the Administrative Law Judge noted that Tax Law § 503 imposes a tax, known as the highway use tax, for the privilege of operating a "vehicular unit" upon the public highways of New York State. The tax is imposed and computed at tax rates based upon vehicular unit weight and the mileage traveled on New York State public highways.

The Administrative Law Judge observed that the taxpayer had the option of selecting one of several alternative methods for computing its highway use tax liability, and petitioner chose to use the "gross weight" method throughout the audit period.

The Administrative Law Judge pointed out that prior to operating a motor vehicle on New York State's public highways, a carrier must apply for and obtain a highway use tax permit and sticker for each vehicular unit, which permit sets forth the gross and unloaded weight of each vehicle and such other information as the Division may require.

After reciting several sections of the Tax Law and the Division's Regulations, the Administrative Law Judge concluded that:

> the gross weight of a vehicular unit is the heaviest weight at which such unit is or may be operated on New York State public highways, whether alone or in combination with a trailer or other attached device. The gross weight (as in this case involving tractor and trailer units) consists of and must take into account three elements – the unloaded weight of the truck or tractor, plus the heaviest weight of the trailer or other attached device to be drawn by the truck or tractor, plus the weight of the maximum (i.e., heaviest) load to be carried. Inasmuch as it is the taxpayer who completes and files the application for a highway use tax permit, it is the taxpayer who determines and specifies the weight of the

> maximum load element of the gross weight which its vehicles will be entitled to carry and, concomitantly, the rate at which its vehicles will be subjected to highway use tax under the permits it obtains. In this case, with the exception of the one vehicle for which petitioner sought and obtained an 80,000 pound permit, petitioner applied for and obtained highway use tax permits with gross weights of either 160,000 pounds or 165,000 pounds.

The Administrative Law Judge also found that the Division's regulations were consistent with the decision of the Appellate Division in ***Matter of De Cato Bros. v. State Tax Commn.*** (90 AD2d 386 [1982]; ***affd*** 59 NY2d 911 [1983]), wherein the Court upheld the Division's assessment of tax based upon the higher tax rate applicable to the actual weights at which the taxpayer's vehicles were found to be operating rather than limiting the applicable tax rate to the lower weights set forth in the taxpayer's highway use tax permits.

The Administrative Law Judge rejected petitioner's argument that the maximum load component of gross weight means the heaviest load that the vehicle can physically and legally carry plus the weight of the vehicle itself and, therefore, petitioner could correctly calculate its highway use tax filings by listing its vehicles at the 80,000 pound level.

The Administrative Law Judge observed that petitioner's method of filing its returns, whereby all of its vehicles were effectively reported at the 80,000 pound level, entirely ignored the fact that some of petitioner's hauling involved heavy hauling for which higher weight permits (for both highway use tax and DOT purposes) are required. The Administrative Law Judge also found that petitioner's methodology ignored the impact of the permitting process, at least insofar as the applicant is required to specify the maximum load for which it seeks a permit and then complete and file its returns based thereon.

The Administrative Law Judge concluded that since petitioner applied for and received highway use tax permits to carry loads at the higher weights, petitioner was required to file its

returns and compute, report and pay tax utilizing the higher tax rates for laden miles as specified by the weight amounts shown on its highway use tax permits regardless of whether petitioner carried all, some or none of its loads at weights in excess of 80,000 pounds.

The Administrative Law Judge determined that the statutory scheme was not ambiguous or inconsistent either within itself or in concert with the Division's regulations implementing the same. He noted that a taxpayer is allowed to determine the maximum weights at which its vehicles will be permitted to operate and to apply for tax permits at such weights, with the choice of heavier weight highway use tax permits occasioning higher highway use tax rates. The Administrative Law Judge observed that petitioner chose to apply for highway use tax permits at weights, which for all of its vehicles, save one, exceeded the 80,000 pound initial (or base) maximum weight limit set forth in Vehicle and Traffic Law § 385.10. While this subjected petitioner to the higher tax rates appurtenant to hauling such heavier loads, it also provided petitioner the flexibility of using all of its vehicles for such hauling as needed.

The Administrative Law Judge rejected petitioner's position that its vehicles were limited, by legal and physical constraints, to hauling at 80,000 pounds, as petitioner could, and presumably did, obtain DOT overweight permits for some or all of the vehicles it had chosen to permit at heavier hauling levels. Further, the Administrative Law Judge pointed out that in order to haul at such heavier weights, petitioner was required to have tax permits reflecting such weights, or else risk penalties for hauling at weights in excess of those permitted for highway use tax purposes. If petitioner could not physically (or safely) haul at weights significantly in excess of 80,000 pounds, the Administrative Law Judge found that there was no apparent reason for petitioner to have applied for permits in excess of 80,000 pounds in the first instance, except for the five vehicles built to specifications capable of heavy hauling. Nonetheless, petitioner applied for and held such

permits and, thus, could utilize any of its vehicles to haul at weights in excess of 80,000 pounds (again, assuming the proper DOT permits were obtained) without risking penalties for doing so if weighed in transit. The Administrative Law Judge found that this suggests that it was a business decision that was advantageous to petitioner.

The Administrative Law Judge concluded that the penalty imposed was appropriate. Despite petitioner's arguments that it was confused as to the correct manner of completing its returns and that petitioner simply kept filing its returns in the manner whereby the laden weight of all of its vehicles was reported as 80,000 pounds, relying on the oral advice of Division personnel, the Administrative Law Judge concluded that in applying for and obtaining permits for its vehicles, petitioner made a choice that allowed for flexibility in the management and use of its vehicles, as described. The Administrative Law Judge found that there was no claim or evidence that petitioner inadvertently or otherwise erroneously applied for vehicle permits at the weights listed. To the contrary, petitioner clearly chose the weights at which its vehicles were to be permitted for purposes of convenience in fleet management. Such business choice carries with it the imposition of highway use tax at a higher rate with respect to laden miles. The Administrative Law Judge also found that there was no shortage of guidance as to the manner by which highway use tax returns are to be completed by those choosing the gross weight method of filing, including specific instruction that the laden weight to be utilized is that set forth on the highway use tax permit for each vehicle.

ARGUMENTS ON EXCEPTION

On exception, petitioner argues that the Division's regulation 20 NYCRR 481.4 (c), which requires that highway use tax is to be based on the unloaded weight of the tractor plus the maximum gross weight of the trailer as set forth in its highway use tax permit, is inconsistent with

Tax Law § 501(4), which defines "gross weight" as the weight of the vehicle plus the maximum load to be carried or drawn by a vehicle. Petitioner points out that the Tax Law does not provide that the highway use tax permit is to be used to calculate highway use tax. Petitioner maintains that petroleum tractor-trailers, such as petitioner's, are legally prohibited by the Vehicle and Traffic Law from having weights in excess of 80,000 pounds. Therefore, the maximum load to be carried, plus the weight of the tractor-trailer, cannot exceed 80,000 pounds.

Petitioner asserts that the Division adopted a position contrary to the position it now espouses in ***Matter of DeCato Bros.* (*supra*)**. Petitioner argues that in that case, the Division successfully asserted that highway use tax was to be calculated on actual gross weight instead of permitted gross weight. Petitioner argues that the holding in ***DeCato*** is in accord with the Tax Law but completely contrary to the Division's regulation. Petitioner maintains that the Division's regulation is inconsistent with the Tax Law and is, therefore, invalid.

The Division, in opposition, argues that petitioner failed to meet its burden to show that the Notice of Determination was incorrect. The Division asserts that when calculating highway use tax using the gross weight method, a taxpayer is required to use the gross weight of the vehicular unit to compute the tax on laden miles and the unloaded weight for unladen miles. Pursuant to Tax Law § 501(4), "gross weight" is the heaviest weight at which a vehicular unit is or will be operated on New York State public highways. Gross weight takes into account the unloaded weight of the truck and the heaviest combined weight of the trailer or other attached device and the weight of the maximum load to be carried.

The Division notes that a carrier must obtain a highway use tax permit for each vehicular unit based on and reflecting the maximum gross weight of each vehicular unit. If the gross weight

of the unit decreases, the carrier may apply for an amended permit, but only during the month of January.

The Division asserts that the Administrative Law Judge correctly determined that the gross weight of a vehicular unit was the heaviest weight at which such unit is or may be operated on New York State public highways and that inasmuch as it is the taxpayer who files the application for the highway use tax permit, it is the taxpayer who determines the maximum load that its vehicles will be entitled to carry and, concomitantly, the rate of highway use tax to which those vehicles are subject.

The Division disagrees with petitioner's position that it was entitled to use the "actual weight" of its vehicular units for purposes of calculating highway use tax rather than the maximum gross weight contained on the highway use tax permits for such units. The Division believes that the Tax Law and its regulations are in accord on this point and not, as petitioner argues, inconsistent and invalid. The Division also asserts that the decision of the Appellate Division in ***Matter of DeCato Bros.*** supports, rather than contradicts, the Division's position.

OPINION

Tax Law § 503 imposes a highway use tax on a carrier for any "vehicular unit" (defined in Tax Law § 501[3]) it operates upon the public highways of New York State. The tax is based upon the vehicular unit's weight and its New York mileage. There are alternative methods available for computing the tax, and the election of methods is made by the taxpayer. Petitioner chose to use the gross weight method throughout the audit period.

Before operating a vehicular unit in New York, a carrier must apply for and obtain a highway use tax permit and sticker for each vehicular unit. The carrier specifies the gross weight and unloaded weight of each vehicle when applying for this permit (***see***, Tax Law § 502).

Highway use tax rates, set forth in Tax Law § 503, are based upon the gross weight of the vehicle for laden miles and the unloaded weight of the vehicle for unladen miles. "Gross weight" is defined for highway use tax purposes in Tax Law § 501(4) as follows:

> "Gross weight" shall mean the unloaded weight of the motor vehicle plus the unloaded weight of the heaviest motor vehicle, trailer, semi-trailer, dolly or other device to be drawn by such motor vehicle (determined in a manner similar to the method for determining the unloaded weight of a motor vehicle) plus the weight of the *maximum load*, exclusive of the weight of the driver and his helper, *to be carried or drawn by* such motor vehicle (emphasis added).

The Division's regulations at 20 NYCRR 472.1(b) define the term "maximum gross weight" similarly as follows:

> The *maximum gross weight* of the motor vehicle is the unloaded weight of the vehicle plus the maximum load, exclusive of the weight of the driver and his helper, *to be carried or hauled by it* on New York public highways. *This provision in the statute is designed to provide a constant weight factor for the computation of the tax.* Accordingly, a particular motor vehicle will have the same maximum gross weight although it may carry a light bulky cargo on one trip and a heavy metal cargo on the next trip. *The maximum load to be carried should be determined by the applicant for the permit.* The maximum gross weight as set forth in the application is subject to audit and approval by the [Commissioner of Taxation] (emphasis added).

Highway use tax computed by using the gross weight method is subject to the following:

> (c) The rate of tax for a tractor-trailer combination is based on the unloaded weight of the tractor plus the maximum gross weight of the trailer *as set forth in its permit* . . . .
>
> (d) The rate of tax on a laden motor vehicle is *always based on its maximum gross weight*, irrespective of the actual weight of the load it may be carrying at any particular time. Accordingly, a decrease in the weight of the load, for example by deliveries along its route, has no effect on the applicable rate of tax.
>
> (e) Although the tax is based on maximum gross weight *as set forth in the permit*, nevertheless if the actual weight of the loaded motor vehicle is in excess of that *set forth in the permit*, the tax must be computed at the rate

> applicable to the actual weight. In such case an amended permit must be obtained (emphasis added) (20 NYCRR 481.4).

We agree with the Administrative Law Judge that the statutory scheme is not ambiguous or inconsistent either within itself or in concert with the Division's regulations implementing that scheme. We also agree with the Administrative Law Judge that this regulation is consistent with the decision of the Appellate Division in ***Matter of De Cato Bros. (supra)***, in which the Court held that where the taxpayer's vehicles were operating at weights higher than those set forth in the taxpayer's highway use tax permits, tax was to be based upon the higher tax rate applicable to the actual weights rather than the lower weights set forth in the permits.

From the foregoing, it is clear that the "gross weight" (Tax Law § 501[4]) as well as the "maximum gross weight" (20 NYCRR 472.1[b]) of a vehicular unit is the heaviest weight at which such unit is or may be operated on New York State public highways, whether alone or in combination with a trailer or other attached device. Of the 13 vehicles that petitioner claimed it operated in New York State, petitioner applied for and obtained highway use tax permits with gross weights of either 160,000 pounds or 165,000 pounds for 12 of those vehicles. Only one vehicle had a highway use tax permit for 80,000 pounds. Despite this, petitioner filed its highway use tax returns listing 80,000 pounds as the gross weight for each of its permitted vehicles.

This was contrary to the Tax Law and the Division's regulations. Petitioner argues that regardless of the tax permit weight levels it applied for and was granted, petitioner was constrained by the Vehicle and Traffic Law to an 80,000 pound level and thus may file its tax returns using the tax rate set forth at that weight. We disagree.

Vehicle and Traffic Law § 385.10 restricts the weight of "a single vehicle or a combination of vehicles having three axles or more and equipped with pneumatic tires, when loaded" so that "in no case . . . shall the total weight [of the vehicle] exceed eighty thousand pounds." Section 385 also authorizes the Commissioner of Transportation to grant permits for the operation of vehicles that exceed the maximum weight. The record does not demonstrate whether petitioner obtained permits for the operation of its overweight vehicles. However, petitioner acknowledged that some of its hauled loads grossly exceeded this 80,000 pound maximum weight. Further, petitioner asserted in its petition that the gross weights indicated on its highway use tax permits were erroneous and that the actual gross weight of petitioner's vehicular units were between 80,000 and 90,000 pounds. Petitioner's witness testified at the hearing and petitioner argued in its brief on exception that the actual weight of such units could not have exceeded 99,000 pounds. Despite its argument that it could not have legally hauled loads in excess of 80,000 pounds, petitioner's witness testified that petitioner was required to obtain highway use tax permits on all of its vehicles for nearly twice what petitioner asserts is the maximum gross weight of its vehicles, due to international registration and reporting requirements.

We need not consider whether petitioner obtained or failed to obtain DOT overweight permits, as it has no effect on petitioner's liability for highway use tax. Further, we need not inquire into the reasons that petitioner had for obtaining permits for its vehicular units (except for one) at a gross weight of 160,000 pounds or more while maintaining that such gross weights were in excess of the hauling capability of all but five of those vehicular units. Our concern is that petitioner incorrectly assumed that it could use a weight lower than its permitted gross weight

when filing highway use tax returns for its vehicular units. Such conduct was directly contrary to the Tax Law and the Division's regulations.[5]

We conclude that the Division's regulations provide a valid interpretation of the Tax Law and, as such, we find that the Administrative Law Judge correctly determined that petitioner had based its highway use tax returns on an incorrect gross weight. As a result, we uphold the assessment as issued.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Storm Asset Management, Inc. is denied;

2. The determination of the Administrative Law Judge is affirmed;

3. The petition of Storm Asset Management, Inc., is denied; and

4. The Notice of Determination dated January 23, 2006 is sustained.

DATED:Troy, New York
December 17, 2009

/s/ Charles H. Nesbitt
Charles H. Nesbitt
President

/s/ Carroll R. Jenkins
Carroll R. Jenkins
Commissioner

[5] It appears likely, from the testimony of petitioner's witness, that when petitioner first began filing highway use tax returns, the maximum gross weight of each of its vehicles did not exceed 80,000 pounds. However, as petitioner's fleet increased, petitioner failed to heed the instructions for filing highway use tax returns (Form MT-903-I) and the Division's Technical Services Bureau Memorandum TSB-M-93(4)M, which specified that the gross weight shown on the highway use tax permit was to be used in calculating the amount of tax due. If petitioner believed that the gross weight shown on its use permits was incorrect, it had the option to amend such permits (**see**, Tax Law § 502[1][a] and 20 NYCRR 473.5[a]). Petitioner did not avail itself of this option.