

COMM. OF REVENUES *v.* TRANSCONTINENTAL BUS SYSTEM, INC.

5-1257

301 S. W. 2d 569

Opinion delivered May 6, 1957.

1. TAXATION—INCOME TAX—INTERSTATE BUSINESSES—UNITARY FORMULA OR METHOD — DISCRIMINATION — PRESUMPTION & BURDEN OF PROOF OF.—The validity of a state income tax formula for allocating to the taxing state a portion of the total income of a business that extends into other states, where the business within the state is not separable, is generally upheld unless the taxpayer sustains the burden of showing that it produces an arbitrary and unreasonable result as applied in the particular case.
2. TAXATION—INCOME TAX—INTERSTATE BUSINESSES—UNITARY METHOD OF ALLOCATION — DISCRIMINATION — WEIGHT & SUFFICIENCY OF EVIDENCE.—Showing of a comparatively low traffic density in Arkansas by interstate bus companies held insufficient to show that unitary tax formula [which allocates operating expenses in rela-



84-2003 (d) and (e). Subsection (e) reads in part: "When the business of such utility is partly within and partly without the State, their net income within the jurisdiction of this State shall be ascertained by taking their gross 'operating revenues' within the State, including in this gross 'operating revenues' within the state the equal mileage proportion within the State of their interstate business and deducting from their gross 'operating revenues' the proportionate average of operating expenses or operating ratio for their whole business as shown by the Interstate Commerce Commission standard classification of accounts.

"To the net operating revenues thus determined shall be added revenues from miscellaneous operations within the State and other nonoperating income from sources within the State, together with a proportionate part based upon the ratio of gross operating revenues from sources within the State to their entire gross operating revenues of all non-operating income from sources other than within this State and deducted therefrom miscellaneous operating expenses within the State and a proportionate part of all deductions from gross income as set forth in the Interstate Commerce Commission classification of accounts based upon the proportionate average of operating expenses for their whole business."

Now it is conceded that the amounts of the deficiency assessments made by the Commissioner are correct if the statutory formula is properly applicable. Nor do appellees find any fault with the formula except as it may be applied in determining the deductible item of operating expenses allocable to Arkansas. In making the assessments, the Commissioner accepted the returns made by appellees as to gross operating revenues and expenses for the years in question and arrived at a net operating income by determining the operating expenses allocated to Arkansas in accordance with the various factors prescribed in the statutory formula. Appellees used a different method and determined the operating expenses allocated to Arkansas upon a "system cost per



inite relation to the percentage that Arkansas revenues bear to system expenses; that there is actually no need for the use of a formula in the instant case; and that due to the comparatively low traffic density in Arkansas and other less important "cost factors" involved here, use of the statutory formula produces an unrealistic, arbitrary and unconstitutional result. Similar contentions were thoroughly considered and determined against the carrier under facts and circumstances perhaps more favorable to it than those involved here in *Cook, Commissioner of Revenues v. Kansas City Southern Railway Company*, 212 Ark. 253, 205 S. W. 2d 441. Certiorari was denied by the U. S. Supreme Court in 333 U. S. 873, 92 L. Ed. 1150, 68 Sup. Ct. 902. In that case deficiency income tax assessments were made and sustained against the railway by the same accountant using the same formula as in the case at bar and we reversed the trial court's holding that the carrier was entitled to substitute a different method along the lines advocated by appellees in this case. There, as here, the state's comparatively low traffic density together with certain less important factors prompted the attempted deviation from the statutory formula. The principles announced there are controlling here and in harmony with those laid down in *Norfolk & W. R. Co. v. North Carolina, supra*. We accordingly conclude that appellees failed to sustain the burden of proving the statutory formula oppressive and discriminatory, or that they have been deprived of any constitutional right by reason of its application in the instant case.

The decree is, therefore, reversed, and judgment will be entered here in favor of the appellant for the deficiency assessments.