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**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**

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

**Contracts Law > Types of Contracts > Personal Property**

**Tax Law > State & Local Taxes > Sales Tax > General Overview**

**Transportation Law > Carrier Duties & Liabilities > State & Local Regulation**

[HN1] *Ohio Rev. Code Ann. § 5733.05(B)(2)(c)* provides, in part: [I] To the extent that the value of business done in this state is measured by sales of tangible personal property, it shall, for the purpose of this section and of *Ohio Rev. Code Ann. § 5733.03*, mean sales where such property is received in this state by the purchaser. [II] In the case of delivery of tangible personal property by common carrier or by other means of transportation, the place at which such property is ultimately received after all transportation has been completed shall be considered as the place at which such property is received by the purchaser. [III A] Direct delivery in this state, other than for purposes of transportation, to a person or firm designated by a purchaser constitutes delivery to the purchaser in this state and [III B] direct delivery outside this state to a person or firm designated by a purchaser does not constitute delivery to the purchaser in this state, regardless of where title passes or other conditions of sale.

**Governments > Legislation > Interpretation**

[HN2] A construction should be adopted which permits a statute and its various parts to be construed as a whole. *Ohio Rev. Code Ann. § 1.47* provides that in enacting a statute, it is presumed that: (B) the entire statute is intended to be effective. *Ohio Rev. Code Ann. § 1.42* mandates, in part, that words and phrases shall be read in context.

**Governments > Legislation > Interpretation**

**Tax Law > State & Local Taxes > Sales Tax > General Overview**

[HN3] By the terms of part (I) of *Ohio Rev. Code Ann. § 5733.05(B)(2)(c)* all sales where such property is received in this state by the purchaser are to be included in the tax computation. Part (II) defines specifically when property is considered to be "received" in this state. Is Ohio the place at which such property is ultimately received after all transportation has been completed? If it is, then such is property received in this state by the purchaser within the meaning of Part (I). Under part II the situs of the sale is not determined until all transportation is completed. Nowhere can it be inferred that the General Assembly intended to exclude transportation furnished by the purchaser.

**Governments > Legislation > Interpretation**

**Tax Law > State & Local Taxes > Sales Tax > General Overview**

[HN4] A customer pick-up constitutes "other transportation" within the meaning of the second paragraph of *Ohio Rev. Code Ann. § 5733.05(B)(2)(c)* and that the phrase "after all transportation is completed" means just what it says, including those cases in which the out-of-state purchaser furnishes its own transportation.

**HEADNOTES**

*Taxation -- Franchise tax -- Computation -- Net income method -- Apportionment formula -- Ohio sales, construed -- R. C. 5733.05(B)(2)(c).*

**SYLLABUS**

In computing a seller's franchise tax liability, transportation of tangible personal property by a non-Ohio purchaser to his place of business outside this state is within the meaning of the phrases "other means of transportation" and "all transportation" in *R. C. 5733.05(B)(2)(c)*, for the purpose of determining the value of business done in this state.

**COUNSEL:** *Coolidge, Wall, Matusoff, Womsley & Lombard Co., L.P.A.*, and *Mr. Merle F. Wilberding*, for appellee.

*Mr. William J. Brown*, attorney general, and *Mr. Charles M. Steines*, for appellant.

**JUDGES:** SWEENEY, J. CELEBREZZE, C. J., HERBERT, W. BROWN, HOFSTETTER and HOLMES, JJ., concur. P. [\*\*\*3] BROWN, J., dissents. HOFSTETTER, J., of the Eleventh Appellate District, sitting for LOCHER, J.

**OPINION BY:** SWEENEY

**OPINION**

[\*306] [\*\*718] The sole issue presented herein concerns the proper interpretation of [HN1] *R. C. 5733.05(B)(2)(c)*, which provides, in pertinent part:

"\* \* \* [I] To the extent that the value of business done in this state is measured by sales of tangible personal property, it shall, for the purpose of this section and of *section 5733.03 of the Revised Code*, mean sales where such property is received in this state by the purchaser. [II] In the case of delivery of tangible personal property by common carrier or by other means of transportation, the place at which such property is ultimately received after all transportation has been completed shall

62 Ohio St. 2d 305, \*; 405 N.E.2d 716, \*\*;  
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be considered as the place at which such property is received by the purchaser. [III A] Direct delivery in this state, other than for purposes of transportation, to a person or firm designated by a purchaser constitutes delivery to the purchaser in this state and [III B] direct delivery outside this state to a person or firm designated by a purchaser does not constitute delivery to the purchaser in this state, [\*\*\*4] regardless of where title passes or other conditions of sale." (Bracketed material added.)

[\*307] Appellant asserts that, under part I above, the equipment is deemed "received in this state by the purchaser" when it is picked up at the Germantown factory. Therefore, the customer pick-ups constitute Ohio sales. The Board of Tax Appeals accepted this construction of the statute. It held that the situs of the instant sales could be determined by viewing part I alone; thus, the other parts need not be considered.

However, as the Court of Appeals correctly noted, by isolating part I, the board failed to consider the statute as a whole. As this court observed in *Humphrys v. Winous Co.* (1956), 165 Ohio St. 45, 49, [HN2] " \* \* \* a construction should be adopted which permits the statute and its various parts to be construed as a whole \* \* \*." Additionally, *R. C. 1.47* provides that "[i]n enacting a statute, it is presumed that: \* \* \* (B) [t]he entire statute is intended to be effective"; and *R. C. 1.42* mandates, in part, that "[w]ords and phrases shall be read in context \* \* \*."

When the other parts of *R. C. 5733.05(B)(2)(c)* are considered, it is apparent that appellant's [\*\*\*5] interpretation cannot be sustained. This identical section was previously analyzed by this court in *House of*

previously analyzed by this court in *House of Seagram v. Porterfield* (1971), 27 Ohio St. 2d 97, 100, as follows:

[HN3] "By the terms of part (I) of the statute all sales 'where such property is received in this state by the purchaser' are to be included in the tax computation. Part (II) defines specifically when property is considered to be 'received' in this state. Is Ohio 'the place at which such property is ultimately received after all transportation has been completed?' If it is, then such is property 'received in this state by the purchaser' within the meaning of Part (I)."

Under part II the situs of the sale is not determined until *all* transportation is completed. Nowhere can it be inferred that the General Assembly intended to exclude transportation furnished by the purchaser. Furthermore, this court can conceive of no reason to distinguish such sales on the basis of the identity of the shipper.

Therefore, we adopt the holding of the Court of Appeals that [HN4] "a customer pick-up constitutes 'other transportation' within the meaning of the second paragraph of *Section 5733.05(B)(2)(c), Revised Code*, [\*\*\*6] and that the phrase 'after all [\*308] transportation is completed' means just what it says, including those cases in which the out-of-state purchaser furnishes its own transportation."

Since the equipment herein was "ultimately received" outside of Ohio, such sales should not have been included in the sales factor as business done in this state. Therefore, the judgment of the Court of Appeals is affirmed.

*Judgment affirmed.*