

ORIGINAL

Decision No. 86259

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of KENNETH R. WHITE
dba FAMILY MOBILE HOME SERVICE for
hearing of Finance & Accounts
Division Audit No. 7698.

Application No. 55919
(Filed August 26, 1975)

FRANK O. STEVENS dba FRANK'S MOBILE
HOME SERVICE & REPAIR for hearing
of Finance and Accounts Division
Audit No. 7699.

Application No. 55936
(Filed September 15, 1975)

WILBUR W. WHITE dba STAR TRANSPORT
for hearing of Finance and Accounts
Division Audit No. 7614.

Application 55944
(Filed September 18, 1975)

Application of CURLY'S TRAILER
TOWING for hearing of Finance and
Accounts Division Audit No. 7747,
Oroville.

Application No. 56009
(Filed October 17, 1975)

Milton W. Flack, by Don B. Shields,
for applicants.
Wilbur White, for himself, applicant.
T. H. Peceimer, for the Commission staff.

O P I N I O N

Applicants Kenneth R. White, doing business as Family Mobile Home Service (Family), Frank O. Stevens, doing business as Frank's Mobile Home Service & Repair (Frank), Wilbur W. White, doing business as Star Transport (Star), and Curly's Trailer Towing (Curly), each objects to the results of an audit of his respective intercity operations conducted by the Commission's Finance and Accounts Division (F&A), which concluded that applicants had underpaid the fees and tax

required by Sections 4304 and 5003.1 of the Public Utilities Code^{1/} and by these applications they request the Commission to find that the revenues in question are not subject to the fees and tax required by those two sections. The matters were joined in one hearing before Examiner Pilling on February 10, 1976 at Los Angeles.

Each applicant holds a radial highway common carrier permit issued by the Commission under which he engages in the for-hire transportation of trailer coaches^{2/} and campers (mobile homes). Family, Frank, and Curly, each contends that the revenue he derives from disassembling and preparing the mobile home for transportation prior to his transporting it and from setting up the mobile home for occupancy^{3/} subsequent to his transporting it does not fall within the term "gross operating revenue" as that term is used in Sections 4304 and 5003.1 which impose fees and a tax on persons "operating motor vehicles in the transportation of property for-hire" based upon a certain percentage of the "gross operating revenue" derived therefrom.

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- 1/ These two sections impose fees and a tax on gross operating revenue derived from the transportation of property.
 - 2/ Minimum Rate Tariff 18 (MRT 18) which governs the movement of mobile homes defines a trailer coach as a "structure with two or more outer walls, including a roof, built on a mobile chassis, containing sleeping accommodations and/or eating, cooking, or sanitary facilities, or designed for industrial, educational, professional or commercial uses, and designed to be drawn on its own wheels."
 - 3/ Item 210 of MRT 18 states that "In addition to all other applicable rates and charges named in this tariff the following charges shall be assessed by the carrier for special services involved in preparing each trailer for transportation and/or preparing each trailer coach for occupancy: . . ."

The Section 4304 tax is imposed in lieu of city and county license fees, and the Section 5003.1 fee is imposed to financially assist the Commission in its regulation of rates. Section 5002 reads as follows:

"5002. 'Gross operating revenue' as used in this chapter [Sections 5001-5011] includes all revenue derived from the transportation of such property having origin and destination within this state, except revenue derived from the transportation of property in interstate or foreign commerce or from the transportation of vehicles by ferries."

Section 4304 specifically adopts the definition of "gross operating revenue" as found in Section 5002. At the hearing the parties stipulated that the physical facts and related charges pertaining to the disassembling, preparation for moving, and setting up are similar to those described in the hearing on Application No. 54563 set out in Decision No. 84315, dated April 15, 1975, and which are as follows:

"Pfeifer also holds a State of California contractor's license to do business as a contractor for mobile home installations and engages in the disassembly and preparation of mobile homes for travel prior to transporting the mobile homes, and in the reassembly and setup of the mobile homes for occupancy after transporting the mobile homes.

"Disassembly may involve taking the roof cap and all the molding off, separating the mobile home into two sections, jacking the two units apart with rollers, and covering up the open side of the halves with plywood or plastic to keep the weather out and to prevent the furniture from falling onto the road.

"The setup of the mobile home includes the removing of the plywood or plastic siding, leveling and joining of the two halves of the mobile home, setting the units on piers, bolting the roof together, putting on the roof cap, sealing the roof with roof sealer, checking the rest of the roof for leaks and if the water is flowing properly through the pipes, the electrical sockets and plugs are checked with special testers to make sure there are no shorts and that they all work, and the gas outlets are checked for leaks. Carpet padding and carpet are laid if so ordered.

"The disassembly and setup of work require a contractor's license and the work is performed by special crews who operate from pickup trucks which are used to carry the workmen and their tools and mobile home supplies to and from the units. These workmen do not perform any of the transportation services.

"The transportation functions by Pfeifer are performed by drivers who do not engage in the setting up or dismantling services. The transportation services commence when the drivers arrive with the toters or tractors at the location of the mobile homes and terminate upon completion of delivery and receipt by the consignee. The transportation services by these drivers include preparing the inside of the mobile home by taping to make sure it is safe to transport the mobile home, connecting the mobile home to the tractor, hooking up the safety chains, turn signals, brake lights, and clearance lights, putting on the breakaway switch, mirrors, flags, wide-load signs, and transporter plate, checking the tires and lugs to make sure they are tight, and airing and repairing the tires whenever necessary. At the destination the procedure is reversed. The mobile home is disconnected from the tractor, the safety chains, turn signals, brake lights, and clearance lights are unhooked, and the breakaway switch, mirrors, flags, wide-load signs, and transporter plates are taken off. The two units are parked as close together as possible so that no one can steal things, but they are not physically joined.

"Invoice No. 1277, which is for assembling a coach described as Southwood 24 x 63 S-8844 at the Point Dume Club, Malibu, shows a total charge for these services of \$581. Invoice No. 1141, which is the freight bill for shipping Southwood 12 x 63 S-8844 at the Point Dume Club, Malibu, shows a total charge for these services of \$581. Invoice No. 1141, which is the freight bill for shipping two Southwood 12 x 63 halves from Boise Cascade, Santa Fe Springs to Point Dume Club, Malibu, shows freight charges of \$70.80 per half plus \$9.40 for an L.A. County permit for each half, totaling \$160.40 for the complete unit.

"The record in this case shows that Pfeifer transports mobile homes whether or not he disassembles and sets them up."

Star objects to paying fees on revenue representing payments to it by the shipper or receiver under Item 240 (a) of MRT 18⁴/ and Item 260 (a) of MRT 18⁵/ . Star also objects to paying fees on revenue Star received from the shipper or receiver which Star in turn paid to subhaulers who actually performed the over-the-highway move where the subhaulers reported and paid the fees on such revenues.

Discussion

The validity of applicants' arguments as well as those put forward by the applicant in Application No. 54563 turns on whether or not money received for the disassembly, preparation, and setup of mobile home is included in the term "revenue derived from the transportation of property" as set forth in Section 5002. It is revenue, to be sure. Section 209 states that the "receipt"

4/ Item 240 reads in part as follows:

"In addition to all other applicable rates and charges named in this tariff, the following charges shall be assessed on shipments requiring escort service:

- (a) When carrier arranges for escort service from the carrier...(no less than equivalent amount paid by carrier).
- (b) When carrier, or its subsidiary or affiliate, provides escort service...(hourly and mileage rates)."

5/ Item 260 in part reads as follows:

"In addition to all other applicable rates and charges named in this tariff, the following charges shall be assessed on all permit shipments:

- (a) A charge shall be made equal to the fee, if any, assessed by the governmental agency for issuing each permit..."

and "delivery" of property is included in the term "transportation of property". When are the mobile homes received by the three applicants? After they have disassembled and prepared the mobile homes for transportation? No. Applicants take possession of the mobile homes for the purpose of transportation at the outset just prior to disassembly and preparation at which time they are in "receipt" of the property. Consequently, revenues received by the applicants for services performed after receipt of the property, in this case for the disassembly and preparation of the mobile home, constitute revenue derived from the transportation of property. Delivery of a mobile takes place when the carrier accomplishes its undertaking, namely, transporting the mobile home and setting it up for occupancy. Hence revenues derived by applicants covering services performed by applicants prior to the mobile home being ready for occupancy are likewise included in the term "revenue derived from the transportation of property". An outstanding feature about a mobile home is its transportability. When the owner of a mobile home decides to have it moved, the preparation for transportation and the setup at destination are usual and ordinary services incidental to the transportation of the mobile home and are therefore included in the term "transportation of property" as defined in Section 209. The fact that these incidental services may cost the owner of the home more money than he has to pay the carrier for transporting the mobile home over the highway in some instances indicates only that the shortness of the haul produced over-the-highway charges less than the total of the incidental charges. Longer hauls could produce hauling charges in excess of the incidental charges. The requirement of a contractor's license to perform these incidental services appears to be required to assure manual and technical competence, much the same as a driver's license is required to establish driving competence before one is permitted to lawfully drive a truck. In either case if the operation involves the transportation of property revenue derived therefrom is subject to the payment of the fees.

Highway carriers will often employ others to perform all or part of the service which the highway carrier has undertaken to perform. Pickup or delivery service will often be farmed out by a carrier and some carriers employ subhaulers to perform the line-haul service which the carrier has undertaken to perform. Sections 4304 and 5003.1 do not differentiate between revenue received by a carrier for service it undertakes to perform where the carrier uses its own employees and equipment and revenue received by a carrier for service it undertakes to perform where the carrier hires someone outside of its organization to perform the service. We hold that so long as a carrier is paid by the shipper or receiver for service which the carrier has undertaken to perform the gross amount paid to the carrier for the service is subject to the payment of fees by the carrier regardless of the method used by the carrier in satisfying the undertaking. This applies to escort service performed by an independent contractor for the carrier and subhauling for the carrier. In its brief the staff points out that the Commission's order in Resolution No. 3556, dated December 19, 1944, requires the carrier to deduct and pay fees from subhauler earnings making the carrier primarily responsible for the collection of those fees which in turn are paid to the Commission.

The payment of a permit fee by a carrier in order to transport over the highway property which is over-length, over-width, or over-height is a carrier expense. Since the fees and tax required to be paid by Sections 4304 and 5003.1 are based on gross operating revenue, all carrier revenue without deduction of expenses is subject to the fee.

Findings

1. Applicants hold radial highway common carrier permits issued by the Commission under which they engage in for-hire transportation of mobile homes over public highways.

2. MRT 18 governs the movement of mobile homes and provides for separate charges covering the preparation of each mobile home for transportation, preparation of each mobile home for occupancy, escort service, permit shipments, and line-haul movement.

3. In connection with applicants' line-haul operations applicants prepare mobile homes for transportation, furnish escort service, obtain permits to move oversize shipments, and prepare mobile homes for occupancy; they charge the shippers or receivers of the mobile homes in accordance with the rates and charges set out in MRT 18.

4. Some of the applicants hire independent contractors to perform escort service and some engage subhaulers to perform the line-haul transportation in operations set out in Finding 3.

5. In the operations described in Finding 3 the preparation for transportation of a mobile home and the preparation of a mobile home for occupancy are services performed in connection with and incidental to the transportation of property and the revenue obtained by applicants for such services is subject to the payment of fees and tax required by Sections 4304 and 5003.1.

6. A contractors license law which requires a showing of manual and technical competence before certain transportation operations may be lawfully performed does not exclude such operation from the definition of "transportation of property" found in Section 209.

7. The gross amount of revenue received by a carrier for transportation services rendered by the carrier is subject to the payment of fees even though the carrier hired someone outside of its organization to perform any or all of the services.

8. Revenue received by a carrier as reimbursement for the carrier's expense in securing a permit to transport over-size shipments is subject to the payment of fees and tax.

Conclusions

1. The subject revenues constitute gross operating revenue derived from the transportation of property on which fees and tax should be paid in accordance with Sections 4304 and 5003.1.
2. The relief requested in the applications should be denied.

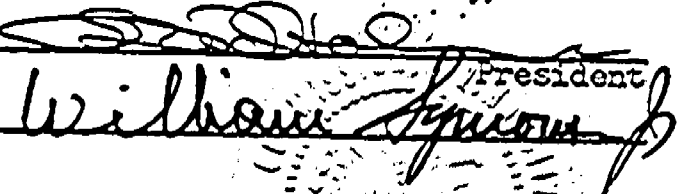
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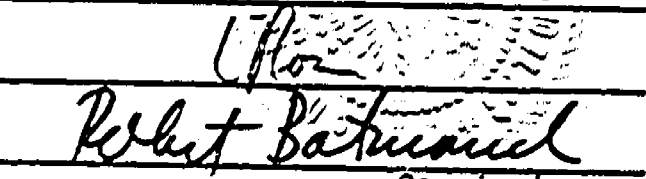
IT IS ORDERED that:

1. Finance and Accounts Division Audits Nos. 7698, 7599, 7514, and 7747 are affirmed.
2. The relief requested in the applications is denied.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 17th
day of AUGUST, 1976.



President


Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.