



Statement of Non-Acquiescence
No. 02- 001
Sales and Use Tax
September 18, 2002

Pumpkin Air and Offshore Logistics, Inc. v. Secretary of the Department of Revenue and Taxation, (95-1495 La. App. 3 Cir, 04/03/96; 671 So. 2d 1131)

Purpose: The purpose of this statement is to announce that the Department of Revenue will not acquiesce in the above decision, insofar as the decision might be interpreted to mean that the numerator of the mileage ratio for use by interstate transportation companies in paying sales or use taxes under R.S. 47:306.1 shall include only the mileage logged by the carriers on intrastate trips, and shall not include any Louisiana mileage logged on interstate trips.

Analysis/Discussion: The taxpayer in the above litigation sought a refund of a portion of the taxes that the taxpayer had earlier remitted to the state on purchases for the operation of its business that provided foreign and interstate transportation. The taxpayer had elected the formula provided by R.S. 47:306.1 to determine the amount of tax due to the state on the taxpayer's purchases of helicopters and the supplies and materials needed to operate the helicopters.

R.S. 47:306.1 was enacted in 1956 to provide an optional formula for the payment of sales and use tax by businesses engaged in providing interstate and foreign transportation. Under this statute, the dealer who elects to pay tax by the use of the formula multiplies his total purchases during the taxable period, in Louisiana or elsewhere, by a fraction. The numerator of the fraction is his Louisiana mileage during the taxable period, and the denominator is his total mileage. The tax rate is applied to that multiplication product to determine the tax due.

The taxpayer's refund claim amount was based on the taxpayer's including only Louisiana mileage on intrastate trips in the numerator and excluding from the numerator of the apportionment fraction the Louisiana mileage that was logged on interstate trips. That change resulted in the taxpayer's claim that sales or use tax was due on only three percent of purchases, instead of on the 15 percent of purchases on which the sales or use tax had earlier been paid. The Department of Revenue challenged the claim, primarily on procedural grounds. Consideration of the issue before the Board of Tax Appeals (BTA), the District Court and the Third Circuit Court of Appeals focused largely on those procedural challenges by the Department.

The taxpayer's right to change the fraction on which the tax liability had been calculated, and the right to file a claim for refund of taxes, rather than a claim against the state, on the basis of the reduced fraction were the major issues that the Third Circuit Court commented on in its decision. The Third Circuit Court did not address the issue of whether Louisiana mileage on interstate trips should be included in the numerator of the fraction. The Court simply addressed whether the BTA's finding of fact that the taxpayer's intrastate flight miles made up only three percent of flight miles was manifestly erroneous. The Court did not address whether both interstate and intrastate miles are includible in the numerator of the fraction.

The position of the Department of Revenue is that, by excluding Louisiana mileage on interstate trips from the numerator of the fraction, the taxpayer will have effectively apportioned its tax liability two times, in contravention of the meaning and purpose of R.S. 47:306.1. For that reason, the position of the Louisiana Department of Revenue continues to be that the numerator of the mileage fraction used to calculate the sales and use tax liability of interstate and foreign transportation companies under R.S. 47:306.1 shall include Louisiana mileage on both interstate and intrastate trips.

Questions concerning this matter can be directed to the Policy Services Division at (225) 219-2780.

Cynthia Bridges
Secretary

By: Raymond E. Tangney
Senior Policy Consultant
Policy Services Division

A Statement of Acquiescence or Nonacquiescence (SA/SNA) is written to provide guidance to the public and to Department of Revenue employees. It is issued under Section 61:III.101(C)(2)(c) of the Louisiana Administrative Code to announce the department's acceptance or rejection of a specific unfavorable court or administrative decision. If a decision covers several disputed issues, a SA/SNA may apply to just one of them, or more, as specified. A SA/SNA is not binding on the public, but is binding on the department until superseded or modified by a subsequent SA/SNA, declaratory ruling, rule, statute or court case.