UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re: Chapter 11 Case

Jefferson Lines, Inc., BKY Case No. 3-89-4137

Debtor. ORDER

This matter came before the Court on objection by Jefferson Lines, Inc. ("Debtor") to Claim Nos. 603-606 of the Oklahoma Tax Commission ("Commission") for unpaid sales taxes in the consolidated amount of $46,659.15. Steven D. DeRuyter represents the Debtor. Douglas F. Price represents the Commission. The Court, having considered the briefs of the parties, and being fully advised in the matter, now makes this ORDER pursuant to the Federal and Local Rules of Bankruptcy Procedure.

I.

The facts are undisputed. Debtor, a Minnesota corporation, is a common carrier providing bus service in Oklahoma and numerous other states. Debtor sells transportation tickets within Oklahoma for both intrastate and interstate routes. "Intrastate routes" are those which originate and terminate within the State of Oklahoma. "Interstate routes" are those which originate in Oklahoma and terminate in a state other than Oklahoma.(1) The Commission, under authority of Oklahoma law, applies a sales tax at a single specified rate to all intrastate tickets, and to all interstate tickets sold by a common carrier for transportation originating in Oklahoma.

Footnote 1
Additionally, Debtor has routes which originate outside of Oklahoma and terminate within Oklahoma; and routes which originate outside of Oklahoma, pass through Oklahoma, and terminate in a state other than Oklahoma. Although these are also interstate routes, Oklahoma does not tax interstate transactions regarding transportation that does not originate in Oklahoma. Accordingly, except where specifically referenced, the term "interstate routes" in this opinion means only those interstate routes for transportation originating in Oklahoma.
End Footnote

Debtor filed for Chapter 11 relief on October 27, 1989. While operating under Sales Tax Permit No. 246600, Debtor deducted all interstate route tickets sold in Oklahoma in computing its total taxable sales. The Commission filed claims in the Debtor's estate seeking payment of the tax on interstate route tickets sold during September and October, 1989 and January and February, 1990. The total amount in controversy is $46,659.15.(2) Debtor objects to allowance of the claims on the grounds that applying Oklahoma's sales tax to the gross receipts of tickets sold in Oklahoma for its interstate routes violates the Commerce Clause of the United States

Constitution.

Footnote 2
The Commission filed Proofs of Claim Nos. 603 and 604 on August 15, 1990, and 605 and 606 on August 16, 1990. The Commission asserts entitlement under these claims to treatment as a priority and administrative creditor for sales and withholding taxes. In its Omnibus Objection to Proofs of Claim, Debtor objects to these claims. On January 23, 1991, the Commission filed Amended Proofs of Claim Nos. 617 and 618, which amended Claim Nos. 603 and 604.

The parties agree that the Commission has reduced all amounts listed in Claim Nos. 603, 604, 605, 606, 617 and 618 by sales or withholding tax collected, other than the amount of sales tax due Oklahoma under Sales Tax Permit No. 246600.
End Footnote

II.

Does the Oklahoma sales tax statute which levies a tax on the gross receipts from sales of transportation over interstate routes violate the Commerce Clause of the United States Constitution?

III.

Oklahoma collects sales tax from the Debtor under the Oklahoma Sales Tax Code. 68 O.S. Section 1354 (1)(C).(3) The Debtor argues that Oklahoma's imposition of a tax on the gross receipts of tickets sold in Oklahoma for interstate route transportation violates the Commerce Clause. U.S. Const., Art. I, Section 8, cl. 3.(4)

Prior to 1977, the United States Supreme Court held that,

> [i]t was not the purpose of the commerce clause to relieve those engaged in interstate commerce from their just share of state tax burden even though it increases the cost of doing business.

Western Live Stock v. Bureau of Revenue, 303 U.S. 250, 254 (1938). Thus, state taxation of transactions involving interstate commerce was not necessarily regarded as a violation of the Commerce Clause.

However, the Court also had ruled that any state tax levied for the expressed "privilege of doing business" in a state was a per se violation of the Commerce Clause. See: Spector Motor Service, Inc. v. O'Connor, 340 U.S. 602 (1951). In 1977, the Court abandoned the per se analysis in Spector Motor Service in favor of a four-part test to determine whether a challenged state tax on interstate commercial transactions withstands constitutional scrutiny, regardless of its statutorily expressed purpose. See: Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977).

Footnote 3
68 O.S. Section 1354 (1)(C) reads in pertinent part:

(1) There is hereby levied upon all sales, not otherwise exempted in Oklahoma Sales Tax Code, Section 1350 et seq. of this title, an excise tax of four and one-half percent (4.5%) of the gross receipts or gross proceeds of each sale of the following:

(C) Transportation for hire to persons by common carriers, including railroads both steam and electric, motor transportation companies, taxicab companies, pullman car companies, airlines, and other means of transportation for hire.
End Footnote

Footnote 4
Art. I, Section 8, cl. 3 reads in pertinent part:
The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.
End Footnote

In Complete Auto Transit, the Court recognized prior decisions which held that such a tax does not violate the Commerce Clause if:

> the tax is applied to an activity with a substantial nexus with the taxing State, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the State. Id. at 279.(5) See also: American Trucking Assoc. v. Scheiner, 483 U.S. 266 (1978); Goldberg v. Sweet, 488 U.S. 252 (1989).

Therefore, in order for the Oklahoma tax to survive a Commerce Clause challenge, its application must satisfy each part of the Complete Auto Transit test.

A. The tax must be applied to an activity with a substantial nexus to the taxing State.

Footnote 5
The Court went on to affirm the Mississippi Supreme Court's judgment that a Mississippi tax on the "privilege of doing [interstate] business" was not a violation of the Commerce Clause, noting that the appellant relied only on the Spector per se rule, and did not object to the tax based on application of the four-part test. See Complete Auto Transit, 430 U.S. at 289.
End Footnote

The Debtor claims that the Oklahoma statute fails to meet the first part of the Complete Auto Transit test, arguing that the mere purchase of an interstate ticket in Oklahoma constitutes the only connection between the activity taxed and the taxing state. However, the Supreme Court has found that maintenance of two non-sales offices in California by a non-profit corporation created a sufficient nexus to justify a tax on sales made to California residents from the corporation's headquarters in Washington, D.C. National Geographic Soc'y v. California Bd. of Equalization, 430 U.S. 551 (1977). Debtor's contact with Oklahoma involves more than mere sales of interstate route tickets. It also sells intrastate tickets, pays sales tax on intrastate ticket sales, and maintains a presence in Oklahoma to facilitate both intrastate and interstate ticket sales. Additionally, Oklahoma issued the Debtor sales tax permits to facilitate collection and payment of sales tax. Although the Debtor views its nexus with Oklahoma as de minimis, it has a sufficient nexus to the taxing state under National Geographic to satisfy the first part of the Complete Auto Transit test.

B. The tax must be fairly apportioned.

In 1989, the Goldberg Court held "the central purpose behind the apportionment requirement is to ensure that each State taxes only its fair share of an interstate transaction." Goldberg, 488 U.S. at 260-261. See: Container Corp. of America v. Franchise Tax Bd., 463 U.S. 159, 169 (1983). To determine whether the apportionment part of the Complete Auto Transit test is satisfied, the Court examines whether the tax is internally and externally consistent. Goldberg, 488 U.S. at 261. American Trucking, 483 U.S. at 284-285.

"To be internally consistent, a tax must be structured so that if every State were to impose an identical tax, no multiple taxation would result." Goldberg, 488 U.S. at 261. See: Container Corp., 463 U.S. at 169. The Debtor suggests the Oklahoma tax lacks internal consistency because other states may enact laws that tax the interstate portion of the tickets sold in Oklahoma. However, the Goldberg Court declared the proper standard for the internal consistency test to be comparison with an identical tax, not a similar tax. Goldberg, 488 U.S. at 261. Therefore, each state could enact an identical tax without producing multiple taxation if it were levied against interstate route tickets sold only within its own state for transportation originating there. Under the Goldberg standard, the Oklahoma sales tax is internally consistent.

The external consistency test is satisfied if the State taxes only that portion of revenues from the interstate activity which reasonably reflects the in-state component of the interstate activity being taxed. Goldberg, 488 U.S. 262. See: Container Corp., 463 U.S. at 169. In making a practical inquiry, the Court noted:

> [i]n previous cases we have endorsed apportionment formulas based on the miles a bus, train, or truck traveled within the taxing State. But those cases all dealt with the movement of large physical objects over identifiable routes, where it was practicable to keep track of the distance actually traveled within the taxing State.

Goldberg, 488 U.S. at 264.(6) See, e.g., Central Greyhound Lines v. Mealey, 334 U.S. 653 (1948)(buses); American Trucking, 483 U.S. 266 (1987)(trucks); Japan Line v. County of Los Angeles, 441 U.S. 434 (1979)(cargo containers); Complete Auto Transit, 430 U.S. 274 (1977)(motor carriers); Michigan-Wisconsin Pipe Line v. Calvert, 347 U.S. 157 (1954)(oil pipelines). In Central Greyhound, a case with similar facts, New York taxed the gross receipts from ticket sales for interstate routes out of New York. The Central Greyhound Court held that the New York tax would withstand a Commerce Clause challenge if it were apportioned by mileage traveled within New York. Central Greyhound, 334 U.S. at 663-664. The Court found that:

> [b]y its very nature an unapportioned gross receipts tax makes
>
> interstate transportation bear more than 'a fair share of the cost of the local government whose protection it enjoys.'

Central Greyhound, 334 U.S. at 663, quoting, Freeman v. Hewit, 329 U.S. 249 (1947).

Footnote 6
The Goldberg Court held that apportioning by mileage the electronic impulses of a telephonic transmission would create "insurmountable administrative and technological barriers."
End Footnote

The Commission argues that the sales tax is self-apportioning since Oklahoma does not tax interstate tickets sold for routes which originate outside of Oklahoma and terminate within Oklahoma. However, in this Court's view, the Central Greyhound analysis is controlling. By taxing the gross receipts from interstate route tickets, the Commission has taxed more than the in-state component of the interstate activity. Accordingly, section 1354(1)(C) is not externally consistent. The tax is not fairly apportioned, and therefore, it fails the second part of the Complete Auto Transit

test.

C. The tax must not discriminate against interstate commerce.

The Debtor argues that the identical four and one-half percent (4.5%) tax on interstate and intrastate tickets clearly discriminates against interstate commerce. In past cases, the Supreme Court has decided that "a tax may violate the Commerce Clause if it is facially discriminatory, has a discriminatory intent or has the effect of unduly burdening interstate commerce". Amerada Hess Corp. v. Director, Div. of Taxation, N.J. Dep't of the Treasury, 490 U.S. 66, 75-79 (1989).

Sections 1354 (1)(C) is applied to all common carriers. Therefore, this statute allocates the tax burden in a facially neutral manner.

To determine if a tax has a discriminatory intent, the Amerada Court considered whether the tax was motivated by an intent to confer a benefit on local industry at the expense of interstate commerce. See also: Bacchus Imports v. Dias, 468 U.S. 263 (1984), in which a Hawaiian tax exemption for fruit wine was found to promote the local pineapple-wine industry. It does not appear from these facts that Section 1354 (1)(C) was enacted to promote or benefit Oklahoma common carriers at the expense of out-state common carriers.

In American Trucking, the Supreme Court invalidated the imposition of unapportioned lump-sum annual taxes on the operation of trucks and truck tractors as discriminating against interstate commerce. Accordingly, an unapportioned tax discriminates against interstate commerce, except (as in Goldberg) where lack of apportionment can be justified by administrative burdens. Therefore, in failing the apportionment part of the Complete Auto Transit test, the Oklahoma tax discriminates against interstate commerce. Section 1354 (1)(C) fails the third part of the Complete Auto Transit test.

D. The tax must be fairly related to the services provided by the State.

The fourth part of the Complete Auto Transit test requires that the tax be fairly related to the activities of the Debtor in Oklahoma. Goldberg, 488 U.S. at 266. This part "focuses on the wide range of benefits provided to the taxpayer, not just the precise activity connected to the interstate activity at issue." Id. at 267. In D. H. Holmes Co. v. McNamara, 486 U.S. 24, the Supreme Court found that police and fire protection, mass transit service and public road maintenance provided by the State of Louisiana caused the tax to be related to the activities of Holmes in running retail stores and a mail order business in Louisiana. Holmes, 486 U.S. at 32. In this case, the Debtor receives police and fire protection, along with other public services, at the locations where it sells tickets and loads its buses. The Debtor also receives benefit from police protection and public road maintenance on its Oklahoma routes. Therefore, the Oklahoma tax is fairly related to the business activities of the Debtor in Oklahoma.

IV.

Based on the foregoing, the Debtor is entitled to an order sustaining its objection on the grounds that the claim is for the payment of a tax on the gross receipts from the Debtor's sales of transportation over interstate routes which tax is levied in violation of the Commerce Clause of the United States Constitution.

Now, therefore, IT IS HEREBY ORDERED:

The objection of the Debtor to the claim of the Oklahoma Tax Commission is sustained.