

INTERNAL POLICY DIRECTIVE 2006-9

September 29, 2006

SINGLE BUSINESS TAX – TRANSPORTATION APPORTIONMENT FOR BUSINESS ACTIVITY: 1) TRANSPORTATION DEFINED, AND 2) TREATMENT OF RAIL CARRIER TRACKAGE AND HAULAGE MILES

INTRODUCTION

This Internal Policy Directive addresses: 1) the meaning of the term “transportation” as used in MCL 208.57 for purposes of apportioning the tax base of taxpayers conducting transportation services other than transporting oil and gas by pipeline and, 2) whether a rail carrier must include “haulage miles” and “trackage miles” in the calculation of the apportionment ratio.

POLICY ISSUES

1. What does the term “transportation” mean as used in the Single Business Tax Act (“SBTA”)¹ for purposes of apportionment?
2. Must a taxpayer whose business activity in Michigan consists of rendering rail transportation services include haulage and trackage miles in revenue miles for purposes of calculating the apportionment ratio?

POLICY DETERMINATIONS

1. Transportation is the carrying or conveying of property or persons from one place to another for others as a commercial enterprise, and does not include ancillary services performed in connection with transportation provided by another.
2. Haulage and trackage miles must be included in revenue miles for purposes of calculating the apportionment ratio. There is no statutory provision for excluding haulage or trackage miles from revenue miles used in the calculation of the apportionment ratio under MCL 208.57.

DISCUSSION

Transportation

A taxpayer, whose business activity consists of transportation services, other than the transportation of oil or gas by pipeline, must determine the portion of its tax base apportioned to Michigan pursuant to section 57 of the SBTA.² Section 57 (1) provides:

In the case of a taxpayer under section 56 other than one whose activity consists of the transportation of oil or gas by pipeline, the tax base attributable to Michigan sources shall be that portion of the tax base of the taxpayer derived from transportation services wherever performed that the revenue miles of the taxpayer in Michigan bear to the revenue miles of the taxpayer everywhere. A revenue mile means the transportation for a consideration of 1 net ton in weight or 1 passenger the distance of 1 mile. The tax base attributable to Michigan sources in the case of a taxpayer engaged in the transportation both of property and of individuals, shall be that portion of the entire tax base of the taxpayer

¹ MCL 208.1 *et seq*

² MCL 208.56

which is equal to the sum of his passenger miles and ton mile fractions, separately computed and individually weighted by the ratio of gross receipts from passenger transportation to total gross receipts from all transportation, and by the ratio of gross receipts from freight transportation to total gross receipts from all transportation, respectively.³

By definition the statutory term “revenue mile” requires that the transportation be provided for consideration. The term “transportation” however, is not defined in the Internal Revenue Code in a similar context or in the SBTAs. In such instances it is appropriate to consult a dictionary for a term not defined by statute.⁴ “When determining the common, ordinary meaning of a word or phrase, consulting a dictionary is appropriate.”⁵ *Black’s Law Dictionary* defines “transportation” to mean: “The movement of goods or persons from one place to another by a carrier.”⁶ *The American Heritage College Dictionary* defines “transportation” as: “The act or an instance of transporting. . . . A means of conveyance. The business of conveying passengers or goods. . . .”⁷

From these definitions, the Department interprets the term “transportation” to mean the service of carrying or conveyance of property or persons from one place to another for others as a commercial enterprise. The formula set forth above in section 57 of the SBTAs can be applied to taxpayers receiving compensation for conveying property or individuals for others. However, the apportionment formula cannot sensibly be applied to those entities merely providing ancillary services that are used in connection with the transportation of property or persons by another. Only the service of transporting goods or individuals for consideration falls within the definitions of revenue miles and transportation. That service is defined by contractual terms between two parties, and will include transportation services that are subcontracted to another. However, the term transportation does not include ancillary services that are performed merely in connection with transportation services performed by another.

Taxpayers engaged in the business activity of carrying or conveying property or people from one place to another for consideration are engaged in transportation irrespective of whether the instrumentalities and facilities of shipment, conveyance or carriage used in the transportation service are owned by the taxpayer; are contracted for use by the taxpayer; or, the services are provided on behalf of the taxpayer by another party under contract. The determination of whether a business is engaged in transportation activity will be based on all the relevant facts and circumstances made known to the Department.

Example 1

X Company is in the business of transporting new automobiles from the manufacturer to dealers throughout the country. Y Company’s business activity is the loading and unloading of new automobiles to and from the railcars of X Company. For operational efficiency and orderly transfer, Y Company has marshalling areas it uses in connection with the loading and unloading of the automobiles from X Company’s railcars.

Ruling

The conveyance of the automobiles by X Company from one location to another constitutes transportation services as defined by the SBTAs and must be

³ MCL 208.57(1)

⁴ *Peters v Gunnell, Inc*, 253 Mich App 211, 220; 655 NW2d 582 (2002)

⁵ *Title Office, Inc v Van Buren Co Treasurer*, 469 Mich 516, 522; 676 NW2d 207 (2004)

⁶ *Black’s Law Dictionary* (8th Ed, 2004)

⁷ *The American Heritage College Dictionary* (3rd ED) p 1438

apportioned pursuant to section 57. The marshalling areas used by Y Company are merely used to allow for orderly loading and unloading of rail cars. The services performed by Y Company in connection with the transportation services of X Company do not constitute transportation services under the statute and therefore apportionment by Y Company under section 57 is inapplicable.

Example 2

A Company is involved in interstate shipments and is contracted by Z Company. Z Company is in the transportation business, has interstate operating authority and contracts with customers to provide transportation services for consideration. A Company does not have such authority but ships under the authority of Z Company. A Company operates in accordance with a contractor operating agreement with Z Company. The contract between Z Company and A Company is transparent to Z Company's customers. Z Company performs all billing and collection activities on A Company's shipments and accepts full responsibility for any liability related to these shipments. Under the agreement, A Company as owner of the transportation equipment provides skilled, professional hauling and related services to Z Company. A Company has no terminal locations in Michigan. A Company determines the methods, means and manner of performance of the shipments including choice of routes, service of equipment and rest stops.

Ruling

The purpose of the agreement between A Company and Z Company is for the professional hauling of property. A Company is actively engaging in the conveyance of goods from one location to another for Z Company. A Company's activities comport with transportation activity under the SBTA. As such, A Company must apportion its tax base pursuant to section 57. Similarly, Z Company's contracts with its customers call for it to provide transportation services, and Z Company must also apportion its tax base pursuant to section 57.

Example 3

B Company is a manufacturer and seller of goods. B Company delivers the goods that it manufactures and sells in vehicles that it leases or owns to its warehouses throughout the country.

Ruling

B Company is not engaged in the actual conveyance of property or individuals for others as a commercial enterprise and therefore is not engaged in transportation services. As a manufacturer, B Company may not use the section 57 apportionment formula.

In view of the foregoing, the term "transportation" for purposes of apportionment under section 57 of the SBTA means the carrying or conveyance of property or persons from one place to another for others as a commercial enterprise, and does not include ancillary services performed in connection with transportation provided by another.

Revenue Miles

Railroads in this country are regulated by the United States Surface Transportation Board ("Transportation Board"). Because trains are restricted in the routes that they may use to get

from one point to another, the Transportation Board mandates that railroads permit each other to use each other's track under agreement for a fee. Two such arrangements are "trackage" rights and "haulage" rights.

Trackage rights, also known as running rights, are an arrangement where the company that owns the line retains all rights, but allows another rail company to operate its trains over certain sections of the line owner's track.

Haulage is a legal agreement between two rail partners. The party requiring the conveyance of property or persons is referred to as the "Haulage Rights Carrier." The other partner is the line owner and referred to as the "Haulage Movement Carrier." With this agreement, the "rights carrier" requests the line owner or "movement carrier" to move the rights carrier's rail equipment over an agreed segment of track using a crew employed by the line owner. To outside parties it appears as if the "rights carrier" is doing the work.

Because of the nature of the rail industry, trackage and haulage miles are a required convention in providing transportation service by rail. The statutory formula included in section 57 requires the inclusion of "revenue miles of the taxpayer everywhere" in the denominator. A revenue mile means the transportation for a consideration of 1 net ton in weight or 1 passenger the distance of 1 mile. Section 57 provides no statutory basis for the exclusion of haulage or trackage miles, which are standard industry practice in rail transportation, from revenue miles.

The fees paid for haulage or trackage miles are a necessary expense incurred by taxpayers in the completion of a contract for the transportation of property or individuals by rail. Haulage and trackage miles are as much an integral component in completing a transportation contract and moving freight from point A to point B as miles traversed on lines owned by the taxpayer. The revenue received from transportation contracts that require the incidence of haulage or trackage miles is included in gross receipts and business income for purposes of the SBT the same as if the miles traveled were on the taxpayer's own line. Because there is no specific statutory provision to exclude haulage or trackage miles from revenue miles, the Department will require their inclusion in the calculation of the transportation apportionment ratio. However, miles traveled in Michigan while carrying no cargo or passengers for consideration (deadhead miles) are not included in the apportionment formula.

Example 4

X Company provides freight rail transportation services in several Midwestern states. It does not have any track in Michigan. Y Company is a line owner in Michigan. X Company has a contract with Y Company under which Y Company will move X Company's trains through Michigan to Canada where the train is further moved by a Canadian carrier. Y Company uses its employees to move X Company's loaded train through Michigan. No pick up or delivery of freight occurs in Michigan. X Company has employees in Michigan to assist with border documentation and the marketing of its rail transportation services.

Ruling

X Company is in the business of transporting freight for others for consideration and must apportion pursuant to section 57. The haulage miles incurred in Michigan must be included in the Michigan revenue miles in the numerator. The denominator reports the revenue miles incurred everywhere. The denominator will include all haulage and trackage miles incurred everywhere in revenue miles. Similarly, Y Company is also contractually engaged in providing transportation

services in Michigan, and must include the haulage miles in its apportionment numerator and denominator.

Therefore, for purposes of computing the apportionment ratio for rail transportation services, revenue miles include haulage and trackage miles. Revenue miles inclusive of haulage and trackage miles incurred in Michigan shall be included in the numerator of the apportionment ratio and the revenue miles inclusive of haulage or trackage miles everywhere shall be included in the revenue miles reported in the denominator.

CONCLUSION

For purposes of apportionment under section 57 of the SBTA, the term “transportation” means the contractual obligation of carrying or conveyance of property or a person from one place to another for others as a commercial enterprise, and does not include ancillary services performed in connection with transportation provided by another. Section 57 apportionment is inapplicable to taxpayers that do not have the contractual obligation to convey or carry freight or persons for consideration but merely perform services in connection with transportation services performed by others. The Department requires the inclusion of haulage and trackage miles in revenue miles used for the calculation of the transportation apportionment ratio.