

Ruling 93-03

Vermont Department of Taxes

Date: January 29, 1993

Written By: Mary L. Bachman, Attorney for the Department

Approved By: Joyce H. Errecart, Commissioner of Taxes

You have requested a ruling on the application of Vermont's corporate income tax. This ruling relies on the facts contained in your letter of October 29, 1991.

Facts: [Corporation] is a [State] corporation, organized and incorporated under the laws of [State]. [Corporation] maintains its only office for conducting business in [State], as well as having a bank account, telephone listing and employee within the State of [State]. [Corporation] is engaged in the business of leasing aircraft to corporate lessees. None of the parties [Corporation] is currently leasing aircraft to is a part of any affiliated group of [Corporation].

All leases for the aircraft are negotiated and executed outside Vermont, and all rents from aircraft leases will be received outside Vermont. [Corporation] has no control over where the aircraft are to be used and/or landed, except they are prohibited, per the lease agreement with all lessees, from landing in [State]. At the beginning of each lease, the lessee takes possession of the aircraft at the manufacturer, who is located outside Vermont.

At no time has [Corporation] procured a certificate of authority to transact business in Vermont. [Corporation] has at no time maintained an office, a place of business, a bank account, a telephone listing or a post office box within Vermont. Furthermore, [Corporation] has no employee employed, domiciled in or specifically assigned to the State of Vermont.

[Corporation] does have a number of responsibilities with respect to the aircraft it leases, including responsibilities for some maintenance and for payment of some insurance. None of the responsibilities, however, will be performed in Vermont. To the extent that [Corporation] uses employees or independent contractors to perform such responsibilities, those persons will be located outside Vermont. Lessees of [Corporation's] aircraft may use the aircraft to haul freight and/or passengers in interstate commerce. [Corporation] anticipates that [Corporation's] lessees will land the leased aircraft in Vermont to load/unload passengers and/or freight. All aircraft will be hangared outside Vermont.

Issues: You request a ruling on the following questions:

1. Whether [Corporation] (Lessor) has sufficient nexus with the State of Vermont as to subject [Corporation] to Vermont's corporate income and/or franchise tax;
2. If [Corporation] (Lessor) has sufficient nexus, how are the lease payments apportioned? Specifically:
 - a. What apportionment factor or factors should be used in determining the apportionment factor, and
 - b. How should the apportionment factor or factors be calculated in apportioning the lease payments?

Ruling

1. An isolated landing would not create a tax liability. The presence, however, of its leased property in the State on a regular or frequent basis is sufficient nexus with the State to subject [Corporation] to Vermont's corporate income tax. See *Collector of Revenue v. Wells Fargo Leasing Corporation*, 393 So.2d 1244 (La. 1981); *In Matter of Tax Appeal of Heftel Broadcasting Honolulu, Inc.*, 554 P.2d 242 (Haw. 1976) See also, J. and W. Hellerstein, *State and Local Taxation*, at 307 (4th ed. 1978). Although [Corporation] does not control the location of its aircraft during the term of a lease, it leases its aircraft to lessees engaged in hauling freight and/or passengers in interstate commerce. The only restriction [Corporation] places on the movement of its aircraft is that they not land in [State].

[Corporation] anticipates that its aircraft will land in Vermont to load and unload passengers and freight. The income generated by [Corporation's] aircraft is in part attributable to its presence in Vermont. Moreover, [Corporation's] aircraft enjoys the benefits bestowed upon it by state and local government such as use of the airport, and fire and police protection.
2. (a) Vermont uses a three factor formula, which weights equally sales, property and payroll, to apportion the income of taxable corporations which derive income from both within and without the State. 32 V.S.A. § 5833. On the facts presented, [Corporation] would have a sales factor because the lease arrangements continue into the state and are a source of income to the lessor. [Corporation] would also have a property factor, but it would have no payroll factor since it has no employees in Vermont.

(b) The lease payments should be apportioned on the basis of revenue miles. Specifically, the sales factor (the percentage of lease payments attributable to Vermont) should be calculated by comparing the miles traveled by [Corporation] aircraft over Vermont to total miles traveled. The property factor is arrived at by comparing the average value (balance sheet or net tax value) of property in Vermont to the average value of [Corporation's] property everywhere. 32 V.S.A. § 5833(a)(1). Because [Corporation's] property in Vermont is mobile, use of the average values at the beginning and end of the taxable year or on a discrete date may not reflect the accurate value of property in Vermont during the taxable year. See 32 V.S.A. § 5833(a)(1). The Commissioner has discretion to require use of a different

apportionment which more accurately reflects the value of a taxpayer's mobile property. 32 V.S.A. § 5833(b). Two such methods are: to apportion property by the ratio which mobile property miles in Vermont bear to total mobile property miles; and to apportion property on the basis of departures of aircraft from locations in this State, weighted as to the cost and value of the aircraft by type, compared to total departures similarly weighted.

This ruling is issued solely to your firm and is limited to the facts presented as affected by current statutes and regulations. Other taxpayers may refer to this ruling to determine the Department's general approach, but the Department will not be bound by this ruling in the case of any other taxpayer or in the case of any change in the relevant statute or regulations.