

February

STATE OF WISCONSIN
TAX APPEALS COMMISSION

FILED
Wisconsin Tax Appeals Commission
APR 28 1999
Darlene Skoleski
Deputy Clerk

J&M TRANSPORTATION SPECIALISTS, INC.

N79 W34363 Peterson Road
Oconomowoc, WI 53066-9718

DOCKET NO. 98-S-138

Petitioner,

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE

P.O. Box 8933
Madison, WI 53708-8933

GRANTING RESPONDENT'S

MOTION FOR SUMMARY

Respondent.

JUDGMENT

THOMAS M. BOYKOFF, COMMISSIONER:

This matter is before this commission on respondent's motion for summary judgment on the grounds that there is no genuine issue of material fact and that respondent is entitled to judgment as a matter of law. Respondent, by Attorney Linda M. Mintener, has submitted its motion and brief in support of its position on its motion. Petitioner, representing itself in filing an appeal to this commission, has not responded to respondent's motion.

Having considered the entire record, the Commission finds, rules, and orders as follows:

UNDISPUTED MATERIAL FACTS

1. Respondent issued a sales/use tax office audit assessment against petitioner on November 26, 1997 in the amount of \$3,767.40 (tax and

interest). The assessment involved sales/use tax on petitioner's purchase of a 1995 motor home which petitioner registered as a Ford truck, claiming the common or contract carrier exemption of Wis. Stat. § 77.54(5)(b), and paying no sales tax.

2. On December 3, 1997, petitioner filed a petition for redetermination dated November 30, 1997 objecting to the assessment. On May 28, 1998, the petition for redetermination was denied on the grounds that motor homes do not qualify for the common or contract carrier exemption. An Office of Appeals Redetermination Notice of Amount Due in the amount of \$3,941.28, with updated interest to July 31, 1998, was sent to and received by petitioner on May 29, 1998.

3. Petitioner filed a timely appeal with this commission on June 3, 1998. In the appeal letter, petitioner wrote: "This vehicle was purchased for hire operations to transport time sensitive material. *The operation never materialized....*" (Emphasis added)

4. On July 12, 1995, petitioner purchased a 1995 Itasca motor home from Iven H. Steckel and Jennifer A. Baril of Okauchee, Wisconsin.

5. Also on July 12, 1995, petitioner applied to register the vehicle with the Wisconsin Department of Transportation ("DOT"), describing the vehicle as a "95 Itasca Motor Home", claiming the sales tax exemption for common or contract carriers, and listing its LC authority number on the application.

6. Petitioner subsequently changed that application to indicate that the vehicle was a 1994 Ford truck, and DOT registered the vehicle as such, without payment of any sales tax.

7. Respondent sent an inquiry form to Iven H. Steckel, one of the sellers, requesting information regarding the sale of the vehicle to petitioner. Mr. Steckel returned the form to respondent on November 16, 1995, describing the vehicle petitioner purchased from him as a "Winnebago motor home."

8. On February 29, 1996, respondent wrote to petitioner requesting information on how the motor home was used as a common or contract carrier. Petitioner responded that the vehicle "is licensed as a 1994 Ford Chasis [sic]," and that petitioner purchased it "to pull a tandem trailer hauling [illegible] & time sensitive freight requiring team drivers." Petitioner further stated that it "felt that this vehicle has nicer accommodations for team drivers."

9. Petitioner subsequently sold the motor home. The new owner, a motor home dealer named Horn's, wrote to both respondent and DOT's Motor Vehicle Division about obtaining a new and corrected title for the motor home. In Horn's July 26, 1997 letter to DOT, the dealer stated: "The customer was able to retitle the unit as a 94 Ford Truck. He did this so an LC# could be used & not have to pay sales tax." In Horn's September 18, 1997 letter to respondent, the dealer stated: "This unit is a motor home—not a

truck—and is probably subject to sales tax as are all motor homes."

10. On January 2, 1998, after receiving petitioner's petition for redetermination, respondent wrote to petitioner explaining that motor homes do not qualify for the common or contract carrier exemption. Petitioner responded by returning that letter and writing on its lower portion that the "Vehicle was purchased & licensed as a 94 Ford truck with a 95 motor home body" and that "The vehicle in question pulls a 16' flatbed trailer & van".

APPLICABLE WISCONSIN STATUTES

77.54 General exemptions. There are exempted from the taxes imposed by this subchapter:

* * *

(5) The gross receipts from the sale of and the storage, use or other consumption of:

* * *

(b) Motor trucks, track tractors, road tractors, buses, trailers and semitrailers, and accessories, attachments, parts, supplies and materials therefor, sold to common or contract carriers who use such motor trucks, truck tractors, road tractors, buses, trailers and semitrailers exclusively as common or contract carriers, including the urban mass transportation of passengers as defined in s. 71.38.

194.01 Definitions. In this chapter, unless the context otherwise requires:

(1) "Common motor carrier" means any person who holds himself or herself out to the public as willing to undertake for hire to transport passengers by motor vehicle between fixed end points or over a regular route upon the public highways or property over regular or irregular routes upon the public highways....

(2) "Contract motor carrier" means any person engaged in the transportation by motor vehicle over a regular or irregular route upon the public highways of property for hire.

340.01 Words and phrases defined. In s. 23.33 and chs. 340 to 349 and 351, the following words and phrases have the designated meanings unless a different meaning is expressly provided or the context clearly indicates a different meaning:

* * *

(33m) "Motor home" means a motor vehicle designed to be operated upon a highway for use as a temporary or recreational dwelling and having the same internal characteristics and equipment as a mobile home.

(34) "Motor truck" means every motor vehicle designed, used or maintained primarily for the transportation of property.

* * *

(53) "Road tractor" means a motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of the vehicle or load so drawn.

* * *

(57) "Semitrailer" means a vehicle of the trailer type so designed and used in conjunction with a motor vehicle that some part of its own weight and that of its own load rests upon or is carried by another vehicle, but does not include a mobile home. A vehicle used with a ready-mix motor truck to spread the load is considered a semitrailer.

* * *

(71) "Trailer" means a vehicle without motive power designed for carrying property or passengers wholly on its own structure and for being drawn by a motor vehicle, but does not include a mobile home.

* * *

(73) "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

RULING

Respondent has moved for summary judgment on the basis that there is no genuine issue as to any material fact and it is entitled to judgment as a matter of law. The Commission agrees. § 802.08(2).

Statutes granting tax exemptions are matters of legislative grace and must be strictly construed against granting the exemption. *Ladish Malting Co. v. Wisconsin Department of Revenue*, 98 Wis. 2d 496, 502, 297 N.W.2d 56 (1980); *Ramrod, Inc. v. Wisconsin Department of Revenue*, 64 Wis. 2d 499, 504, 219 N.W.2d 604 (1974). All doubts regarding an exemption must be resolved against the person claiming the exemption and in favor of taxability. *Gene E. Greiling v. Wisconsin Department of Revenue*, 112 Wis. 2d 602, 605, 334 N.W.2d 118 (1983). A taxpayer that claims an exemption must show that the exemption's terms clearly apply to it. *Midcontinent Broadcasting Company of Wisconsin, Inc. v. Wisconsin Department of Revenue*, 98 Wis. 2d 379, 390, 297 N.W.2d 191 (1980). The burden of bringing the property in question within the exact terms of the exemption is on the person claiming the exemption, and any doubts that it has done so are to be resolved in favor of taxation. *Madison Aerie No. 623 Fraternal Order of Eagles, Inc. v. City of Madison*, 275 Wis. 472, 476, 82 N.W.2d 207 (1957); *Ladish* at 502; *Ramrod* at 504-505.

For petitioner to not pay sales/use tax on its motor home, it must qualify the vehicle for the § 77.54(5)(b) exemption as follows: (1) the vehicle must be a motor truck, truck tractor, road tractor, bus, trailer or semitrailer;

(2) petitioner must be a common or contract carrier; and (3) petitioner must "use" the vehicle exclusively as a common or contract carrier.

First, petitioner's vehicle is a Winnebago "motor home" as defined in § 340.01(33m). Iven Steckel's reply on inquiry, received by respondent on November 16, 1995, states that the vehicle is a "Winnebago motor home" and was never used in carriage. Mr. Steckel is one of the vehicle's two immediate past owners. The Commission concludes that the vehicle, as used, did not fit the statutory definition of motor truck, truck tractor, road tractor, bus, trailer or semitrailer.

Second, respondent has shown that petitioner has not used the vehicle in common motor carriage as defined in § 194.01(1). One part of the statutory definition in § 194.01(1) of a "common carrier" is a person holding himself or herself out to the public as willing to transport *passengers* by motor vehicle between fixed end points. Petitioner states that its purpose is to move "time sensitive freight requiring team drivers" and that it "felt that this vehicle has nicer accommodations for team drivers." Transporting passengers was *not* petitioner's vehicle's function; it was ancillary and a necessary aspect of transporting freight.

Third, petitioner did not "use" its vehicle "exclusively as [a] common or contract carrier[s]". § 77.54(5)(b). In fact petitioner admits, in its December 3, 1997 petition for review filed with the Commission, that "the

operation never materialized"; i.e., petitioner never used the motor home as a common or contract carrier as was intended.

Because this necessary statutory requirement cannot be met, petitioner's vehicle does not qualify for the exemption. Given this uncontroverted fact, and other material facts which are not in dispute, there is no way the Commission could reasonably find in favor of petitioner. Granting respondent's motion is therefore appropriate. *Kenefick v. Hitchcock*, 187 Wis. 2d 218, 224 (Ct. App. 1994).

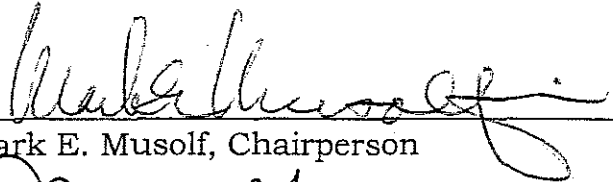
Therefore,

IT IS ORDERED

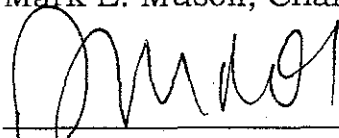
That respondent's motion for summary judgment is granted, and this case is dismissed.

Dated at Madison, Wisconsin, this 28th day of April, 1999.

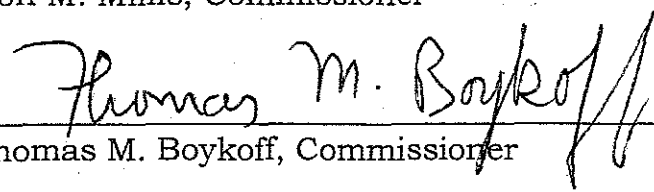
WISCONSIN TAX APPEALS COMMISSION



Mark E. Musolf, Chairperson



Don M. Millis, Commissioner



Thomas M. Boykoff, Commissioner

ATTACHMENT: "**NOTICE OF APPEAL INFORMATION**"