

TAXATION: TANGIBLE PERSONAL PROPERTY, ETC. - SITUS FOR TAXATION — REVIEW OF LOCAL TAXES - CORRECTION OF ASSESSMENTS, REMEDIES AND REFUNDS — LOCAL OFFICERS - COMMISSIONERS OF THE REVENUE.

Taxpayer must prove rolling stock of interstate common carrier is subject to property taxation on apportioned basis in another state and has tax situs there. Tax situs in another state is prerequisite to apportionment of taxes for property with tax situs in Virginia. Local tax official is appropriate person to hear evidence and determine whether rolling stock of interstate common carrier qualifies for apportioned property tax assessment. Taxpayer may challenge in court tax official's ruling on facts or official's application of law to facts.

The Honorable William Roscoe Reynolds

Member, Senate of Virginia

December 16, 1998

You ask whether § 58.1-3511(B) of the *Code of Virginia* requires that the assessment of personal property taxes on the rolling stock of an interstate common carrier be apportioned in a Virginia locality upon proof that the property is subject to taxation in another state or whether the taxpayer must submit proof of the actual payment of taxes on the property in another state.

Section 58.1-3511(B) provides:

The assessment of motor vehicles, travel trailers, boats or airplanes operating over interstate routes, in the rendition of a common, contract or other private carrier service which are subject to property taxation in any other state on the basis of an apportioned assessment, shall be apportioned in the same percentage as the total number of miles traveled in the Commonwealth by such vehicle bears to the total number of miles traveled by such vehicle.

While the statute clearly requires that, in order to receive an apportioned assessment, the property must be "subject to taxation" in another state, it does not define the phrase "subject to taxation."

A 1988 opinion of the Attorney General concludes that, in order to receive an apportioned assessment under § 58.1-3511(B), the taxpayer must show only that the property is "'subject to taxation on an apportioned basis' ... in another jurisdiction."¹ While the opinion states that the taxpayer need not show that taxes actually have been assessed against the property in another jurisdiction or that the taxes have been paid,² it does not discuss what constitutes proof that the property is "subject to taxation" in another jurisdiction.

In 1994, the Supreme Court of Virginia in the case of *Ryder Truck Rental v. County of Chesterfield*³ considered the proof needed to trigger the apportionment requirement of § 58.1-3511(B). The Court held that evidence showing that the company's vehicles operate in states other than Virginia and presenting the portion of miles traveled each year in Virginia is insufficient to establish that the property is "subject to taxation" in another state.⁴ Rather, the taxpayer must show that the property is "subject to taxation" in another jurisdiction because it has a tax situs there.⁵ As the Court stated: "The substantial nexus, or tax situs, requirement is designed to guard

against the risk of double or multiple taxation in violation of the Due Process and Commerce clauses while insuring that property used in interstate commerce does not escape taxation."⁶ Absent a tax situs in another state, the property is not subject to the risk of double taxation and the domiciliary state may tax the full value of the property.⁷

The "substantial nexus" requirement is part of the test established by the Supreme Court of the United States in the case of *Complete Auto Transit, Inc. v. Brady*⁸ for determining whether the state taxation of interstate commerce satisfies the Commerce Clause. A state tax does not violate the Commerce Clause if the tax (1) is applied to an activity with a substantial nexus to the taxing jurisdiction, (2) is fairly apportioned, (3) does not discriminate against interstate commerce, and (4) is fairly related to services provided by the taxing jurisdiction.⁹ The Supreme Court of Virginia in *Ryder Truck Rental* concluded that, since substantial nexus in another taxing jurisdiction is a prerequisite to the property's being "subject to taxation" under Commerce Clause analysis, it is likewise a prerequisite to the apportionment of the taxes under § 58.1-3511(B).¹⁰

The Court held that the taxpayer's showing that its trucks accumulate mileage in other jurisdictions and records showing the amount of the mileage in other jurisdictions failed to establish substantial nexus, or tax situs, in the other jurisdictions.¹¹ The Court stated: "Ryder has not demonstrated that it has actually paid taxes or would even be subject to taxes in another jurisdiction on this basis. It is not enough for a taxpayer to merely identify another jurisdiction in which the taxable instrumentality is used."¹² The company had not shown that it reported the vehicles based in Chesterfield County for personal property tax purposes in another jurisdiction or that any other jurisdiction assessed taxes on the property.¹³ The Court considered the failure of any other jurisdiction to assess taxes on the property to be "probative."¹⁴ The Court agreed with the company, however, that the actual payment of the tax is not a prerequisite to the finding of a tax situs in another jurisdiction.¹⁵

Evidence other than assessment or payment of a tax on the property in a jurisdiction also may establish tax situs in the jurisdiction. The Court summarized this type of evidence and pointed out the company's failure to present such evidence:

A tax situs in another jurisdiction can be established by a showing that the taxpayer's property traveled on fixed and regular routes or was habitually, though irregularly, employed in a particular state. Ryder has not shown that its trucks travel on regular, scheduled routes or that they are habitually employed in another jurisdiction. The evidence presented shows only that Ryder's vehicles are frequently, but erratically, operated throughout the United States. In addition, Ryder has not presented any evidence of significant business transactions, cargo loading or unloading, vehicle storage, leasing of its trucks, or other significant activities outside Virginia. Ryder has only proven that its trucks accumulate mileage in other jurisdictions. Mere absence from one taxing jurisdiction is not sufficient to establish a tax situs in another.^[16]

The decision of the Supreme Court in the case of *Ryder Truck Rental v. County of Chesterfield* establishes the type of proof a taxpayer is to present to qualify for an apportioned assessment under § 58.1-3511(B). The local tax official is the appropriate person to hear the evidence and to determine whether the evidence shows that the taxpayer is "subject to property taxation in any other state on the basis of an apportioned assessment."¹⁷ A taxpayer may challenge in court either the tax official's ruling on the facts or the tax official's application of the law to the facts.¹⁸

¹1987-1988 Op. Va. Att'y Gen. 578, 587.

²*Id.*

³248 Va. 575, 449 S.E.2d 813 (1994).

⁴*Id.* at 580, 449 S.E.2d at 816.

⁵*Id.* at 577-78, 449 S.E.2d at 815.

⁶*Id.* at 578, 449 S.E.2d at 815.

⁷*Id.*

⁸430 U.S. 274 (1977).

⁹*Id.* at 279.

¹⁰248 Va. at 577-78, 449 S.E.2d at 815.

¹¹*Id.* at 579, 449 S.E.2d at 816.

¹²*Id.*

¹³*Id.* at 580, 449 S.E.2d at 816.

¹⁴*Id.* at 579 n.4, 449 S.E.2d at 816 n.4.

¹⁵*Id.*

¹⁶*Id.* at 579, 449 S.E.2d at 816 (citations omitted).

¹⁷Section 58.1-3511(B). *See also* § 58.1-3109(6) (commissioner of revenue shall procure from taxpayers or their agents information necessary to assess taxpayers' tangible personal property taxes); § 58.1-3110 (commissioner of revenue may summon taxpayer or other person to appear and answer questions regarding tax liability of specified taxpayer). If a commissioner determines that the property is subject to taxation on an apportioned basis in another state, the commissioner is to tax the property on an apportioned basis in his jurisdiction. Section 58.1-3511(B). Section 58.1-3511(B) makes no provision in such instance for assessing the property at full value and then crediting taxes actually paid to other states.

¹⁸*See* § 58.1-3984(A).