

STATE TAXATION OF INTERSTATE CARRIERS

THEY CAN'T DO THAT, CAN THEY?



You bet they can and they have. It may not seem fair but other states can tax your business even if you only make a delivery or two in that state each year! We are talking about New York, New Jersey and Pennsylvania in particular; however, almost all states have similar tax regulations on the books but may not be as active as the above named states in their enforcement actions. In fact, we just learned that Connecticut is pursuing carriers in a similar nature. So much for neighborliness.

It was in the days of James Madison that he saw the need for relief that allowed the free flow of commerce free from undue taxation, interruption of the flow of commerce and arbitrary regulations. The Commerce Clause was born by the Continental Congress to address these very issues.

The Commerce Clause is more than an affirmative granting of power it additionally has an inverse side know as the Dormant Commerce Clause. The Dormant Commerce Clause prohibits certain state action that interferes with interstate commerce originally the Supreme Court saw the Dormant Commerce Clause as prohibiting any form of state taxation on interstate commerce. This was stated in ***Leloub v Port of Mobile 127 U. S. 640, 648 (1888)*** (stating that “No state has the right to lay a tax on interstate commerce in any form). Strong language, but soon to fall.

On might think that standard is still in effect, however, the courts began to change the standard by allowing certain indirect “burdens” on interstate commerce without totally destroying the prohibition. This action began in the late 1890’s and early to mid 1900’s.

What we have today is a scheme that allows for taxation of interstate commerce when there is a showing of a substantial nexus. And, in recent years the standard for “substantial nexus” has eroded to the point that a single shipment is enough to trigger the particular states taxation laws. The only good news is that not every state is as aggressive as other states such as Pennsylvania, New York and New Jersey. Many carriers see the occasional property rendition tax forms that yield little tax such as Arkansas, Kentucky and Kansas. But as states seek new revenues you can expect to see a more aggressive stance towards such taxation.

RANSOM: The three states mentioned above are very aggressive in assessing business tax and, in fact, New Jersey is so aggressive that they will even impound your vehicle until you pay them a “ransom” to release your vehicle and you still have to make the necessary tax filings. You may find that the ransom was much

more than the actual tax and you will have a difficult time trying to get the balance back, if ever.

In 2002 more than 6.2 trillion dollars worth of goods moved by truck. That a lot of money ripe for opportunistic taxation. Add to that figure the fact that 221 billion dollars was generated in carrier operating revenue and employed some 3.1 million truck drivers. All of which are potentially subject to some type of taxation as the truck rolls.

As previously stated the Dormant Commerce Clause was slowly eroded during the first part of the 1900's. It was in 1977 in ***Complete Auto Transit, Inc v Brody 430 U. S. 274 (1977)*** that the courts brought the Dormant Commerce Clause and due process considerations together. Under the Complete Auto case a tax will be sustained if it is

- Applied to an activity with a substantial nexus with the taxing authority.
- Is fairly apportioned.
- Does not discriminate against interstate commerce
- Is fairly related to the services proved by the state.

The states that do enforce the collection of such taxes have obviously made sure they are in compliance with this 4 prong test. Routinely we see various trucking interests fighting the imposition of new taxes if they are not in compliance with the above test.



Motor carriers can be subject to as many as 6000 taxing jurisdictions. The motor carrier industry as a whole has been on the front line fighting efforts to place additional tax burdens on carriers.

The case that probably best explains the current climate and the aggressiveness of Pennsylvania, New Jersey and New York was a 1948 case, ***Central Greyhound Lines, Inc. v Mealy*** when Central Greyhound was assessed taxes for all gross receipts on a trip that originated in New York but traversed New Jersey and Pennsylvania and back into New York on the way to Buffalo. Greyhound Central argued that PA and NJ wanted their portion of tax as well and that only 57 percent of all miles were actually in New York. New York wanted all of the tax!

THE SOLUTION: There is no solution other than to fight each new tax. Changing existing laws to eliminate these taxes would certainly not be met well by the individual states. However, Pennsylvania and New Jersey offer an amnesty program that will enable a carrier to avoid the unpleasantness of an impoundment while avoiding the unreasonable ransom. The program allows the carrier to come forward, file documents and determine what taxes are due. The carrier is given an opportunity to file the appropriate tax filings and not be stopped in a routine highway check and then be impounded.

With the warm weather approaching carriers should be warned that these states will be on the lookout for carriers who are not paying tax. In some instances the state will hire independent companies that handle the “on the road” activity and they only get paid when they stop a truck. They don’t let you off because then they won’t get paid.

Call the office for more information on the various amnesty programs that are available at this time. That is your best course of action.