Interstate Versus Intrastate

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An attempt by the State of Michigan Department of Treasury to narrowly interpret the meaning of interstate commerce in the context of a state sales/use tax exemption for interstate rolling stock was recently rebuffed in a unanimous published decision by the Michigan Court of Appeals in *Alvan Motor Freight, Inc v Department of Treasury*, 2008 WL 4365971. In that case, the Michigan Court of Appeals addressed two consolidated actions, one involving Alvan Motor Freight, Inc. ("*Alvan*"), and the other involving United Parcel Service, Inc. ("*UPS*"). At issue were sales/use tax exemptions for the carriers' rolling stock "used in interstate commerce" pursuant to MCL 205.94k(4), but which equipment did not physically leave the state.

In the *Alvan* case, the taxpayer contested an assessment from the Michigan Department of Treasury that certain of its power units utilized in its less-than-truckload operation were not entitled to exemptions under the Michigan Use Tax Act, MCL 205.91, *et seq*., because such units operated wholly within the State of Michigan, even though they transported interstate freight on a regular and continuous basis. The Michigan Tax Tribunal affirmed the Department of Treasury position in rejecting Alvan's claim for the exemption, from which decision Alvan appealed. In the *UPS* case, on the other hand, the taxpayer successfully sought a refund in the Michigan Court of Claims of its use taxes on its delivery trucks that carried interstate freight but were operated entirely within the state of Michigan. The State then appealed the Court of Claims determination in favor of UPS. The Court of Appeals consolidated the two matters, involving as they did the same basic issue.

The Michigan Use Tax Statute provides an exemption for "rolling stock used in interstate commerce and purchased, rented or leased outside of this state by an interstate motor carrier . . ." at MCL 205.94k(2). Although the statute defines "interstate motor carrier" as an entity engaged in the business of carrying property "for hire across state lines, whose fleet mileage was driven at least 10% outside of this state in the immediately preceding tax year," the statute does not define "used in interstate commerce." The State did not contest that Alvan

and UPS were "interstate motor carriers" that operated "rolling stock" in Michigan. The issue was whether that rolling stock was "used in interstate commerce" when the particular equipment at issue did not leave Michigan. Treasury took the position, consistent with its Internal Policy Directive ("IPD") 2003-1 that the trucks themselves must cross state lines for them to be employed in interstate commerce regardless of whether they were used to transport interstate freight within the State of Michigan.

Alvan and UPS contended that over a century of well-settled case law supported their position that transportation between two points in the same state could be interstate in nature regardless of whether a state line was crossed, pointing to the decision of the United States Supreme Court in *The Daniel Ball*, 77 US 557, 565; 19 L Ed 999 (1871), where a steamer plying Michigan's Grand River was deemed to be engaged in interstate commerce without leaving Michigan's boundaries as long as it carried goods or passengers originating from or destined to other states. The taxpayers cited a plethora of decisions in the rail, motor, and air context buttressing the position that the vessel or vehicle is "used in interstate commerce" when it carries goods in a continuous stream of commerce from one state to another, even when the instrument of transportation never leaves the particular state, including *Northern Pacific Railway Co v Washington*, 222 US 370; 32 S Ct 160; 56 L Ed 237 (1912) and *United States v Yellow Cab Co*, 332 US 218; 67 S Ct 1560; 91 L Ed 2010 (1947). Also noted were the spate of federal court affirmations of Interstate Commerce Commission decisions from the 1980s-1990s, determining the interstate character of freight movements conducted solely within the boundaries of a single state but consisting of movements which had an origin or destination outside of that state consistent with the shipper's intent such as *Middlewest Motor Freight Bureau v Interstate Commerce Commission*, 867 F2d 458 (8th Cir 1989); *Texas v United State*s, 866 F2d 1546 (5th Cir 1989); *Central Freight Lines v Interstate Commerce Commission*, 899 F2d 413 (5th Cir 1990); and *California Trucking Association v Interstate Commerce Commission*, 900 F2d 208 (9th Cir 1990). Contrary to Michigan's contention that the commingled interstate/intrastate LTL operations of the taxpayers somehow tainted the nature of the interstate shipments, these cases supported the proposition that the rolling stock in question was operated in interstate commerce although utilized to also transport intrastate freight in mixed loads. The American Trucking Associations, Inc. filed an amicus brief in support of the taxpayers' positions.

Upon review, the Michigan Court of Appeals noted that the Legislature, when it drafted the statute in question, was capable of crafting language that required the crossing of state lines, but did not do so. The Court of Appeals further emphasized that the Legislature, under time-honored rules of statutory construction, was presumed to be fully aware of judicial decisions interpreting existing statutes. The Court of Appeals declared:

> We hold that the only reasonable reading of the words "interstate commerce" as used in 1996 PA 447, as amended, is that the Legislature intended them to have the "peculiar and appropriate meaning in the law" that those words have acquired in over a century of judicial decisions applying the Commerce Clause of the United States Constitution.

Further, the Court concluded that dictionary definitions also supported the taxpayers' position as to the meaning of interstate commerce. The Court determined that the phrase "used in interstate commerce" is unambiguous. Contrary to Treasury's argument, the general principle that tax exemptions are strictly construed in favor of the taxing authority did not assist it when confronting the unambiguous meaning of the

term "interstate commerce". The Court of Appeals also ruled that the Michigan Tax Tribunal had improperly relied upon an earlier Court of Appeals precedent in *Bob- Lo Co v Michigan Department of Treasury*, 112 Mich App 231; 315 NW2d 902 (1982) which concerned a use tax exemption for vessels engaged exclusively in interstate commerce, as opposed to rolling stock merely used in interstate commerce. The Tax Tribunal in *Alvan* had also improperly based its decision upon its policy directive IPD 2003- 1, because "an agency's interpretation that is contrary to the statute's plain meaning is not controlling." In the appellate court's view, the IPD had erroneously conflated the two differing statutory prerequisites that the rolling stock must be "used in interstate commerce" and that the party claiming the exemption must be an "interstate motor carrier." Such an interpretation was not consistent with the plain meaning of the statute.

The decision of the Michigan Tax Tribunal was reversed accordingly in *Alvan*, and the determination of the Court of Claims was affirmed in *UPS*. Both carriers were entitled to the exemption for their rolling stock which transported interstate shipments, whether or not that rolling stock crossed the Michigan state line. The Department of Treasury elected not to seek leave to appeal the Court of Appeals ruling to the Michigan Supreme Court. The meaning of "interstate commerce" remains the same in Michigan as in other states, despite one state's attempt to fill its coffers by ignoring this time-honored definition.