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IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 6758

COMMISSIONER OF THE DIVISION OF MOTOR VEHICLES OF THE COMMONWEALTH OF VIRGINIA,

Appellant,

v.

EASTERN AIR LINES, INC.,

Appellee.

BRIEF AND APPENDICES FOR THE APPELLEE

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APPENDIX

APPENDIX A TO BRIEF OF APPELLEES

COMMISSIONER OF THE DIVISION OF MOTOR VEHICLES OF THE COMMONWEALTH OF VIRGINIA

v.

EASTERN AIR LINES, INC.

RECORD No. 6758

The relevant statutes cited by Appellee in its brief are as follows:

Section 58-715, Code of Virginia (1950), as amended, in pertinent part:

* * *

> And a refund of three cents per gallon on all motor fuel purchased within the State and consumed in aeroplanes or aircraft in flights over and within the boundaries of this State shall be made and a refund of the full tax paid shall be made on all motor fuel purchased in this State and consumed in aeroplanes or aircraft in flights outside the boundaries of the State, the quantities consumed within and without the State to be determined by the flight logs of each trip and the average consumption of motor fuel per hour per month by each aeroplane or aircraft. On and after July one, nineteen hundred sixty-one, with respect to all motor fuel and other fuels as are subject to the tax imposed by chapter

14 (§ 58-731 et seq.) of this title purchased in this State and consumed in aeroplanes or aircraft in flights over and within the boundaries of this State, a refund in the following graduated amounts shall be made to each user of such fuel. The quantity of such fuel used in aircraft subject to graduated refunds shall accumulate to each user throughout each fiscal year beginning on July first of each year.

The amount of the refund with respect to all motor fuel and other fuels as are subject to the tax imposed by chapter 14 (§ 58-731 et seq.) of this title used by any person in flights over and within the boundaries of this State, with respect to the accumulated usage of such fuels during each fiscal year, shall be:

(1) On each gallon of such fuel so used less than one hundred thousand gallons, a refund per gallon equal to the amount of the tax per gallon less four cents, the intention being that the State shall retain four cents tax per gallon;

(2) On each gallon of such fuel so used more than one hundred thousand gallons and less than two hundred thousand gallons, a refund per gallon equal to the amount of the tax per gallon less two cents, the intention being that the State shall retain two cents tax per gallon;

(3) On each gallon of such fuel so used more than two hundred thousand gallons and less than three hundred thousand gallons, a refund per gallon equal to the amount of the tax per gallon less one cent, the intention being that the State shall retain one cent tax per gallon;

(4) On each gallon of such fuel so used more than three hundred thousand gallons and less than four hundred thousand gallons, a refund per gallon

equal to the amount of the tax per gallon less one-half cent, the intention being that the State shall retain one-half cent tax per gallon;

(5) On each gallon of such fuel so used more than four hundred thousand gallons, a refund per gallon equal to the amount of the tax per gallon less one-quarter cent, the intention being that the State shall retain one-quarter cent tax per gallon.

Section 58-716, Code of Virginia (1950), as amended:

Procedure to obtain such refund.—Any person entitled to any such refund shall file with the Commissioner an application in writing duly signed by the applicant, accompanied by a paid ticket or invoice from the dealer or retail distributor showing such purchase. Such application shall set forth the total amount of such fuel so purchased and used by such consumer, other than in motor vehicles operated or intended to be operated upon any of the public highways, streets or alleys of this State, and how used. The Commissioner, upon the presentation of such application and such paid ticket, invoice or other document, shall repay to such consumer from the taxes collected on motor fuel the taxes paid on fuel sold and delivered and used other than for motor vehicles as aforesaid. But the application for refund as provided herein must be filed with the Commissioner within twelve months* from the date of the sale or invoice, on forms prepared and furnished by the Commissioner. A ticket issued to the holder of a courtesy card evidencing the delivery to such holder of tax-paid motor fuel shall, for the purpose of this section, be deemed a paid ticket or invoice.

*The 1966 amendment substituted "twelve months" for "six months" in the fourth sentence.

Section 58-733, Code of Virginia (1950), as amended:

Purpose.—The tax imposed by this chapter is levied for the purpose of providing revenue to be used by this State to defray in whole or in part the cost of construction, reconstruction and maintenance of the public highways of this State and the regulation of traffic thereon, and for no other purpose except that the Commissioner of the Division of Motor Vehicles shall also pay at the rate of seven cents a gallon, less refunds made in accordance with law, for each and every gallon of aviation fuel sold and delivered or used in this State into the treasury, as a special fund, to be disbursed upon order of the State Corporation Commission, on warrants of the Comptroller to defray the cost of the administration of the laws of this State relating to aviation and for the construction, maintenance and improvement of airports and landing fields to which the public now, or which it is proposed shall, have access, and for the promotion of aviation in the interest of operators and the public generally.

Section 58-753, Code of Virginia (1950), as amended:

Refund of taxes erroneously or illegally collected.—In the event it shall appear to the satisfaction of the Commissioner that any taxes or penalties imposed by this chapter have been erroneously or illegally collected from any licensee, the Commissioner shall certify the amount thereof to the Comptroller, who shall thereupon draw his warrant for such certified amount on the State Treasurer to such licensee. Such refund shall be paid by the State Treasurer.

No refunds shall be made under the provisions of this section unless a written statement therefor sets

forth the circumstances by reason of which such refund is claimed. The claim shall be in such form as the Commissioner shall prescribe and shall be sworn to by the claimant. It shall be filed with the Commissioner within one year from the date of the payment of the taxes erroneously or illegally collected.

Section 58-753.1, Code of Virginia (1950), as amended:

Refund for nonhighway use.—Any person who shall purchase fuel and pay the tax thereon and use the same for purposes other than to propel vehicles operated or intended to be operated on the highway, shall, upon making application therefor as herein provided, be reimbursed the amount of such tax paid. Application for refund shall be filed with the Commissioner within six* months from the date of sale, shall show the purpose for which the fuel was used, and shall be accompanied by the invoice covering sale of the fuel to such person. Such refunds shall be paid in the manner provided in § 58-753.

Section 58-753.3, Code of Virginia (1950), as amended:

Refund on fuel used in operating aircraft. Any person who shall buy, in quantities of five gallons or more at any one time, any special fuel for the purpose of operating or propelling any aircraft on which special fuel the tax or taxes imposed by this chapter shall have been paid, shall be allowed a partial refund on each gallon of special fuel pur-

*The 1966 amendment substituted "six months" for "three months" in the second sentence.

chased within the State and consumed in any aircraft in flights over and within the boundaries of this State, which partial refund per gallon of such fuel so used shall be equal to the tax per gallon less four cents, the intention being that the State shall retain four cents tax per gallon; and a refund of the full tax paid shall be made on all special fuel purchased in this State and consumed in aircraft in flights outside the boundaries of the State, the quantities consumed within and without the State to be determined by the flight logs of each trip and the average consumption of special fuel per hour per month by each aircraft. On and after July one, nineteen hundred sixty-one, with respect to all fuels taxable under this chapter and all motor fuels as are subject to the tax imposed by chapter 13 (§58-686 et seq.) of this title purchased in this State and consumed in aeroplanes or aircraft in flights over and within the boundaries of this State, a refund in the following graduated amounts shall be made to each user of such fuel. The quantity of such fuel used in aircraft subject to graduated refunds shall accumulate to each user throughout each fiscal year beginning on July first of each year. The amount of the refund with respect to fuels taxable under this chapter and all motor fuels as are subject to the tax imposed by chapter 13 (§ 58-686 et seq.) of this title used by any person in flights over and within the boundaries of this State, with respect to each fiscal year's accumulated usage of those fuels, shall be:

(1) On each gallon of such fuel so used less than one hundred thousand gallons, a refund per gallon equal to the amount of the tax per gallon less four cents, the intention being that the State shall retain four cents tax per gallon;

(2) On each gallon of such fuel so used more than one hundred thousand gallons and less than two hundred thousand gallons, a refund per gallon equal to the amount of the tax per gallon less two cents, the intention being that the State shall retain two cents tax per gallon;

(3) On each gallon of such fuel so used more than two hundred thousand gallons and less than three hundred thousand gallons, a refund per gallon equal to the amount of the tax per gallon less one cent, the intention being that the State shall retain one cent tax per gallon;

(4) On each gallon of such fuel so used more than three hundred thousand gallons and less than four hundred thousand gallons, a refund per gallon equal to the amount of the tax per gallon less one-half cent, the intention being that the State shall retain one-half cent tax per gallon;

(5) On each gallon of such fuel so used more than four hundred thousand gallons, a refund per gallon equal to the amount of the tax per gallon less one-quarter cent, the intention being that the State shall retain one-quarter cent tax per gallon.

Every person who is subject to payment to the State of the tax on aviation fuel under this chapter shall attach a statement to their monthly reports which statement shall show the quantity of aviation fuel on hand the first and last days of the preceding calendar month; the quantity of aviation fuel received, produced, refined or compounded during the month, and the quantity sold, delivered or used during the month.

APPENDIX B TO BRIEF OF APPELLEES

COMMISSIONER OF THE DIVISION OF MOTOR VEHICLES OF THE COMMONWEALTH OF VIRGINIA

v.

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The following is a summary analysis of the cases cited in Appellant's brief in support of his argument that §§58-753.1 and 58-753.3 should be construed together on the doctrine of *in pari materia.* In each case, the interrelation between the statutes was obvious—quite unlike the suggested relation between §§58-753.1 and 58-753.3.

Commonwealth v. *Appalachian Elec. Power Co.,* 193 Va. 37 (1951), involved a controversy over whether an electric utility company would have to report a tax liability to the State for money held on deposit in other states. This question was not answered in the section imposing a tax on utilities, but in another section specifying those properties exempt from State taxation. The court concluded that the two sections should be read together because of their direct bearing on the issue at hand.

In *Commonwealth* v. *Pembroke Limestone Works,* 145 Va. 476 (1926), a mining company sought relief from a double assessment of taxes. One statute stipulated a one year time period for seeking relief against an erroneous

tax assessment on mineral lands and another waived all time limitations where double assessments were involved. The court quite naturally concluded that the mining company's complaint of a double assessment was not subject to the one year time limitation.

Appellant cites *Kirkpatrick* v. *Board of Supervisors,* 146 Va. 113 (1926), for the principle that where two statutes are in apparent conflict, every effort should be made to harmonize them. The implication is that §58-753.1 and §58-753.3 conflict as to the question of a time period, and that this conflict can be resolved only by reading the time period as applicable to both. *Kirkpatrick* was a suit to enjoin the Arlington County Board of Supervisors from issuing bonds under a referendum held pursuant to a general law. A special act dealing with procedures for an Arlington County referendum had been enacted prior to the general law, and the contention was that the referendum should have followed the procedures required by that special act. The court interpreted the two acts as showing the legislative intent to provide the County with a choice of procedures by which to hold a referendum. It was quite clear that the general act was intended to have application to the County, for by its terms it was to cover only those counties with a certain minimum population. At the time, only Arlington County met this requirement. A similar intent with respect to the application of §58-753.1 to aircraft uses is not so readily apparent.

Wilburn v. *Raines,* 111 Va. 334 (1910), may be distinguished in similar fashion. A special act dealing with the construction and maintenance of roads in Giles Coun-

ty contained no express limitations against the expropriation of orchards and cemetaries by the Road Board. The general road law contained such a limitation, and was construed by the court as prevailing where the special law was silent. But once again the general law had an obvious application to the situation, a fact not present with respect to §58-753.1.