

FILED

DISTRICT OF COLUMBIA TAX COURT

Louisville & Nashville Railroad

Petitioner,

Docket No: 1492

District of Columbia

FINDINGS OF FACTS AND OPINION

The petitioner here complains of franchise taxes assessed against it for the privilege of carrying on, or engaging in a trade or business in the District of Columbia during the taxable years involved. It assails also the imposition of a license tax for such activity. It contends that it was not engaged in any trade or business nor did it perform any work or services in the District of Columbia.

Findings of Facts

1. The petitioner is a Kentucky corporation. It is engaged as a common carrier of passengers and freight. Its principle office is in Louisville, Kentucky.

2. The petitioner's lines of railroad are located in thirteen states east of the Mississippi River and south of the Ohio River and extending to the Gulf of Mexico. Its nearest termini to the District of Columbia are Norton, Virginia, 200 miles distant, and Cincinnati, Ohio, 600 miles distant from the District. It does not maintain, operate or control any rail lines, trains, cars or any transportation facilities in the District. It does not supply any transportation services performed in the District.

3. During the taxable years involved there were carried for hire over the petitioner's rail lines shipments of freight which originated

and terminated in the District of Columbia. Such shipments were transported between the District and termini of the petitioner's rail lines by common carriers other than the petitioner. The petitioner received compensation for the transportation services performed by it over its own rail lines.

4. During the taxable years involved there were transported for hire over the petitioner's rail lines passengers travelling on trips which originated and terminated in the District of Columbia. Such passengers were transported between the District of Columbia and the termini of the petitioner's rail lines by common carriers other than the petitioner. The petitioner received compensation for the transportation services performed over its own rail lines.

5. During the taxable years involved the petitioner maintained an office in the Warner Building in the District of Columbia in relation to which it employed Henry E. Beck as statutory agent to accept service of complaints and other papers served by the Interstate Commerce Commission and growing out of hearings on matters before that Commission as required by law.

6. During the taxable years involved the petitioner maintained an office in the Woodward Building in the District of Columbia with which it employed John H. Coch as general agent, an employee, a clerk-stenographer, primarily for the soliciting of freight traffic from the United States Government, and from commercial firms mostly outside the District of Columbia. The soliciting territory of such general agent comprised southern Delaware north to Wilmington, the State of Maryland east of Frederick, northern Virginia and south to Richmond and Norfolk and the District of Columbia. His soliciting activities consisted of calling upon traffic representatives of the United States Government agencies in the District of Columbia and nearby Virginia, upon the traffic representatives of railroads located in his territory, and upon traffic representatives primarily of large commercial firms in the Baltimore, Richmond and Norfolk areas to solicit freight traffic that might be to points on, or beyond and over the rail lines of the petitioner. In extremely rare instances the general agent solicited

freight traffic from commercial establishments in the District of Columbia. About 75 per cent of his time was occupied in soliciting freight traffic from the United States Government, of which 65 per cent was spent in the District of Columbia and 10 per cent in nearby Virginia. The remainder of his time (about 25 per cent) was spent in soliciting freight traffic in his territory outside the District.

7. The general agent neither had authority to, nor did he enter into any transportation contracts for or on behalf of the petitioner. Neither did he have authority to, nor did he collect or receive any money for or on behalf of the petitioner. No bank account was maintained by the petitioner in the District of Columbia. The salary of the general agent and clerk-stenographer and all other expenses of the Washington office were paid by check from petitioner's office in Louisville, Kentucky. All books and records of petitioner were kept outside the District of Columbia.

8. While the general agent's compensation is solely salary, and no commission, he did get "credit" for all freight shipments that began in his territory and which ultimately went over the petitioner's rail lines to some point thereon or beyond. The first knowledge he had of any results of his solicitation was when he received what was called and known as "passing reports", reporting the shipper and the product received at the nearest point of origin on the railroad of the petitioner. Such reports were prepared by the receiving agent, that is to say, the representative of the petitioner at the point where the shipment entered its transportation system, and were furnished all general freight agents for their information.

9. During the taxable years the petitioner was asked to, and did, as an accommodation, make reservations of Pullman accommodations over its lines. For instance, if a shipper or someone else in the general agent's territory expected to travel from Louisville to New Orleans, the general agent would communicate with petitioner and procure the desired accommodations. The general agent procured for the petitioner information relating to, or in connection with claims filed with the petitioner by shippers

1250, 604, 793.16 2173, 992, 163.77 1173, 247, 532.32 3163, 867, 363.57

1952 1952 1952 1952

1950

Total Operating Expenses

12,323.23 813,633.66 111,423.60 12,323

1952 1952 1952 1952

12,323 813,633.66 111,423.60 12,323

Salaries and Expenses of Management were as follows:

Operating expenses of the petitioner and the petitioner's net income
expenses of the general agents balance in Xanadu, Inc., the total of materials and
11. During the taxable year's indicated the total of labor and

1953 32,209.99 15,370.16 12,323

1952 13,251.63 15,103.72 5,076.16 12,323

1951 10,070.30 15,390.53 3,713.16 12,323

1950 537,342.70 611,025.38 57,066.16 12,323

Southern Ry. Co. Ohio R.R. Co. and Potomac R.R. Co.
Baltimore & Richmond, Frederick

all lines was as follows:

D. C., by collecting carriers which included routing over petitioner's
taxable years involved on account of passenger tickets sold at Washington,
10. The amount of revenue owing to the petitioner during the
time contributed to the person who brought the matter to his attention,
general agent received from the petitioner concerning the matter was in
that the petitioner could get the business. Whatever information the
from his Informer and transmitted the same to the petitioner in order
interested as a common carrier. The general agent produced all details
be a movement of passengers in a direction in which the petitioner was
engaged transportation. From someone he learned that there was about to
a blue period the general agent would have no difficulty to do with pass-

enger transportation to traffic. Two or three days later the tax-
collected relating to traffic. The general agent within the District of
the general agent informed importers from source within the District of
the utility representatives of other and connecting railroads companies.
claimed the government's and other shipper's rate to representatives, and
In connection with his duties of office he was a agent inter-

Net Income

| | <u>1951</u> | <u>1952</u> | <u>1953</u> |
|-----------------|-----------------|-----------------|-----------------|
| \$24,279,450.50 | \$22,761,391.25 | \$25,093,368.13 | \$30,653,516.06 |

12(a). On September 8, 1954, the Assessor assessed the petitioner franchise taxes and interest for the taxable years involved as follows:

| | <u>1950</u> | <u>1951</u> | <u>1952</u> | <u>1953</u> |
|----------|-------------|-------------|-------------|-------------|
| Tax | \$19.66 | \$44.59 | \$52.23 | \$68.41 |
| Interest | 10.13 | 6.42 | 4.38 | 1.64 |
| Total | \$59.79 | \$51.01 | \$56.61 | \$70.05 |

(b) The foregoing franchise taxes were computed as follows:

| | <u>1950</u> | <u>1951</u> | <u>1952</u> | <u>1953</u> |
|---|-----------------|-----------------|-----------------|-----------------|
| Total salaries and expenses of Washington office | \$ 12,323.23 | \$ 13,633.66 | \$ 14,423.60 | \$ 15,074.82 |
| Proportion allocable to services performed outside Washington (estimated 50%) | <u>6,161.61</u> | <u>6,816.83</u> | <u>7,211.80</u> | <u>7,537.41</u> |
| Salaries and expenses allocable to Washington activities | 6,161.61 | 6,816.83 | 7,211.80 | 7,537.41 |
| Operating expenses, entire system | 159,684,793.16 | 173,992,163.77 | 173,247,532.32 | 168,867,363.57 |
| Percent of operating expenses allocable to Washington activities | .004039070% | .003917891% | .004162714% | .004463509% |
| Net income (per income statement) | 24,279,450.50 | 22,761,391.25 | 25,093,368.13 | 30,653,516.06 |
| Net income allocable to Washington | 973.21 | 891.77 | 1,044.56 | 1,368.22 |
| Tax at 5% | 49.66 | 44.59 | 52.23 | 68.41 |

(c) On October 7, 1954, the petitioner paid the foregoing taxes and interest; and on November 19, 1954, filed in this Court a petition (asigned Docket No. 1445) in which the petitioner appealed from the assessment of taxes and interest. In the latter dated January 11, 1955, the Assessor's Office notified petitioner that the assessments made under date of September 8, 1954, had been recalled. Such assessments were cancelled because the Assessor's Office believed that the proper procedure was not followed in making them. By a

registered letter dated January 12, 1955, the Assessor's Office notified petitioner that "adjustment" of petitioner's tax liability for the years 1950 through 1953 appeared to be warranted. The "adjustment" proposed was to assess the tax for the years 1950 through 1953 in the precise amounts which had been assessed under date of September 8, 1954, and which are set out in Findings Number 11 hereof. Such letter stated that if petitioner did not agree to the proposed adjustment, petitioner should file protest within thirty days, stating the grounds of its exceptions.

14. By letter dated February 1, 1955, petitioner protested the proposed adjustment, waived the statutory right of a hearing, reserved its statutory right of appeal, and authorized under protest the application of any credits, due it by reason of the cancellation of the assessments made under date of September 8, 1954, in settlement of the proposed adjustment, the same as if the adjustment were paid by petitioner under protest. The adjustment was made on February 16, 1955, and payment of the tax liability and interest (in the amounts set out in Findings Number 11 hereof) was made, by way of credit, on the same day.

15. At or about the time of the filing of the income and franchise tax returns above referred to, petitioner also filed, under protest, an application for a corporate license and paid, under protest, the \$10.00 tax due thereon on September 8, 1954. In its petition to this Court, in Docket No. 1445, petitioner contested such imposition. On November 20, 1954, petitioner also filed, under protest, an application for a corporate license for the calendar year 1955 and paid, under protest, the \$10.00 tax.

16. This proceeding was filed March 24, 1955.

Opinion

The petitioner, Louisville and Nashville Railroad Company, complains of the imposition of a franchise tax for the years 1950, 1951, 1952 and 1953, and of an excise tax in the form of a license fee for the privilege of doing business in the District of Columbia under the District of Columbia Income and Franchise Tax Act of 1947, as amended. The franchise tax was measured by that proportion of the net income of the petitioner



imposition of the license fee of \$10.00. There is no statute that gives this Court jurisdiction in such matter. See George D. Warren, et al. v. District of Columbia, D. C. B. T. A., Docket No. 1093. For that reason the complaint of the petitioner in that respect will be dismissed for lack of jurisdiction. Having disposed of the license fee matter, the Court will now proceed to consider the following assignments of error in the petition:

"The assessments of tax are based upon the following errors:
"(a) Corporate Income and Franchise Tax

"The error of the Assessor in ruling

"(1) That petitioner was carrying on or engaging in a trade or business in the District of Columbia within the meaning of that term as employed in Secs. 47-156(a) (e)(1), 47-157(a) and 47-155(c) (h) of the District of Columbia Code.

"(2) That petitioner derived taxable income from sources within the District of Columbia, within the meaning of Sec. 47-157(l) of the District of Columbia Code."

The foregoing assignments of error bring into focus those parts of the District of Columbia Income and Franchise Tax Act of 1947, as amended, encompassed in the sections of the District of Columbia Code, 1951 Edition, following:

Sec. 47-155(c). General Definitions ***

(h) The words "trade or business" include the engaging in or carrying on of any trade, business, profession vocation or calling on commercial activity in the District of Columbia; ***

Sec. 47-157(a). Imposition and rate of tax.

For the privilege of carrying on or engaging in any trade or business within the District and of receiving income from sources within the District, there is hereby levied for each taxable year a tax at the rate of 5 per centum upon the taxable income of every corporation, whether domestic or foreign, except those expressly exempt under Section 47-155(l).

Sec. 47-1580. Purpose of Article.

It is the purpose of this article to impose *** (2) a franchise tax upon every corporation and unincorporated business for the privilege of carrying on or engaging in any trade or business within the District and of receiving such other income as is derived from sources within the District; *** The measure of the franchise tax shall be that portion of the net income of the corporation and unincorporated business as is fairly attributable to any trade or business carried on or engaged in within the District and such other net income as is derived from sources within the District; ***.

Sec. 47-1580a. Allocation and apportionment.

The entire net income of any corporation or unincorporated business, derived from any trade or business carried on or engaged in wholly within the District shall, for the purposes of

3

this article, be deemed to be from sources within the District, and shall, along with other income from sources which may be allocated to the District. If the trade or business of any corporation or unincorporated business is carried on or engaged in both within and without the District, the net income derived therefrom shall for the purposes of this article, be deemed to be income from sources within and without the District. Where the net income of a corporation or unincorporated business is derived from sources both within and without the District, the portion thereof subject to tax under this article shall be determined in accordance with the regulations prescribed by the Commissioners. The Assessor is authorized to employ any formula or formulas provided in any regulation or regulations prescribed by the Commissioners under this article which in his opinion should be applied in order to properly determine the net income of any corporation or unincorporated business subject to tax under this article. (Emphasis supplied)

The first assignment of error quoted above raises the question of issue as to whether the petitioner was carrying on or engaging in a trade or business in the District of Columbia during the taxable years within the meaning of Sections 47-1551c (b) and 47-1571a of the District of Columbia Code (1951) Edition. The Court is of the opinion that the petitioner was so engaged. It regularly conducted through its general agent a course of solicitation of freight traffic. Such solicitation was a commercial activity. Any doubt concerning the statutory meaning of "trade or business" was put at rest by the decision of the United States Court of Appeals for the District of Columbia Circuit in Owens-Illinois Glass Co. v. District of Columbia, 92 U. S. App. D. C., 15, 204 F.2d 29, where it was held:

* * * By defining 'trade or business', to include 'engaging in . . . any . . . commercial activity, as well as engaging in 'trade' or 'business', Congress plainly intended to go beyond the ordinary concept of 'doing business'. There could be no other reason for adding the phrase 'any . . . commercial activity'. The many cases that deal with the concept of 'doing business', usually in connection with service of process, e.g. Mueller Brass Co. v. Alexander Milburn Co., 80 U. S. App. D. C. 274, 152 F.2d 142, are therefore not in point.

It does not necessarily follow, however, that the petitioner derived taxable income attributable to such trade or business or from sources within the District of Columbia as defined by the regulations pertaining to the Income and Franchise Tax Act merely because it happens to be so engaged within the meaning of the Act. For instance, in the Owens-Illinois Glass Company case, as above indicated, the United States Court of Appeals held that the soliciting activity of that company's agents in the District of Columbia was a "commercial activity" within the meaning of the Act, and

remanded the case to this court to determine the amount of the tax due by the Company. Upon a rehearing on remand this Court found that, under the appropriate formula adopted by the Commissioners of the District of Columbia for the apportionment of net income and for the determination of the source of income, there was neither "net income which is 'fairly attributable' to any trade or business" carried on in the District nor "other net income as is derived from sources within the District"; and cancelled the assessment against the Owens-Illinois Glass Company. (1)

From such decision there was no appeal. The Court, therefore, must now determine whether under the facts and the applicable regulations the petitioner during the taxable years received net income fairly attributable to a trade or business carried on by it in the District or other net income from sources within the District.

Acting under the authority conferred upon them by Section 47-1580a of the Code (1951 Ed.) the Commissioners adopted formulas for the apportionment and allocation of net income of various kinds of unitary businesses. During all of the taxable years involved there was in force Section 10-2 which was of general importance and provided:

"The measure of the franchise tax shall be that portion of the net income of a corporation or unincorporated business as is fairly attributable to any trade or business carried on or engaged in within the District, as defined by the Act, and such other income as is derived from sources within the District. The portion of such net income which is fairly attributable to any trade or business or such other net income as is derived from sources within the District shall be determined by allocation and apportionment thereof as prescribed in Sections 10-2(b), 10-2(c), 10-2(d), 10-2(e)." (Emphasis supplied)

It should be observed that Section 10-2 provides that the formulas set up hereinafter in Sections 10-2(b), 10-2(c), 10-2(d) and 10-2(e) were for the determination by apportionment and allocation not only of net income "fairly attributable to any trade or business" but also of "other net income as is derived from sources within the District".

The only formula of those prescribed in Section 10-2 applicable to a corporation which, like the petitioner, supplies services of any kind

(1) See Opinion and Decision entered June 10, 1953, in Owens-Illinois Glass Co., v. District of Columbia, D.C.T.C. Docket No. 1215.

is found in a subsection of Section 10-2(d), designated in Section 10-2(d)(2), and which will hereinafter be so called. During the taxable years 1950, 1951 and 1952 and up to and including August 5, 1953, the formula contained in Section 10-2(d)(2), and which will be called "the original formula" was the following:

"(2) Where gross income for any taxable year is derived from work done or services performed, the portion thereof to be apportioned to the District shall be such percentage of the total of such income as the aggregate of charges for such work done and services performed in the District bears to the aggregate of such charges for work done and services performed by the taxpayer everywhere."

On August 6, 1953, the Commissioners amended Section 10-2(d)(2), so as to make the formula, which will hereinafter be called "the amended formula", read as follows:

"(2) Where income for any taxable year is derived from work done or services performed, the portion thereof to be apportioned to the District shall be such percentage of the total of such income as the aggregate of charges for or costs of such work done and services performed in the District bears to the aggregate of such charges for or costs of work done and services performed by the taxpayer everywhere. The Assessor is authorized to use the aggregate of charges or the aggregate of costs with respect to each class of services performed if in his opinion it will produce an equitable apportionment."

In Section 15 of the amended regulations of August 6, 1953, it was provided that the amended formula should "apply to the taxable year or part thereof beginning on the first day of January, 1948". Notwithstanding such provision, the Court is of the opinion that the original formula making charges for services performed the determining factor applied during the taxable years 1950, 1951, 1952 and that part of 1953 prior to August 6, 1953. Retroactive application of the amended formula in respect to such taxable periods is not permissible since there was in force during such

(2) periods a valid regulation setting up a contrary formula. See Pierre
Ent and Associates v. District of Columbia, D.C.T.C. Docket No. 1397,
and Radio Corporation of America v. District of Columbia, D.C.T.C. Docket
(3)

(4) No. 1463. The taxability of the petitioner as to the years 1950, 1951,

(2) The original formula with charges only as factors was held valid in United Charitable Hospital Corp. v. District of Columbia, 36 U.S. App. D.C. 260, 14 F.2d 639, as to corporations performing services. See discussion of such formula in the opinion in that case.

(3) The decision of this Court was reversed on another ground by the United States Court of Appeals, but the ruling as to retroactivity was not disturbed. District of Columbia v. Pierre Ent and Associates, U.S. App. D.C., 220 F.2d 210.

(4) Now on appeal to the United States Court of Appeals for the District of Columbia Circuit.

1952 and part of 1953 prior to August 6, 1953, must therefore be determined in the light of such holding, that is to say, under the original formula; and the part of the year 1953 subsequent to August 6, 1953, under the amended formula, which in effect was two formulas, one containing the "aggregate of charges" as a factor, and the other the "aggregate of costs" of the services performed.

Considering solely the original formula containing the one factor of "gross rate of charges" and its applicability to the years 1950, 1951, 1952 and part of 1953, it is clear that no charges were made by the petitioner for any of the activities of its agents in the District of Columbia, even if such activities can be said to have been "work done and services performed" within the meaning of either the original or amended formula. It is difficult, therefore, to see how any tax could be assessed against the petitioner for the years 1950, 1951, 1952 and part of 1953 prior to August 6 of that year. In that respect the respondent advances two propositions, one, that since the original formula was not applicable to the petitioner, it can be said that there was no valid regulation in force during the above period, which absence permitted retroactive effect of the amended formula of under August 6, 1953. The other proposition is that section 10-2(d)(3) of the regulations in force during the above mentioned periods the Assessor had the authority to conceive or adopt and apply any formula or method of apportionment, regardless whether or not it had been prescribed by the Commissioners as required by section 47-1500a of the Code (1951 Ed.).

Such Section 10-2(d)(3) of the regulations provides:

"Where gross income for any taxable year is derived from a business other than those hereinbefore referred to, the portion thereof to be allocated or apportioned to the District shall be determined by the Assessor by such method or methods of allocating or apportioning such income as will, in the opinion of the Assessor, determine the portion of the taxpayer's net income that is fairly attributable to any trade or business carried on in the District by such taxpayer during the taxable year."

Both of respondent's positions are untenable. The original formula applied to the petitioner, to all other common carriers and to all corporations and unincorporated businesses performing work or supplying services. And this becomes no less true because the application of the formula results in no tax liability.

(5)

(5) See discussion of this Court's opinion and decision on remand in Owens-Illinois Glass Co., case on page 9 hereof.

- 13 -

(6) See the conclusion of this document for two reasons. First, the power to prescribe forms as in the opinion of the General Assembly and the Secretary-General, the D.G.C.C., Doc. 90, 1959.

conventionally necessary to the practical operation of the Convention, as it is true that the collection of statistics is itself, or perhaps,

and not perhaps a service for the shipper.

For instance, in Section 11, Article 11, prescribes that "the Government of Colombia shall, for the purpose of carrying out the Convention, in the interest of Colombia, but for the employer, the port operator,

of such services were performed, not for the Government and the port office of such services were performed, all

public accommodations from some point on the port operator's lines, all with the exception of incidentals accommodations of common who deal

this matter, performed services within the interest of Colombia, but,

of course, the General trustee agent, and the statutory agent for

anytime over the rail lines.

In its correlative capacity, namely, the transportation of passengers and to submit to the collection for which it was authorized and which it performs

in 1953, or whether the meaning of such term when applied to the port operator, services performed within the meaning of the amendment of August 6,

the General trustee agent in the District of Colombia were "work done on behalf, we come to consider the question as to whether the activities of

any, we come to consider the question as to whether the taxiable

either "charge" or "costs", as the factor applied to all of the taxable

ability, and assuming for the time being that the demand formula, with

1953 prior to August 6, and that, with application results in no tax law

as the only factor applied to the years 1950, 1951, 1952 and the part of

forgetting for the moment that the original formula having "charges"

prescribed by the Commissaries."

(9)

ployee" any formula or formula provided in any regulation or regulation

given to the Commissaries. The assessor, a authority is limited to an

on the assessor the power to prescribe formulas, which power is expressly

relative of Section 17-180 of the Code (1951 Ed.), in that it confers

law work done and services performed. Second, Section 10-2(d)(3) is

in Section 10-2(f), namely, a business income gross income is derived

that can these before referred to. It is a business referred to

elance, business of publishing, newspaper, etc. It is not, however,

Section 10-2(f) does not apply for two reasons. First, the port-

- 16 -

(7) 309. INTERIM TAXES Ch. V. 310. INTERIM TAXES Ch. VI. 311. INTERIM TAXES Ch. VII. 312. INTERIM TAXES Ch. VIII. 313. INTERIM TAXES Ch. IX. 314. INTERIM TAXES Ch. X. 315. INTERIM TAXES Ch. XI. 316. INTERIM TAXES Ch. XII. 317. INTERIM TAXES Ch. XIII. 318. INTERIM TAXES Ch. XIV. 319. INTERIM TAXES Ch. XV. 320. INTERIM TAXES Ch. XVI. 321. INTERIM TAXES Ch. XVII. 322. INTERIM TAXES Ch. XVIII. 323. INTERIM TAXES Ch. XIX. 324. INTERIM TAXES Ch. XX. 325. INTERIM TAXES Ch. XXI. 326. INTERIM TAXES Ch. XXII. 327. INTERIM TAXES Ch. XXIII. 328. INTERIM TAXES Ch. XXIV. 329. INTERIM TAXES Ch. XXV. 330. INTERIM TAXES Ch. XXVI. 331. INTERIM TAXES Ch. XXVII. 332. INTERIM TAXES Ch. XXVIII. 333. INTERIM TAXES Ch. XXIX. 334. INTERIM TAXES Ch. XXX. 335. INTERIM TAXES Ch. XXXI. 336. INTERIM TAXES Ch. XXXII. 337. INTERIM TAXES Ch. XXXIII. 338. INTERIM TAXES Ch. XXXIV. 339. INTERIM TAXES Ch. XXXV. 340. INTERIM TAXES Ch. XXXVI. 341. INTERIM TAXES Ch. XXXVII. 342. INTERIM TAXES Ch. XXXVIII. 343. INTERIM TAXES Ch. XXXIX. 344. INTERIM TAXES Ch. XL. 345. INTERIM TAXES Ch. XLI. 346. INTERIM TAXES Ch. XLII. 347. INTERIM TAXES Ch. XLIII. 348. INTERIM TAXES Ch. XLIV. 349. INTERIM TAXES Ch. XLV. 350. INTERIM TAXES Ch. XLVI. 351. INTERIM TAXES Ch. XLVII. 352. INTERIM TAXES Ch. XLVIII. 353. INTERIM TAXES Ch. XLIX. 354. INTERIM TAXES Ch. L. 355. INTERIM TAXES Ch. LII. 356. INTERIM TAXES Ch. LIII. 357. INTERIM TAXES Ch. LIV. 358. INTERIM TAXES Ch. LV. 359. INTERIM TAXES Ch. LX.

represented by a debt or an amount due taxpayer was the liability of the debtor.

taxes of \$59.73, was arbitrarily assessed liable, and collected from C. G. G., plus interest in the amount of \$10.13, or a total of tax and (a) what a taxable tax for the calendar year 1950, in the amount

for the reasons stated above the Court held as follows:

to tax under this article, which was applied equally to no tax liability to properly determine the net income of the petitioner "subject to formula "to provide an appropriate accounting under the alternative in section 4150(a)", provided an appropriate

of whom was in the District, except for the fact that the Committee of any

the District of Columbia, i.e. the committee of the constituency, carriers of any source of such gross income or a part thereof might to have been in paid to the petitioner during the taxable year more substantially, and the Rederickspurge and Potowmack Railroad Company. The amounts so collected and

outlet of delivery company, railroads and other railroad companies and independent railroad over the last three. The connection between the carriers had to the petitioner the amount collected for, even though continuing over 11/2 of the selling carrier and the petitioner

trucks representing transportation originating in the District of Columbia having terminal and ticket offices in the District of Columbia sold to persons

the record discloses that certain commodity carriers than the petitioner

landry Corp. v. District of Columbia, 88 U.S. App. D.C. 266, 188 F.2d 669.

than this meaning of Section 10-2 of the regulations. Industrial Coverall

"need of such other income as is fairly attributable to any trade or business

"position of such net income as is fairly attributable, to any trade or busi-

could be used as the factor in the formula for the determination of the

joined by services within the District, the charges for, or costs of which

to put it differently, the Court does not know that the petitioner per-

carrying on, or engaging in a trade or business in the District of Columbia,

amounted to, even though such activity by state or territory definition amounts to

is the performance of service compensated by either the original or the

is true of most businesses, but the Court does not believe that such activity

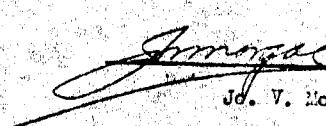
the petitioner and is hereby cancelled; and that the petitioner is entitled to a refund thereof, with interest thereon at the rate of 4 per centum per annum from February 16, 1955, until date of payment of such refund.

(b) That a franchise tax for the calendar year 1951, in the amount of \$44.59, plus interest in the amount of \$6.42, or a total of tax and interest of \$51.01, was erroneously assessed against, and collected from the petitioner and is hereby cancelled; and that the petitioner is entitled to a refund thereof, with interest thereon at the rate of 4 per centum per annum from February 16, 1955, until date of payment of such refund.

(c) That a franchise tax for the calendar year 1952, in the amount of \$52.23, plus interest in the amount of \$4.38, or a total of tax and interest of \$56.61, was erroneously assessed against, and collected from the petitioner and is hereby cancelled; and that the petitioner is entitled to a refund thereof, with interest thereon at the rate of 4 per centum per annum from February 16, 1955, until date of payment of such refund.

(d) That a franchise tax for the calendar year 1953, in the amount of \$60.41, plus interest in the amount of \$1.64, or a total of tax and interest of \$70.05, was erroneously assessed against, and collected from the petitioner and is hereby cancelled; and that the petitioner is entitled to a refund thereof, with interest thereon at the rate of 4 per centum per annum from February 16, 1955, until date of payment of such refund.

Decision will be entered for petitioner.


J. V. Morgan,
Judge

of 170.05, was erroneously assessed during and collected from the petitioner
166.62, plus interest in the amount of 32.63, or a total of tax and interest

(a) That a franchise tax for the calendar year 1953, in the amount of

"\$170.05, dated January 16, 1955, until date of payment, unless,

paid, plus interest thereon at the rate of 4 per centum per annum from
and is hereby canceled; and that the petitioner is entitled to a refund

of 170.01, was erroneously assessed interest and collected from the petitioner
166.23, plus interest in the amount of 1.33, or a total of tax and interest

(c) That a franchise tax for the calendar year 1953, in the amount of

January 16, 1955, until date of payment of such interest.

thereof, with interest thereon at the rate of 4 per centum per annum from

and is hereby canceled; and that the petitioner is entitled to a refund

of 170.01, was erroneously assessed against, and collected from the petitioner
166.57, plus interest in the amount of .66, or a total of tax and interest

(b) That a franchise tax for the calendar year 1951, in the amount of

refund.

centum per annum from January 16, 1955, until date of payment of such

interest to a refund thereof, with interest thereon at the rate of 4 per
centum per annum from January 16, 1955, until date of payment of such

interest, and is hereby canceled; and that the petitioner is en-
titled to a refund thereof, with interest thereon at the rate of 4 per
centum per annum from January 16, 1955, until date of payment of such

interest to a refund thereof, with interest thereon at the rate of 4 per
centum per annum from January 16, 1955, until date of payment of such

(a) That a franchise tax for the calendar year 1950, in the amount of

ADMITTED AND DISMISSED, as follows:

That on said petition, it is, by the Court, this 14th day of November, 1955,
and upon consideration thereof, and of the evidence adduced at the hearing
and upon consideration thereof, and of the evidence adduced at the hearing,

This proceeding comes on to be heard upon the petition filed herein,

DECISION

DISMISSED, respondent.

v.s.

Petitioner,

The Company,

Division of Chemicals

DOCKET NO. 1192

Nov. 1955

DISMISSED AND DISMISSED COMPANY,

Nov. 1955

FILED

DISMISSED AND DISMISSED COMPANY

and is hereby cancelled; and that the pet. fil. no. is 1
thereof, with interest thereon at the rate of 4 per cent.
February 16, 1955, until date of payment of such refund.

Conroyan
John V. Morgan,
Judge

Findings of Facts, Opinion and
Decision served as follows:

Robert R. Faulkner, Esq.,
Attorney for Petitioner,
9100 Shorham Building,
Washington 5, D. C. (Mailed 11/4/55)

Assessor, D. C. (Personally 11/4/55)

Corporation Counsel, D. C. (Personally 11/4/55)

Philip R. Liberti

Philip R. Liberti,
Clerk

and is hereby cancelled; and that the petition is dismissed
thereof, with interest, the sum at the rate of 4 percent
February 16, 1955, until date of payment of such refund.

J. V. Morgan
J. V. Morgan,
Judge

FINDINGS OF FACT, OPINION AND
JUDGMENT SERVED AS FOLLOWS:

Robert R. Paulkner, Esq.,
Attorney for Petitioner,
910 Sherman Building,
Washington 2, D. C. (Mailed 11/4/55)

Assessor, D. C. (Personally 11/4/55)

Corporation Counsel, D. C. (Personally 11/4/55)

J. V. Morgan
J. V. Morgan,
Judge