

ORIGINAL

Decision No. 88772 MAY 2 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of DE WITT TRANSFER )  
 and STORAGE COMPANY pursuant to )  
 Public Utilities Commission Code )  
 Section 4310 for refund of High- )  
 way Carriers Uniform Business )  
 License Tax payments made during )  
 the past three years. )

Application No. 57568  
 Filed September 15, 1977

O P I N I O N

Applicant is engaged in the transportation of property over the highways of the State of California as a radial highway common carrier, highway contract carrier and household goods carrier. It also operates under a certificate of public convenience and necessity issued by the Interstate Commerce Commission in Docket MC 137014 for the transportation of mail within certain western states including the State of California. This transportation is performed in vehicles devoted exclusively to the transportation of mail.

In this proceeding the applicant seeks a refund of the Highway Carriers' Uniform Business License Taxes which it has paid over the past three years pursuant to Section 4304 of the Public Utilities Code and which it asserts were collected illegally. The applicant's contentions in this proceeding are identical with those it made in Application 56978 filed January 3, 1977.

In Decision 88315 dated January 10, 1978 in that proceeding, we found that the revenue from the transportation of co-mingled interstate and intrastate mail in sacks, from the Bulk Mail Center in Bell, California to various points throughout California, was not subject to the Transportation Rate Fund Act, but that revenues from transportation of mail under mail delivery contracts strictly in intrastate commerce, was so subject.

We also found there that the three year statute of limitations provided in Section 338 of the Code of Civil Procedure applied to refunds of rate fund fees. For the purpose of this proceeding,

the statute was tolled on September 14, 1974. However, by letter dated March 30, 1978, the applicant has requested that any refund due be calculated commencing October 1, 1974.

DeWitt Transfer and Storage Company has computed the percentage of purely intrastate transportation for the period of October 1, 1974 to December 31, 1974 and the years 1975 and 1976 and the 1st half of 1977 and has determined the separate and total revenues for intrastate and interstate mail transportation and the amount to be refunded, as follows:

	<u>Intrastate</u>	<u>Interstate</u>	<u>Total</u>
1974 (4th quarter)	\$ 8,147.54	\$ 346,093.28	\$ 354,240.82
1975	23,546.18	1,000,200.89	1,023,747.07
1976	35,353.09	1,483,796.69	1,519,149.78
1977 (1st half)	<u>21,166.64</u>	<u>592,407.02</u>	<u>613,573.66</u>
TOTAL	<u>\$88,219.45</u>	<u>\$3,422,497.88</u>	<u>\$3,510,711.33</u>

Total Highway Carriers' Uniform Business License Taxes paid based on total revenue from transportation of mail

(\$3,510,711.33 x 1/10 of 1%) \$3,510.71

Tax due on intrastate revenue

(\$88,213.45 x 1/10 of 1%) \$ (88.21)

Refund Due \$3,422.50

DeWitt Transfer and Storage Company has filed its application for refunds in this proceeding by letter. The staff has notified the Executive Director of its agreement with the claim, and pursuant to Section 4310 of the Public Utilities Code, the Executive Director shall cause a refund to be made to DeWitt Transfer and Storage Company of such over-contributions to the Highway Carriers' Uniform Business License Tax Account in the total amount of \$3,422.50.

Inasmuch as the phrase "gross operating revenue" in the Highway Carriers' Uniform Business License Tax Act is defined by making reference to that phrase in the Transportation Rate Fund Act, we adopt the findings and conclusions of law made in Decision 88315 in the disposition of this proceeding.

O R D E R

IT IS ORDERED that:

1. Pursuant to Section 4310 of the Public Utilities Code, the Executive Director is directed to cause a refund to be made to DeWitt Transfer and Storage Company of the difference between the amount contributed to the Highway Carriers' Uniform Business License Tax Account pursuant to Section 4304 of the Public Utilities Code based upon intrastate revenue for the transportation of United States mail between the period October 1, 1974 and June 30, 1977, and the total amount contributed to this account for the transportation of United States mail, which amount of refund totals \$3,422.50.

2. DeWitt Transfer and Storage Company shall include in its future quarterly reports of Gross Operating Revenue to the Commission all revenues received from the transportation performed pursuant to United States mail delivery contracts of a purely intrastate nature.

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

Dated at San Francisco, California, this 2nd day of MAY, 1978.

Robert Babronis

President

William S. ...

Leonard L. ...

Robert D. ...

Clair J. ...

Commissioners