

1 of 3 DOCUMENTS

**THE DUPPS COMPANY, APPELLEE, v. LINDLEY, TAX COMM.,
APPELLANT**

No. 79-1223

Supreme Court of Ohio

62 Ohio St. 2d 305; 405 N.E.2d 716; 1980 Ohio LEXIS 745; 16 Ohio Op. 3d 354

June 11, 1980, Decided

PRIOR HISTORY: [***1] APPEAL from the Court of Appeals for Montgomery County.

This cause originated as applications by taxpayer-appellee, The Dupps Company, for review and correction of franchise tax assessments covering the tax years 1973 through 1975.

Appellee is an Ohio corporation with its principal place of business in Germantown, Ohio. It manufactures heavy machinery and replacement parts for use in the meat processing industry, which it sells to customers in all 50 states and approximately 20 foreign countries. In most instances, the customer is responsible for shipment of the equipment from appellee's Germantown plant.

In computing its franchise tax obligation on the basis of the net income method authorized by *R. C. 5733.05(B)*, appellee excluded from the sales factor of the formula its "customer pick-up" sales. These were sales to non-Ohio customers, where the purchaser either used his own vehicles to transport the equipment from the Germantown factory or hired private truckers to do the same.

Appellant, Tax Commissioner, however, determined that these customer pick-ups were Ohio sales includable in the apportionment formula of *R. C. 5733.05(B)(2)*. Appellant, therefore, recomputed [***2] appellee's franchise tax liability for the years in question and assessed taxpayer an additional \$ 11,204.96. The Board of Tax Appeals affirmed the commissioner's orders imposing these assessments. Upon appeal, the Court of Appeals reversed the board's decision.

The cause is now before this court pursuant to allowance of a motion to certify the record.

DISPOSITION: *Judgment affirmed.*

CASE SUMMARY:

PROCEDURAL POSTURE: Appellant tax commissioner sought review of a judgment from the Court of Appeals for Montgomery County (Ohio), which reversed the decision of board of tax appeals upholding the determination of the commission that appellee taxpayer owed additional franchise tax liability. The commission contended that pick-up sales by out of state customers were taxable under *Ohio Rev. Code Ann. § 5733.05(B)(2)*.

OVERVIEW: The taxpayer was an Ohio corporation with its principal place of business in Ohio. It manufactured heavy equipment, which it sold to customers in all states and approximately 20 foreign countries. In most instances, the customer was responsible for shipment of the equipment from the taxpayer's plant. In computing its franchise tax obligation on the basis of the net income method authorized by *Ohio Rev. Code Ann. § 5733.05(B)*, the taxpayer excluded from the sales factor of the formula its "customer pick-up" sales. These were sales to non-Ohio customers, where the purchaser either used his own vehicles to transport the equipment from the factory or hired private truckers to do the same. In affirming the judgment of the court of appeals, the court held that by isolating part I of *Ohio Rev. Code Ann. § 5733.05(B)(2)(c)*, the board failed to consider the statute as a whole. A customer pick-up constituted "other transportation" within the meaning of the second paragraph of *§ 5733.05(B)(2)(c)* and the phrase "after all transportation is completed" meant just what it said, including those cases in which the out-of-state purchaser furnished its own transportation.

OUTCOME: The court affirmed the judgment of the court of appeals, which reversed the board.

LexisNexis(R) Headnotes

