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PARKVIEW SAND & GRAVEL 129197 082670 DANE CTY CIR CT

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----- . #129-197  
 PARKVIEW SAND & GRAVEL, INC., .  
 a Wisconsin corporation, .  
 Petitioner, .  
 vs. .  
 WISCONSIN DEPARTMENT OF REVENUE .  
 f/k/a WISCONSIN DEPARTMENT OF TAXATION, .  
 Respondent. .  
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MEMORANDUM DECISION

Petitioner brings this action pursuant to Chapter 227 of the Statutes of the State of Wisconsin for the reversal of the November 7, 1969, decision and order of the Wisconsin Tax Appeals Commission affirming the September 6, 1967, decision of respondent imposing a sales tax on the trucks and truck parts purchased and used by petitioner during the period of April 1, 1964, through December 31, 1966. The amount of the assessment is not in dispute.

Petitioner claims the sale of such items are exempt under section 77.54(5)(b), Stats. The Commission concluded such items were not used exclusively by petitioner in its capacity as a common or contract carrier, and, hence, the exemption did not apply. This conclusion was based on a finding that the petitioner also uses such items to haul its own products and does not use such items exclusively to haul the products of others. The petitioner, on the other hand, contends that at all times material it used the trucks and truck parts exclusively for hauling property for hire.

The record in this case indicates that the petitioner used the trucks, parts and accessories it purchased in essentially two ways. It used these items to haul materials for others, and it used these items to haul its own sand and gravel from its pits to its customers. In doing the latter work separate charges are made for the materials and the delivery of the materials to the customer's site. This is the basis for petitioner's assertion that it charged its customers for hauling sand and gravel purchased from it and thus maintained its standing as a contract motor carrier for hire.

This argument overlooks the fact that common or contract carriage involves the element of hauling for others for hire by all definitions. Hauling one's own materials, as here, is acting as a private carrier and places petitioner outside the exemption afforded to common or contract carriers. Petitioner while hauling its own products is not "engaged in the transportation by motor vehicle of property for hire."

The property belongs to the petitioner while in transit, and a charge is made by petitioner for delivery to a particular site designated by the customer. The property belongs to the customer when he accepts delivery at a particular site and not before.

There is then substantial evidence in view of the entire record to support the finding of the Commission, and its decision and order must be affirmed in all respects. Counsel may prepare an appropriate judgment for the court's signature.

Dated: August 26, 1970.

BY THE COURT:

/s/ William C. Sachtjen

William C. Sachtjen, Judge  
Circuit Court, Branch 4

cc Attys. Moertl, Hubbard