

Record-Keeping Requirements for Carriers Subject to the Highway Use Tax

Every carrier who operates a motor vehicle in New York State that is subject to the tax under Article 21 of the Tax Law, and every carrier to whom a highway use tax permit was issued for the operation of a motor vehicle, must maintain a complete and accurate daily record of operations for such vehicle. This requirement applies whether or not there is tax due on the motor vehicle for a particular period. Every carrier must maintain all records required by the Highway Use Tax regulations (20 NYCRR Part 432) and any other records used to calculate the New York State highway use tax return.

Increasingly, the Tax Department is encountering instances where carriers are not maintaining records required by the Highway Use Tax regulations. Many carriers are depending on electronic data such as the data obtained via a GPS (Global Positioning System) to determine New York miles. The problem is that some carriers do not maintain any other records, and in some cases, carriers delete the electronic data. GPS alone does not provide an accurate method to determine actual miles traveled in New York by motor vehicles. GPS must be supplemented by other required records to provide an accurate method to determine actual miles traveled in New York. (For example, a carrier uses a GPS for its fleet. The GPS, used with some other mileage software, allows the carrier to complete its tax returns. In addition to keeping GPS data and a daily record of operations, a carrier must keep other supporting records, such as odometer readings to determine actual mileage traveled.) Some carriers do not maintain a summary of what was reported or how it was determined, nor can they reproduce substantiating records on audit. This is making it very difficult to verify the accuracy of filed returns. Failure to maintain adequate records, or to make them available to the department for review, does not relieve a carrier of its obligations under the Tax Law. Nor is the carrier relieved of these obligations if it uses a third party to maintain its records, such as a records management service.

If the highway use tax return of any carrier is insufficient or incorrect, or the records of any carrier do not accurately reflect the actual miles traveled by the carrier's motor vehicles, the department may determine the amount of tax due from any available information. The determination may be made within four years from the time the return was filed. If no return is filed or if a willfully false or fraudulent return is filed, the determination may be made at any time. All mileage is deemed taxable unless proof is submitted otherwise.

Motor vehicles subject to the record-keeping requirements

A carrier who uses the gross weight method in computing its highway use tax must maintain records for each self-propelled motor vehicle subject to tax (that is, only for trucks and tractors with a gross weight of more than 18,000 pounds). A carrier who uses the unloaded weight method in computing its tax must maintain records only for trucks with an unloaded

weight of more than 8,000 pounds and for tractors with an unloaded weight of more than 4,000 pounds. A carrier is not required to maintain records for trailers or other attached devices.

Record-keeping requirements for the highway use tax

A carrier must compute the actual mileage traveled by each motor vehicle and keep substantiating records, including but not limited to: measurement based on odometer readings, hubometer and any similar readings, fuel consumption records, and map mileage from point of origin to point of destination; plus any tariff schedules or records of mileage used for billing purposes and used to compute the actual taxable mileage. The computed mileage is subject to audit by the department.

A carrier computing its tax under the gross weight method must maintain records such as bills of lading; waybills; freight bills; invoices; shipping orders; dispatch sheets; records of motor vehicles and drawn devices leased, interchanged or hired; and drivers' daily logs or trip sheets necessary to substantiate the operations of the motor vehicle. In the absence of any of these records, other records that reflect the information needed to substantiate the operations of the vehicle may be acceptable.

All records must distinguish the operations of motor vehicles subject to tax from those operations that are not subject to tax. A carrier must maintain all records used to calculate the New York State highway use tax liability. These records must be made available for inspection and audit upon request. All records for highway use tax must be preserved for at least four years from the due date of the tax return to which they relate or the date the return was filed, whichever is later.

Daily record of operations

A carrier must keep a daily record of operations for each motor vehicle that includes the following information:

- the permit number of the motor vehicle;
- the identification number of the motor vehicle; and
- the name of the owner if operating a leased or interchanged motor vehicle.

This record of operations must show, as daily manifests or trip records, the following information for each trip:

- the date of each trip;
- the point of origin and the point of destination for each trip, and the number of round trips each day (if applicable);
- the total miles traveled in New York State;
- the total miles traveled outside New York State; and
- the total New York State Thruway toll miles (see TSB-M-95(6)M, *Thruway Defined for Highway Use Tax Purposes*).

If the gross weight method is used to compute the highway use tax, the daily manifests or trip records must also show for each vehicle:

- the total miles traveled in New York State laden (with a load or any part of a load); and
- the total miles traveled in New York State unladen (with no load).

A carrier who uses the gross weight method must show the above information separately for each trip for each of the following:

- each tractor that operates alone;
- each truck that operates with an attached vehicle when either is laden; and
- each unladen truck that operates with an unladen attached device.

All records must be cross-referenced either by permit number or other vehicle identification.

A carrier must prepare a monthly summary for each motor vehicle subject to the record-keeping requirements.

Additional required records for Thruway toll mileage

Miles traveled on those portions of the New York State Thruway that are considered toll-paid mileage (see TSB-M-95(6)M, *Thruway Defined for Highway Use Tax Purposes*) are not subject to the highway use tax.

A carrier must establish the Thruway travel with toll receipts or with monthly invoices. Where no toll is collected but the mileage is considered toll-paid mileage (for example, one-way tolls), Thruway travel must be evidenced by other records such as bridge tickets, vehicle logs, fuel receipts, or other external indices which establish travel on a qualified portion of the Thruway.

A carrier must keep receipts for Thruway toll charges paid in cash or monthly invoices for tolls that are charged. The carrier must write the vehicle permit or vehicle identification number and the trip or manifest number on the back of each cash receipt. For a charge account, the carrier must enter the vehicle permit or vehicle identification number on the detailed listing of trips on the invoice received from the Thruway Authority. A carrier should attach the toll receipts to the particular manifest or trip record to which they apply, or otherwise maintain them so they can be readily identified with the Thruway toll mileage they represent. A carrier must keep the same accurate daily record of Thruway toll mileage as it keeps for all other mileage traveled within the state.

Taxpayer record retention formats

Any record that is required to be retained by a carrier may be retained in either hard-copy format or electronic format (or both) at the discretion of the carrier. The electronic records,

either alone or in conjunction with the carrier's other records, must contain sufficient information in order to support and verify all of the entries that are made on the carrier's tax returns, and to determine the proper taxes that may be due. "Electronic" means any technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities. The Tax Department does not prescribe specific technologies or technical specifications for electronic records nor does the department require the use of particular types of hardware or software. However, electronic records must be dated, legible (for example, if the record is scanned), and maintained and preserved in such a manner so as to disclose upon retrieval, in readily accessible and verifiable detail, the basis for and accuracy of the information reported (or required to be reported) to the department. Electronic records should be maintained in a secure storage environment.

A carrier must provide the department, upon its request, with the opportunity and, if necessary, the means to ensure the accuracy and integrity of the carrier's electronic records. Such means may include, but are not limited to, suitable facilities and computer resources (for example, appropriate hardware and software, terminal access, computer time, personnel, etc.) as may be necessary for the department to carry on its audit procedures. Regardless of the format in which a carrier chooses to retain its records (whether electronic or hard-copy), the records retained and presented for audit must contain all the required information. For more information on record-keeping formats, see 20 NYCRR Part 2402 (*Taxpayer Record Retention Formats*).