

STATE OF ALABAMA §
DEPARTMENT OF REVENUE, §

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DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

v. §

DOCKET NO. ADV. 87-176

DELTA AIRLINES, INC. §
Corporate Taxes -- Dept. 852 §
P.O. Box 20534 §
Hartsville Atlanta Intl Airport §
Atlanta, GA 3032-2534, §

Taxpayer. §

ORDER

The Department entered a tentative assessment of value of utility property against Delta Airlines, Inc. ("Taxpayer") for the tax year 1987. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on November 18, 1987. The Hon. Helene Cohen appeared on behalf of the Taxpayer. Assistant counsel Ron Bowden represented the Department. Based on the evidence and arguments presented by the parties, the following findings of fact and conclusions of law are hereby made and entered.

FINDINGS OF FACT

Code of Ala. 1975, §40-9-1(24) exempts from ad valorem tax all aircraft, replacement parts, etc. used by a certified or licensed air carrier in a "hub operation within this state". A hub operation is defined by the above statute as a location where there "originates" fifteen or more flight departures and five or more "different first-stop destinations." Further, each flight must operate at least five days per week for six or more months during

the year, and property and/or passengers must be exchanged at the location between flights.

The issue to be decided is whether the Taxpayer's Birmingham operation constitutes a hub within the scope of the above exemption.

The relevant facts are undisputed. The Taxpayer is an air carrier and operates twenty different flights that either begin, are routed through, or terminate in Birmingham. Each flight operates at least five days per week for more than six months during the year. Passengers and/or property are regularly exchanged between flights.

Five of the flights begin in Birmingham and another five have Birmingham as a final destination. For the remaining ten flights, Birmingham is a connecting city. All total, fifteen different flights depart from Birmingham on a regular basis.

All flights departing from Birmingham (both beginning and connecting flights) make first-stops at any one of seven different cities. However, all flights beginning in Birmingham make a first-stop in Atlanta. Birmingham is the first-stop for generally three or four different flights.

CONCLUSIONS OF LAW

Code of Alabama 1975, §40-9-1(24) provides an exemption from ad valorem taxes as follows:

(24) All aircraft, replacement parts . . ., when used by a certified or licensed air carrier with a hub operation within this state,. . . For the purpose of this subdivision, the words "hub operation

within this state" shall be construed to have all of the following criteria:

(a) There originates from the location 15 or more flight departures and five or more different first-stop destinations five days per week for six or more months during the calendar year; and

(b) Passengers and/or property are regularly exchanged at the location between flights of the same or a different certified or licensed air carrier.

The parties agree that the Taxpayer is a licensed air carrier and that property and passengers are regularly exchanged between flights in Birmingham. Further, all flights operate at least five days a week for six or more months during the year. Thus, the only issue is whether there originates from Birmingham fifteen or more flight departures and five or more different first-stop destinations.

The Department argues that "originates" should be construed to mean "begins". Thus, a flight originates only once, at the location where the flight number is assigned and it first departs. Under that interpretation, the exemption should be denied because only five flights actually begin in Birmingham.

On the other hand, the Taxpayer equates "originates" with "departs". That is, a flight originates each time it departs a location. For example, a flight from Atlanta to Dallas-Ft. Worth via Birmingham and Memphis would originate upon each departure from Atlanta, Birmingham and Memphis. If the Taxpayer is correct, the exemption would apply because fifteen flights depart Birmingham on a regular basis.

"Originate" is not defined by applicable Alabama law. in such cases, a word must be given its plain, common meaning. Adams v. Mathis, 350 So.2d 381; Darks Dairy v. Alabama Dairy Commission, 367 So.2d 1378. The American Heritage Dictionary, Second College Edition, defines "originate" as follows: "To bring into being; create. To come into being; start." Further, the Glossary of Air Transportation Terms, 1st Edition (1977), issued by the Civil Aeronautics Board, defines "origin" as "[T]he first point in the itinerary and the point where the passenger (or cargo) first boards a carrier at the beginning of the itinerary." Using those definitions, a flight originates only once, when it departs its beginning location. While each flight segment may originate with each departure, the flight itself originates only once. Consequently, the Taxpayer has only five flights originating in Birmingham.

The Taxpayer argues that the Department's "position represents a misunderstanding of the definition of an airline hub and industry practices on flight numbering." According to the Taxpayer, a hub is the central location of an airline network. Flights may begin at the hub, but more often begin and are numbered at another location and are routed through the hub at some point during the flight.

However, the Legislature has specified that at least fifteen flights must originate, i.e. begin, at an Alabama location for that location to be exempt as a hub operation under §40-9-1(24). Thus, while Birmingham may have some general characteristics of a hub or

control location, it is not a hub within the purview of the exemption statute. The plain language of a statute must control, and the intention of the Legislature can only be determined from the specific language of the statute. Advertiser Company v. Hobbie, 474 So.2d 93; State v. Zewen, 116 So.2d 373; Montgomery Bridge and Engineering, Inc. v. State of Alabama Highway-Department, 440 So.2d 1114.

The Taxpayer interprets the statute as follows: "[T]here departs from the location 15 or more flights going to five or more different first-stop destinations". However, the Legislature cannot be presumed to have used the word "originates" for no purpose. Robinson v. State, 361 So.2d 1113, on remand 361 So.2d 1115. Also, when interpreting an ambiguous statute, an exemption from taxation must be construed against the taxpayer. Alabama Farm Bureau Mut, v. City of Hartselle, 460 So.2d 1219.

Concerning "first stop destination", the Department contends that Birmingham is a first-stop destination when it is the first stop for a flight, i.e. Flight 711 from Atlanta to Birmingham to Memphis to Las Vegas.

However, a more reasonable construction is that a first-stop destination is that location at which a flight first lands. But while departures from Birmingham go to seven different cities, the exemption further requires that originating flights must have five different first-stop destinations. "There originates from the location . . . five or more different first-stop destinations". A

review of Taxpayer's Exhibit 2, concerning June and October, 1986, indicates that all flights originating in Birmingham have only one first-stop destination, Atlanta. Consequently, flights originating in Birmingham have only one first-stop destination.

The above considered, the Department's tentative assessment of value is correct and should be made final.

Done this 18th day of December, 1987.

BILL THOMPSON
Chief Administrative Law Judge