

Dated 10/13/65

October 7, 1965

## REPORT ON FACTS:

Taxpayer is an interstate common carrier. \_\_\_\_\_, and \_\_\_\_\_ are subsidiary corporations of taxpayer.

At the time of preliminary hearing a general objection was offered to audit items E and F respecting tires, oil and greases sold to subsidiary corporations. It was stated that the local tax would not apply if the subsidiaries, \_\_\_\_\_ and \_\_\_\_\_ were public utilities. The audit report indicates that these companies are not public utilities. Taxpayer's representative was to supply additional information if he could show these companies could be established as public utilities, but nothing further has been submitted. We therefore have no information indicating an adjustment should be made in respect to items E and F.

The principal issue is with respect to audit items A, B and C. Taxpayer purchased certain tractors, trailers and converter gears out-of-state and leased them to its subsidiaries, \_\_\_\_\_ and \_\_\_\_\_. \_\_\_\_\_'s an interstate common carrier operating in interstate commerce between Portland, Oregon and Oakland, California. \_\_\_\_\_ is stated in the audit report to be a radial carrier operating in California. \_\_\_\_\_ is both an interstate and intrastate common carrier. Certain pieces of equipment were delivered to taxpayer out-of-state and placed in revenue service of a lessee there. Other equipment was delivered to taxpayer in California and placed in lease service of the lessee in this state. When in revenue service of the subsidiary lessees the equipment was variously used in interstate commerce or intrastate commerce in California.

Although the case of Union Oil v. State Board of Equalization teaches that the lessor uses property acquired out-of-state by putting it to leasing service in California, it is significant in that case that the principal use of the property was an intrastate use, i.e., the tankers were employed in this state.

We believe it is proper to assert the use tax where the first use of an instrumentality of interstate commerce takes place in California, regardless of whether the property is used thereafter exclusively in interstate commerce and regardless of whether the property which is an instrumentality of interstate commerce is thereafter employed in interstate commerce use more outside the state than within. (American Airlines v. S.B.E., 216 A.C.A. 215.)

Where we have an instrumentality employed in interstate commerce by a carrier-lessee it is proper to employ the first use theory in imposing the use tax on the lessor. However, where the first use takes place outside of California and after the first use it is employed continuously and principally in interstate commerce, we

105

16

October 7, 1965

believe that we should not apportion the interstate commerce employment under a lease but should apply the first use test. To do otherwise would result in a burden upon interstate commerce, and we should not push our use tax to this extreme position. Again, we must remember that Union Oil was concerned with intrastate employment of the instrumentality.

In accordance with imposition of use tax based upon the doctrine of first use for this petition, we shall review the equipment purchases and indicate disposition of the various measures of tax in the protested items.

Item A - Equipment leased to  
(Audit working papers 13A, pages 1-3.)

Converse operated between Oakland and Portland in interstate commerce.

On July 21, 1961, taxpayer purchased 19 Brown trailers (audit measure \$102,239). These trailers were delivered in Las Vegas, Nevada, but immediately leased to [redacted]. We are informed that they were turned over to [redacted] in either Oakland or Sacramento, where they were placed in revenue service by [redacted].

No adjustment should be made for this item.

On August 31, 1962, taxpayer purchased 12 Brown trailers (measure \$63,955). We are told these trailers were delivered by [redacted] to [redacted] in Portland, Oregon, and entered California while being employed in interstate commerce by the lessee. They remained in interstate commerce employment. The measure of \$63,955 state and local tax should be deleted.

On July 31, 1962, taxpayer acquired 12 Brown trailers (measure \$55,200). On April 26, 1962, taxpayer acquired 12 converter gears (measure \$14,880). The facts are the same as for the 12 Brown trailers purchased August 31, 1962. The measure of \$55,200 and \$14,880 should be deleted for both state and local tax.

On May 20, 1963, taxpayer acquired 8 White trucks (measure \$117,200). They were delivered to [redacted] in Portland, Oregon. They were placed to [redacted] lease service in Portland and were employed in interstate commerce, going between Oakland and Portland. The measure of \$117,200 for both state and local tax should be deleted.

On November 12, 1962, taxpayer acquired 20 Brown trailers (measure \$89,261 local tax). These trailers were delivered in Oakland and placed in leasing service there. No adjustment is recommended.

164

October 7, 1965

Item B - Equipment leased to  
(Audit working papers 13B, page 2)

operated as a radial carrier in California. The evidence indicates that all the equipment included in this item was acquired by taxpayer for the purpose of leasing to [redacted]. While some of the equipment was delivered to taxpayer out-of-state, it was immediately transferred to [redacted] in California and put under lease. Other equipment was delivered in California and turned over to [redacted] here. No adjustment is recommended for this item with respect to the measure of state tax of \$189,375 and measure of local tax of \$1,445,737.

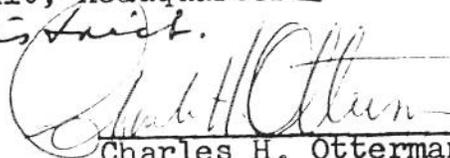
Item C - Equipment leased to  
(Audit working papers 13C, page 3)

On September 23, 1963, taxpayer acquired 10 White tractors (measure \$144,750). It is not specified in the audit where these trucks were first employed to the lease for use in interstate commerce by the lessee. At the preliminary hearing it was indicated by taxpayer's representative that at least 5 were delivered in Los Angeles. Taxpayer was to submit additional evidence if the delivery and employment to use was otherwise than in Los Angeles. No such evidence has been submitted. No adjustment is recommended with respect to this item, with a measure of state and local tax of \$144,750.

CONCLUSIONS AND RECOMMENDATIONS:

The determination should be redetermined in accordance with the recommendation for each item as shown above. The adjustments should be made by the Petition Unit, Headquarters,

*of district.*



Charles H. Otterman, Hearing Officer

CHO: dse

APPROVED:

  
Tax Counsel

10-13-65  
Date

  
Principal Tax Auditor

10-18-65  
Date

163

163

4