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Nevada Trailer Finance Company, Inc. and Idaho Trailer Finance Company, Inc. v. State Tax Commission of The State of Utah : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH
_____ FILED

MAY 14 1956

NEVADA TRAILER FINANCE
COMPANY, INC.

and

IDAHO TRAILER FINANCE
COMPANY, INC.

Appellants,

— vs. —

STATE TAX COMMISSION OF
THE STATE OF UTAH,
Respondent.

Clerk, Supreme Court, Utah

Case No.
8436

Brief of Respondent

STATE TAX COMMISSION OF UTAH

REX W. HARDY

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8436

Brief of Respondent

STATE TAX COMMISSION OF UTAH

STATEMENT OF FACTS

The Statement of Facts as set forth in Appellant's Brief appear to us to be over-simplified and in some respects incomplete. We desire, therefore, to restate the facts with some elaboration of certain facts which we deem highly pertinent to this case.

The Idaho Trailer Finance Company was incorporated in the State of Idaho in the year 1951. The Nevada Trailer Finance Company was incorporated in the State of Nevada in the year 1951. The object and purpose of both finance companies was and is to purchase conditional sales contracts from the sellers of house trailers with sales agencies in the states of Idaho and Nevada. After purchasing the contracts, the finance companies held most of them, collected the principal and interest due thereon from the obligors and ultimately realized a profit. The same facts apply generally to both companies with the exception that the Idaho company purchased contracts from Idaho house trailer dealers and the Nevada company purchased its contracts from Nevada house trailer dealers. The only other difference appears to be that in the case of the Nevada company, a bank account was maintained in its name in a Las Vegas bank during part of the period involved herein. All of the banking for the Idaho company appears to have been transacted through a Salt Lake City bank.

The conditional sales contracts purchased by the finance companies are represented by Tax Commission Exhibits Nos. 1 and 2. (Tr. 46) These contracts were executed by the purchasers of the trailers and the sellers of the trailers located outside of the state of Utah. Later, the seller of the trailer assigned his contracts to the finance company and forwarded them to the office of the company which is located at 76 East Second South, Salt Lake City, Utah. (Tr. 48) Here the contracts were inspected by Mr. Max Siegel, Manager of the companies,

who thereupon issued a check to the seller of the trailer in payment for the contract. (Tr. 69-70)

The Commission does not concur with Appellants in their contention that the acceptance by the finance companies of the assigned contracts takes place outside the State of Utah. Under the facts of this case, in order for the finance companies to accept these contracts outside the state of Utah, the seller of the trailer, whom taxpayers claim as their agent, would first have to execute the contract as the trailer sales agency with the purchaser of the trailer, then assign the contract to the finance companies, then accept the assignment on behalf of the finance companies and then mail it to the finance companies in Salt Lake City. Mr. Siegel's statements, although somewhat contradictory, indicate that there is an acceptance of the contracts when received in finance offices, inspected by him, and a check issued in payment thereof in Salt Lake City, Utah. (Tr. 25, 38, and 69)

As previously stated, the original copies of the conditional sales contracts are sent to the companies' offices in Salt Lake City. (Tr. 78) Account cards on all contracts are made up by the office help in said office and thereafter the original contracts are retained in a safe deposit box in a Salt Lake City bank. (Tr. 48 and 69) Monthly installment payments are sent to the company offices in Salt Lake. (Tr. 49 and 50) Some payments are received at the office of the trailer selling agencies or a bank in Las Vegas. In either case, the money and record of payment is forwarded to the companies' offices

in Salt Lake City where the posting to the account cards is made. (Tr. 50) Sizeable bank accounts are maintained by both companies in Salt Lake City banks, to which sizeable deposits are made almost daily and upon which checks are drawn by the companies almost daily. (T.C. Ex. 3 and 4) The muniments of title on the trailers are retained by the companies in Utah as security until the contract is paid out. (Tr. 72) Correspondence to contract obligors is sent from the Salt Lake City office of the corporations. (Tr. 50) The relationship of the corporations to Utah and the other activities of these corporations in Utah includes such things as:

1. The directors, officers and manager of the corporations are Utah residents and maintain offices in Utah. (Tr. 13)
2. Directors' meetings are held in Utah. (Tr. 13)
3. Some contracts are discounted in Utah by the corporations to Utah banks. (Tr. 35)
4. The corporations borrow money in Utah. (Tr. 65)
5. The corporations retain legal counsel and auditors in Utah for auditing corporation books and acting in advisory capacity to the corporations' management. (Tr. 76)
6. The corporation books are maintained and kept in Utah. (Tr. 77) (T.C. Ex. 5)
7. For the privilege of having their offices at 76 East Second South, Salt Lake City, Utah, the corporations paid a prorated share of the office expense which included such items as office help, rent, telephone and other miscellaneous expense. (Tr. 62 and 63) The deductions taken by the cor-

porations for their expense incurred almost entirely in the state of Utah are as follows:

	1951	1952
Idaho Trailer		
Finance Company	\$1,200.00	\$1,200.00
Nevada Trailer		
Finance Company	\$3,600.00	\$3,930.00

8. In addition, a single salary was paid by the corporations during 1951 and 1952. This salary was for the sum of \$5,000 which was paid by the Idaho Trailer Finance Company to Mr. Max Siegel, Manager of the corporations with offices in Salt Lake City, Utah. (Tr. 65)

It should be noted that neither of these corporations maintain offices outside Utah. Neither of the corporations have employees outside the State of Utah and neither of the corporations own real or tangible personal property situated outside the state of Utah. (Tr. 30) Mr. Siegel stated in the record that some directors' meetings had been held in Las Vegas, that he made occasional trips to Idaho and Nevada, and that some payments by the obligors on the contracts had been received at the trailer sales office in Nevada or in a Nevada bank or at the office of the Shady Lane Trailer Sales in Idaho.

Under these facts the Commission has found that the Idaho Trailer Finance Company and the Nevada Trailer Finance Company were doing business in the state of Utah during the taxable years 1951 and 1952, and based upon such facts a deficiency for Utah corporation franchise and privilege tax was assessed against said corporations in accordance with the statutes and regulations of this state.

POINT I.

THE FOREIGN CORPORATIONS HEREIN ARE CORPORATIONS ENGAGED IN AN INVESTMENT TYPE BUSINESS CONSISTING OF THE PURCHASING OF CONDITIONAL SALES CONTRACTS AND SAID CORPORATIONS WERE DOING BUSINESS IN THE STATE OF UTAH DURING 1951 AND 1952 IN CONTEMPLATION OF THE UTAH CORPORATION FRANCHISE TAX LAW.

Section 59-13-3, Utah Code Annotated 1953, (formerly 80-13-3 U.C.A. 1943) provides:

“Every bank or corporation . . . for the privilege of exercising its corporate franchise or for the privilege of doing business in the state shall annually pay to the state a tax . . .”

The term “doing business” has been defined in our law and “includes any transaction or transactions in the course of its business by a foreign corporation qualified to do or doing intrastate business in this state.” Section 59-13-1 (5) Utah Code Annotated 1953 (formerly Sec. 80-13-1 (5) U.C.A. 1943).

The above statutes give to the state of Utah the necessary authority to assess a franchise tax provided that a taxable incident exists in the state, which would constitute the doing of business in the state by the corporation.

The definition of what constitutes doing business varies depending upon the context in which it is used. In this instance we are dealing with corporations engaged

in an investment type business. Little can be gained from a discussion of cases relating to a different set of facts from those presented here. On the question of what acts by a corporation constitute doing business our state laws and regulations provide:

Regulation No. 8, Utah Corporation Franchise
Tax Regulations
April 15, 1945.

“To determine the portion of net income assignable to business done in the State of Utah, for the purpose of fixing the corporation franchise tax payable by corporations doing business in the state of Utah, it is necessary, according to the provisions of Section 80-13-21, U.C.A. 1943 to allocate directly certain income. Subsections (1) and (3) of this section read as follows:

““(1) Rents, interest and dividends derived from business done outside this state less related expenses shall not be allocated to this state.’

““(3) Rents, interest and dividends derived from business done in this state less related expenses shall be allocated to this state.’

“These two subsections allocate directly to Utah all rental, interest or dividend income derived from business done in the State of Utah by the taxpaying corporation.

“Where a corporation’s business consists in investing money in rental properties, loans or securities, and in receiving income from such investments, the business which gives rise to this income is considered to be done in the state where the investment activities take place. Thus, where a corporation received income from rental properties, or from security investments, the business

giving rise to this income is considered to be done in the state where the corporation maintains its chief place of business, holds its directors' meetings, maintains its bank account, keeps its books and muniments of title, pays its salaries, collects its rents, and carries out all other activities incident to its investment business. If these activities are distributed throughout several states, then the business is considered to be done in the state where the most important activities take place.

“Where a corporation (foreign or domestic) has its chief place of business in Utah, there is a strong presumption that all rental, interest or dividend income derived from its business activities is allocable directly to Utah. This presumption can only be rebutted by the taxpayer's making a positive showing that a substantial portion of the business factors discussed above were physically located outside the State of Utah. If, after applying the above tests, it cannot be ascertained that rents, interest and dividends are derived from business done in any particular state, it will be presumed that such income is derived from business done in the state of incorporation.”

The case of *American Investment Corporation vs. State Tax Commission, et al.*, 101 Ut. 191, 120 P. 2d 331 (1941), was one of our Supreme Court's first pronouncements on the question of allocating investment type income under our Franchise Tax Act. In that case the court looked to the place where the corporation paying the dividend did business as being the place where the income from such intangibles should be allocated, rather than looking to the place where the taxpaying corporation carried on its investment activities. Follow-

ing this case our Supreme Court in *J. M. & M. S. Browning Co., et al. vs. State Tax Commission*, 107 Ut. 457, 153 P. 2d 993 (1945) reconsidered its previous ruling in the American Investment case and expressly overruled it. In the Browning opinion the court stated that unless it were made to appear that the petitioner was also conducting an investment business (doing business) in another state, all of its net income from its investment business done would be correctly allocated to Utah. The court in that case noted that the corporation maintained no offices in connection with its investment business other than its offices in Utah. All the activities in connection with investments were managed from that office and its accounts were kept there.

In this connection the activities of the Idaho Trailer Finance Co. and the Nevada Trailer Finance Co. in Utah afford an equally persuasive set of facts to support the finding that the corporations were doing business in Utah in 1951 and 1952. To begin with, neither of the corporations maintained offices or hired any employees outside the state of Utah. The most that can be said for their activities outside Utah is that they maintained a bank account in a Las Vegas bank during part of the period involved herein, and that Mr. Siegel made occasional trips to confer with the trailer dealers in the other states. There is also Mr. Siegel's statement that some directors' meetings had been held in Las Vegas. On the other hand, the activities of the corporations in Utah consisted of acts ordinarily performed by investment companies doing business in Utah. These include

such activities as maintaining offices in Utah, having its management permanently located and residing in Utah, keeping the books for the corporation in Utah; maintaining bank accounts in Utah; holding directors' meetings in Utah; retaining original copies of contracts in Salt Lake City office and banks; retaining in Utah titles to trailers as security; receiving contract payments in Utah; discounting contracts with Utah banks; accepting assignment of contracts; hiring legal services; hiring professional accountants; corresponding with obligors on contracts; borrowing money in Utah and paying a proportionate share of stenographic expense, telephone, rent, etc.

By comparing the activities of the corporations in Utah with the activities of the corporations outside Utah, and keeping in mind that we are dealing with investment type businesses, it is difficult to understand how, by any stretch of the imagination, these corporations are doing business or carrying on their businesses other than in the state of Utah.

The case of *Emerald Oil Company vs. State Tax Commission*, 1 Ut. 2d 379, 267 P. 2d 272 (1954) dealt with a domestic corporation leasing oil lands in Colorado. The Emerald Oil Company held title to the oil lands in Colorado, paid a corporation tax in Colorado, had a process agent there and its officers frequently made trips to the Colorado lands to verify and measure all oil produced and to compare the barrels of oil shipped from the field with barrels of oil received by the refinery; to determine if the lessee was drilling its quota of wells;

to determine location, depth and quality of wells drilled; to determine location of the telephone line route and condition of the warehouse, possible trespassing, and to confer with certain Colorado authorities on tax problems. Nevertheless, the court weighed these activities in Colorado with the activities of the corporation in Utah and concluded that the corporation was doing business in Utah so as to require allocation of its entire net income to Utah for the purpose of computing its franchise tax. In sustaining the Tax Commission's decision in that case our Supreme Court stated:

“At Vernal the following business activities took place: (1) All directors' meetings (normally monthly) were held in the Uintah State Bank. (2) All expenses were paid from the Uintah State Bank. (3) Dividends were distributed from Vernal. (4) The corporation banked in Vernal. (5) The corporate books, muniments of title and the leases with Equity Oil Company were kept in Vernal. (6) Policy discussions were held in Vernal at the regular meetings of the board of directors. (7) All royalty receipts were received at Vernal. (8) Both leases with Equity Oil Company were executed at Vernal. (9) Correspondence, management, and clerical activities connected with the leases were normally conducted in or from Vernal. All of the aforesaid activities have received some recognition as factors to be considered in determining the location of 'business done.' See C.C.H. State Tax Reporter, New York, Book 1, Section 5-109. See also Utah State Tax Commission Corporation Franchise Tax Regulation Number 8 of April 15, 1945. We are of the opinion that the nature and extent of the activities of Emerald Oil Company in Utah, coupled with their

continuity, frequency, and regularity, compared with its activities in Colorado adequately sustain the decision of the State Tax Commission.”

The case of *Commonwealth vs. American Gas Company*, 352 Penn. 113, 42 A. 2d 161, presents a situation similar to this one. In that case the court held that a foreign subsidiary public utilities holding corporation, holding directors’ meetings, keeping its securities in bank deposit vaults, receiving and depositing dividends, renting offices and in general conducting its authorized business in the commonwealth was engaged in doing business therein within the Franchise Tax Act, and that the fact that its business involved dealing in intangibles rather than tangibles does not relieve it from its just share of the tax burden.

It is the Commission’s contention that said cases sustain the position of the Tax Commission and that within the contemplation of the Utah Corporation Franchise Tax Act the Idaho Trailer Finance Company and the Nevada Trailer Finance Company were legally doing business in the state of Utah.

POINT II

THE ACTIVITIES OF THESE CORPORATIONS OUTSIDE THE STATE OF UTAH ARE COMPARABLE TO THE ACTIVITIES IN UTAH OF MANY INVESTMENT CORPORATIONS WHOSE ACTIVITIES IN UTAH DO NOT CONSTITUTE THE DOING OF BUSINESS IN CONTEMPLATION OF THE UTAH CORPORATION FRANCHISE TAX LAW.

Appellants have stated in their brief that if the activities of the corporations in these cases were reversed

so that what was done in the states of Idaho and Nevada was being done in Utah, and what was done in the state of Utah was being done in the states of Idaho and Nevada, the Tax Commission would assess a tax on all the corporations' income. The Tax Commission does not agree with the appellants on this point. The *J. M. & M. S. Browning* case, *supra*, applied a test for determining where the income of an investment type corporation should be allocated for franchise tax purposes. The court held:

“The test as to whether a corporation is doing business in states other than Utah under particular fact situations would therefore be: Would such conduct is carried on in Utah be held to constitute doing business so as to subject the corporation to the Utah Corporate Franchise Tax.”

The activities of these corporations in Idaho and Nevada closely parallel the activities in Utah of many foreign corporations which purchase first mortgages from mortgage loan companies in the state of Utah. Although the Supreme Court has never construed our statute in this regard, the administrative interpretation by the Tax Commission has been that they were not doing business in contemplation of our franchise tax act. Legal counsel has advised the purchasing companies that they were not doing business in the state of Utah. In some cases the corporations have been advised by their legal counsel to qualify under the Utah foreign corporation act so as not to jeopardize their right to sue, but said corporations even after qualifying have only paid the \$10.00 minimum tax.

Although the case of *G.M.A.C. vs. Lund*, 60 Ut. 247, 208 Pac. 502 (1922) dealt with the question of the right to sue, nevertheless our court held under a similar set of facts that:

“The mere act of accepting an assignment of an obligation against a citizen of this state is not doing business within the contemplation of the law.”

This same result was later reached in the case of *Anglo-California Trust Company vs. Hall*, 61 Ut. 223, 211 Pac. 991 (1922).

Although there may not be complete uniformity in the methods of operation in Utah by financing institutions who purchase mortgages from sources in Utah, their activities are substantially the same, and the Commission maintains that in assessing the tax herein it has followed a consistent and equitable policy with respect to the taxation of this type of financing corporation.

ANSWER TO TAXPAYERS' ARGUMENT

Appellants' arguments in Point 1 of their brief have been answered in Points I and II of Tax Commission's Brief.

Appellants appear to be taking somewhat of a contradictory stand in Point II of their brief. They cite the Utah statute giving the state of Utah the power to tax a corporation doing business in the state, even though not qualified. Later they take the position that even if

they are doing business, they cannot be taxed by the state of Utah because what they are doing in Utah is unlawful, since they are not qualified, and the state cannot grant a privilege for doing business unlawfully. The difficulty with this position is that no corporation would qualify to do business in Utah if it could avoid paying taxes by refusing to qualify here as a foreign corporation. While this argument was not advanced by the plaintiffs in the recent case of *Riley Stoker Corporation vs. State Tax Commission*, 3 Ut. 2d 164 (1955), the holding of the case clearly indicates that such a position would be completely untenable if the corporation is actually doing business in the state of Utah within the contemplation of our law.

The case of *People vs. Tropical Fruit Corp.*, 223 App. Div. 864, 228 N. Y. Supp. 189, *Aff'd.*, 252 N. Y. 605, 170 N. E. 160, expresses what we consider to be a fair reply to this argument:

“A foreign corporation doing business in the state is liable for license tax regardless of whether it has obtained a certificate authorizing it to do business in this state required by the stock corporation law. The corporation should obtain no advantage over other foreign corporations legally doing business in the state by failing to comply with the laws of the state.”

Appellants quote the case of *First Security Corporation of Ogden vs. State Tax Commission*, 91 Utah 101, 63 P. 2d 1062 (1937), as sustaining their position. We feel that the soundness of this case stands on shaky grounds inasmuch as the *American Investment* case, *supra*, which

relied upon the *First Security* case was expressly overruled in the *J. M. & M. S. Browning* case, *supra*. Furthermore, the facts in this case differ greatly from those in the *First Security Bank* case, *supra*. It was not shown that the Wyoming corporation involved in the *First Security Bank* case was doing business in Utah. Instead, it was a case wherein a Utah holding corporation held all the stock of the Wyoming corporation. As previously stated in this brief, our Supreme Court, prior to the *J. M. & M. S. Browning* case, *supra*, looked to the place where the corporation who paid the dividend did business as being the place of doing business for franchise tax purposes. In the *J. M. & M. S. Browning* case, *supra*, the court looked instead to the place where the investment company did business for purposes of determining where the net income should be assigned for franchise tax purposes.

The Tax Commission does not claim that it is within its province to require corporations to qualify in Utah as foreign corporations. The laws of this state require that foreign corporations doing business in Utah shall qualify and pay a tax for the privilege of doing business. Other state agencies are responsible for imposing a penalty for failure to qualify; it is the Tax Commission's duty to collect the franchise tax.

Appellants maintain that all their business is carried on outside the state of Utah, and then go on to say that at most their activities in Utah are incidental to an interstate business and, therefore, beyond the jurisdiction of

the state of Utah. The Commission contends that interstate commerce does not afford the corporations a taxable immunity in this case. Although the corporations herein were incorporated in the states of Idaho and Nevada, the evidence indicates that they actually function and conduct their business in the state of Utah. Furthermore, it is difficult to see how an investment type business would not be at least remotely connected with interstate transactions. A corporation with principal place of business in the state of Massachusetts could undoubtedly purchase stocks and bonds from sources in many places in the 48 states. The dividend payments, interest on bonds, the stock certificates and other indicia of ownership would likely be sent to the corporation's offices in Massachusetts. If a franchise tax based on such income is to be regarded as a burden on interstate commerce then it is difficult to imagine a corporation that could not steer its activities down the narrow road between interstate and intrastate commerce and thus avoid the payment of a tax in any state. If appellants are not doing business in Utah so as to be subject to the Utah Franchise Tax, it is difficult to see where they are doing business.

In the case of *Champion Copper Company v. Massachusetts*, 246 U. S. 155, 62 L. Ed. 637, 38 S. Ct. 295 (1916), a Michigan corporation maintained an office in Boston pursuant to a provision in its Articles of Association. The proceeds of its business in Michigan were deposited in Boston banks and, after paying salaries and expenses, were distributed as dividends from the Boston Office. Directors' meetings were held frequently during each

year at the Boston Office, at which meetings reports from the Treasurer and General Manager were received. Dividends were voted, officers were elected and other corporate duties were discharged. The Supreme Court held:

“These corporate activities in Massachusetts are not interstate commerce and may be made the basis of an excise tax by that state.”

Substantially all the activities which took place in the above mentioned case have also taken place in Utah by the corporations now before us, plus additional activity, such as borrowing money in Utah and discounting conditional sales contracts with Utah banks. On the basis of the above case and the facts herein, the required taxable incident for taxation by the state of Utah is present and does not burden interstate commerce.

The last point made by appellants is that the local incidents of internal management are unrelated to any business done in the state and, therefore, do not provide a basis for a tax. We believe that a comparison of the facts in the cases cited by appellants satisfactorily distinguishes them from the present case.

The court in *Iowa Limestone vs. Cook County*, 223 N. W. 682 (cited by appellants) construes a statute which assesses a county tax on the shares of stock of a corporation at the place where its *principal business is transacted*. Upon making a comparison of the activities of the corporation in Des Moines, Cook County, with the activities at Alden, the court concluded that the *principal business* of the corporation was transacted at Alden. But

it did not say that no business was transacted at Des Moines. Under the facts of the present case it is difficult to see how the appellants could contend that no business was transacted in Utah when in fact the principal place of business appears to have been Salt Lake City, Utah. The case of *Miller Brewing Co. vs. Capitol*, 72 P. 2d 1056, was a "right to sue" case and involved only the execution of a single guarantee of payment in the state of Utah.

CONCLUSION

It is respectfully submitted by counsel for the Commission that under the law and facts, the Idaho Trailer Finance Company and the Nevada Trailer Finance Company were clearly doing business in the state of Utah during the years 1951 and 1952. We further submit that by comparison, the position of the Commission in this matter has been consistent and fair with respect to the treatment of other corporations and that the Commission's determination that the corporations herein are obligated to pay an equitable franchise tax to the State of Utah should be upheld.

Respectfully submitted,

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