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City Use Tax—Not Applicable To Interstate Carrier

In *Metropolitan Convoy Corporation v. City of New York*,³⁰ plaintiff, an interstate motor carrier doing intra-state business, was held not to be within the class of persons covered by a New York City Use Tax.³¹ Plaintiff owned a fleet of trailers used in the transportation of automobiles from Detroit or Buffalo, to dealers in New York, New Jersey, and Pennsylvania. The bulk of its income was derived from sales within the City of New York. The plaintiff paid, under protest, the tax imposed by the city law, and brought this suit to recover the paid taxes, declaring that the act, by its terms, was inapplicable to plaintiff's business, or if applicable, void as an unconstitutional restraint upon interstate commerce.

The trial court felt that the continuous business activity of plaintiff within the City of New York permitted the city to tax it for the privilege of using the city streets.³² The Court of Appeals, ³³ however, interpreted the phrase in the statute, "used *principally* in connection with a business carried on *within* the city," (Emphasis added), to mean such business activity and operation dealing with intra-city business, rather than either intra-state or inter-state business activity; that is, to concerns which depend upon the streets as their avenues of merchandise transportation to various sections of the city, and not encompassing business activity which had contact with the city by way of discharging cargo which had been carried either from outside of the state or from some point within the state.

An investigation of the statute in question reveals that the Court did not have to strain the language of the act in order to reach its sound result. Also, it is clear that, if any appeal were taken, the Supreme Court would accept the interpretation of the Court of Appeals where it did not abridge any of the rights of the plaintiff which are protected in the Constitution.³⁴ The interesting question regarding the constitutionality of the city law was never reached since the Court felt that the section was meant to reach only that limited group of carriers which plied their trade to different sections of the city, and left it to the state, by way of its own taxing power, to reach carriers such as the plaintiff.

30. 2 N.Y.2d 384, 161 N.Y.S.2d 31 (1957).

31. ADMINISTRATIVE CODE OF CITY OF NEW YORK, §E46-2.0.

32. 208 Misc. 528, 529, 144 N.Y.S.2d 622, 624 (Sup. Ct. 1955).

33. 2 N.Y.2d at 386, 161 N.Y.S.2d at 34. The Court of Appeals may well have used the reasoning found in *People v. Von Rapacki*, 158 Misc. 823, 287 N.Y. Supp. 36 (2d Dep't 1936), where the distinction was drawn between intra-city and intra-state activity in order to apply the statute in dispute.

34. The Supreme Court will generally accept the construction placed upon a statute by the highest court of the state where the state has restricted its application. *Covington v. Commonwealth of Kentucky*, 173 U.S. 231 (1899); *Hicklin v. Coney*, 290 U.S. 169 (1934); *Aero Mayflower Transit Co. v. Board of R.R. Commissions*, 332 U.S. 495 (1947). Also, the Court will not pass upon any constitutional question until the highest court of the state has construed its coverage. *Spector Motor Service v. McLaughlin*, 323 U.S. 101, 104, 105 (1944); See *Watson v. Buck*, 313 U.S. 387, 401 (1940).