

14-1288
TAX TYPE: LOCALLY ASSESSED PROPERTY
TAX YEAR: 2014
DATE SIGNED: 3/1/2016
COMMISSIONERS: J. VALENTINE, R. PERO, R. ROCKWELL
EXCUSED: M. CRAGUN

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, vs. PROPERTY TAX DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION Appeal No. 14-1288 Taxpayer No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2014 Judge: Jensen
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This Order may contain confidential "commercial information" within the meaning of Utah Code Section 59-1-404, and is subject to disclosure restrictions as provided in that section and Utah Admin. Rule R861-1A-37. In accordance with Section 59-1-404(4)(b)(iii)(B), Utah Admin. Rule R861-1A-37(6) prohibits parties from disclosing commercial information obtained from the opposing party to nonparties outside of the hearing process. As provided by Utah Admin. Rule R861-1A-37(7), the Tax Commission may publish this decision, in its entirety, unless the taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must mail the response to the address listed near the end of this decision.

Presiding:
 Clinton Jensen, Administrative Law Judge

Appearances:
 For Petitioner: REPRESENTATIVE FOR TAXPAYER, for the Taxpayer
 Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing. On the basis of a joint request by the parties, the Commission did not hold the scheduled Formal Hearing and considers the matter on the basis of briefing by the parties. The parties present the matter on the basis of stipulated facts; the only issues before the Commission are legal determinations to be determined on the basis of those facts. Based on the stipulated facts and the legal positions as set forth in the parties' briefs, the Tax Commission makes its:

FINDINGS OF FACT

1. TAXPAYER (“TAXPAYER”) is domiciled in the state of STATE-1.
2. TAXPAYER operates in interstate commerce as an air taxi that flies unscheduled on-demand flights.
3. TAXPAYER controls which aircraft from its fleet of aircraft are used for each customer’s flight and controls where each aircraft will be used. TAXPAYER furnishes the pilots for, provides for the maintenance of, and arranges insurance for the aircraft in its fleet. TAXPAYER also purchases and disposes of its fleet aircraft.
4. TAXPAYER was assessed by the Property Tax Division of the Utah State Tax Commission (“Division”) for the lien date of January 1, 2014, on or about April 15, 2014.
5. The Division’s 2014 assessment of TAXPAYER’s property, after all adjustments, was \$\$\$\$\$.
6. The Division assessed TAXPAYER’s taxable operating property using unitary appraisal methods and allocated a portion of the value of TAXPAYER’s taxable operating property to the state of Utah based on two of TAXPAYER’s operating statistics: (1) weighted ground hours and (2) originating and terminating tonnage.
7. The Division calculated that TAXPAYER has a Utah weighted ground hours allocation factor of 1.37% and an originating and terminating tonnage allocation factor to Utah of 0.88% for an overall allocation of the mobile flight equipment of 1.30%. No value for ground property was allocated to the State of Utah.
8. In 2013, TAXPAYER had ##### arrivals and departures, ##### overnight layovers, and spent ##### ground hours in the State of Utah.
9. TAXPAYER aircraft landed and departed at the following Utah airports: CITY-1; CITY-2; CITY-3; CITY-4; CITY-5; CITY-6; CITY-7; CITY-8; and CITY-9.
10. TAXPAYER aircraft were present in the State of Utah on ##### of the 365 days of the year in 2013.
11. In 2013, TAXPAYER also operated in all 50 States, including STATE-1.
12. In STATE-1, unscheduled air taxis are assessed at the County level and 100% of all STATE-1 value is assessed to the County where it is determined the aircraft are habitually situated.
13. The County of COUNTY-1 (“COUNTY-1”) has asserted assessment jurisdiction over TAXPAYER and has assessed TAXPAYER’s operating property.

14. COUNTY-1 has determined that TAXPAYER's operations in other States was transitory in nature and insufficient to establish tax nexus in any other State and has apportioned 100% of TAXPAYER's value to COUNTY-1.

15. In 2013, TAXPAYER operated ##### aircraft.

16. TAXPAYER maintains a floating fleet, and the aircraft do not have home bases.

17. TAXPAYER aircraft are maintained and repaired at various locations, generally the closest location at which an aircraft is located at the time it needs to be maintained or repaired. All routine maintenance was performed outside the State of Utah.

18. In 2013, TAXPAYER had a salesperson working out of the salesperson's home in Utah.

19. TAXPAYER receives various opportunities, benefits, protections and other services when it flies to Utah that are substantially similar in nature to the benefits, protections and services it receives in STATE-1 and in other assessment jurisdictions into which it flies its aircraft. These services include: facilities for loading and unloading; refueling; parking planes overnight; clear, maintained and secured runways; air traffic control services; airport ground control services; and police and fire protection.

20. TAXPAYER could not conduct its air taxi operations in Utah without the presence and availability of these services.

21. TAXPAYER has been operating nonscheduled air taxi flights in Utah, continuously since 2010 and has plans to continue making air taxi flights into Utah into the future.

22. TAXPAYER timely appealed the Division's assessment on or about May 20, 2014.

APPLICABLE LAW

The Constitution of Utah, Article XIII, Section 2 (1) provides, "So that each person and corporation pays a tax in proportion to the fair market value of his, her, or its tangible property, all tangible property in the State that is not exempt under the laws of the United States or under this Constitution shall be: (a) assessed at a uniform and equal rate in proportion to its fair market value, to be ascertained as provided by law; and (b) taxed at a uniform and equal rate."

The Constitution of Utah, Article XIII, Section 2 (2) provides, "Each corporation and person in the State or doing business in the State is subject to taxation on the tangible property owned or used by the corporation or person within the boundaries of the State or local authority levying the tax."

All tangible taxable property shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law. Utah Code Ann. §59-2-103 (1).

Utah Code Ann. §59-1-210(5) grants the Utah State Tax Commission authority to “administer and supervise the tax laws of the state.”

Utah Code Ann. §59-2-201(1)(a) prescribes the Commission’s scope of assessment authority: “By May 1 of each year the following property . . . shall be assessed by the commission at 100% of fair market value, as valued on January 1, in accordance with this chapter: (i) except as provided in Subsection (2), all property which operates as a unit across county lines, if the values must be apportioned among more than one county or state; . . . (iii) all operating property of an airline, air charter service, and air contract service;”

Utah Code Ann. §59-2-102(2) defines “[a]ir charter service” as “an air carrier operation which requires the customer to hire an entire aircraft rather than book passage in whatever capacity is available on a scheduled trip.”

Utah Code Ann. §59-2-102(3) defines “[a]ir contract service” as “an air carrier operation available only to customers who engage the services of the carrier through a contractual agreement and excess capacity on any trip and is not available to the public at large.”

Utah Code Ann. §59-2-102(5)(a) provides that an “airline” means “an air carrier that (i) operates: (A) on an interstate route; and (B) on a scheduled basis; and (ii) offers to fly one or more passengers or cargo on the basis of available capacity on a regularly scheduled route.”

Utah Code Ann. §59-2-102(5)(b) provides that an “airline” is not “(i) an air charter service” or “(ii) an air contract service.”

Utah Code Ann. §59-2-102(12) defines “[f]air market value” as “the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts.”

The Utah Legislature has provided that the taxpayer generally bears the burden of proof in proceedings before the Tax Commission. Utah Code Ann. §59-1-1417(1) provides that “[i]n a proceeding before the commission, the burden of proof is on the petitioner.” While this Section provides for exceptions to this rule, none of those exceptions are relevant in this case. *Id.*

DISCUSSION

There is no dispute regarding facts of the Taxpayer’s operations in Utah. Likewise, the Taxpayer does not dispute the value of the Taxpayer’s subject property for purposes of taxation. The only dispute between the parties is whether the Taxpayer has sufficient nexus with Utah to warrant Utah property taxes on the Taxpayer’s tangible personal property.

The Taxpayer relies in part on the determinations of COUNTY-1 that the Taxpayer is commercially domiciled in STATE-1 and therefore subject to STATE-1 property tax on 100% of the value of the personal property used in the Taxpayer's operation. The Taxpayer notes that the Appeals Board for the County of COUNTY-1 ruled that TAXPAYER's presence outside STATE-1 was merely transitory. The COUNTY-1 Appeals Board relied on *Ice Capades, Inc. v. County of COUNTY-1*, 56 Cal. App. 3d 754; 128 Cal. Rptr. 717; 1976 Cal App. LEXIS 1399 (1976); and *NetJets Aviation, Inc. v. Guillory*, 207 Cal. App. 4th 26; 143 Cal. Rptr. 3d 111 (2012) in reaching a determination that "the nature of the owner's [TAXPAYER's] property contact with the jurisdiction outside of STATE-1 was incidental and the aircraft was never intended to remain there or to be habitually based there. The owner [TAXPAYER] of the aircraft was domiciled in STATE-1. The aircraft was primarily in STATE-1 for the majority of the tax year. The applicant [TAXPAYER] failed to submit any evidence to prove that its aircraft came under the threat of taxation in any other jurisdiction other than COUNTY-1, as is required in *Ice Capades*"

The Taxpayer cites *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977) for the proposition that both the due process and commerce clauses of the U.S. Constitution require that any state's tax on property domiciled elsewhere must meet four criteria: (1) the tax is applied to an activity with a substantial nexus with the taxing state; (2) the tax is fairly apportioned; (3) the tax does not discriminate against interstate commerce; and (4) the tax is fairly related to services provided by the state.

The Division cites two cases in which the United States Supreme Court upheld state property taxes imposed on property in cases with arguably fewer contacts in the states imposing property tax when compared to the Taxpayer's contacts within Utah. Relying on these and similar cases, the Division maintains that the Taxpayer's nexus with Utah is sufficient to meet both the due process and commerce clauses of the U.S. Constitution.

The Division presented *American Refrigerator Transit Co. v. Hall* 174 U.S. 70 (1899) as a case in which the United States Supreme Court supported taxing nexus for a non-domiciled taxpayer. American Refrigerator was based in Illinois and had no office or place of business in the taxing state, Colorado. The only contacts with Colorado were refrigerated cars running from points outside Colorado into or from inside Colorado to destinations outside Colorado. The refrigerated cars "never were run in [Colorado] in fixed numbers, or at regular times, not as a regular part of particular trains, nor were any certain cars ever in the state of Colorado, except as engaged in such business aforesaid, and then only transiently present in said state for such purposes." *Id.* at 72, 81. American Refrigerator averaged 40 cars in Colorado during

the year. *Id.* At 81. The United States Supreme Court nevertheless upheld Colorado's imposition of tax on American Refrigerator. *Id.* At 81-82.

The second case cited by the Division is *Ott v. Mississippi Valley Barge Line*, 336 U.S. 169 (1949). Here, Mississippi Valley Barge Line made trips into Louisiana towing a line of barges to be unloaded in Louisiana and reloaded for ports outside Louisiana. *Id.* The United States Supreme Court upheld a Louisiana taxing scheme as a method to cause a carrier "to pay its way by bearing a nondiscriminatory share of the tax burden which each state may impose on the activities or properties within its borders." *Id.* At 170.

CONCLUSIONS OF LAW

In 2013, TAXPAYER had ##### arrivals and departures, ##### overnight layovers, and spent ##### ground hours in the State of Utah and had aircraft landing and departing at Utah airports in CITY-1, CITY-2, CITY-3, CITY-4, CITY-5, CITY-6, CITY-7, CITY-8, and CITY-9. These minimum contacts are sufficient to create a taxable nexus on TAXPAYER's activities and property within Utah. These contacts are more numerous than those that the United States Supreme Court have upheld as reasonable exercises of the rights of states to tax property and activities within their borders.

TAXPAYER's activities satisfy the requirements of the very case that TAXPAYER cites as the touchstone for reasonable exercises of state taxing authority. The Taxpayer cites *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977) for the proposition that both the due process and commerce clauses of the U.S. Constitution require that any state's tax on property domiciled elsewhere must meet four criteria: (1) the tax is applied to an activity with a substantial nexus with the taxing state; (2) the tax is fairly apportioned; (3) the tax does not discriminate against interstate commerce; and (4) the tax is fairly related to services provided by the state. As previously cited, TAXPAYER has substantial nexus that is greater than that required by previous U.S. Supreme Court cases and thus satisfies the first part of the *Complete Auto* test. Utah's allocation of a portion of the value of TAXPAYER's taxable operating property to the state of Utah based on TAXPAYER's operating statistics of weighted ground hours and originating and terminating tonnage is a reasonable apportionment and thus satisfies the second *Complete Auto* test of fair apportionment. Because Utah's tax is a reasonable and fair apportionment based on verifiable facts that TAXPAYER itself provided rather than some theory that apportions 100% of the value to any one state, it cannot help but meet the third part of the *Complete Auto* test of nondiscrimination on interstate commerce. Finally, it is undisputed that Utah provides facilities: for loading and unloading, refueling, and parking planes overnight; clear, maintained and secured runways; air traffic control services; airport

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ground control services, and police and fire protection. These services satisfy the fourth part of the *Complete Auto* test of being a tax that is fairly related to services provided by the state.

There is good cause to uphold Utah's taxation on the Utah apportionment of the total value of the Taxpayer's property.

Clinton Jensen
Administrative Law Judge

DECISION AND ORDER

On the basis of the foregoing, the Tax Commission upholds Utah's taxation on the Utah apportionment of the total value of the Taxpayer's property for the 2014 tax year. It is so ordered.

DATED this ____ day of _____, 2016.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit in accordance with Utah Code Ann. §63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §§59-1-601 and 63G-4-401 et. seq.