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## Coates' Canons Blog: Jet Planes and Carnival Games: Who Gets to Tax Them?

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In the last few months of 2009, the North Carolina Court of Appeals issued two interesting opinions on property tax situs. A fancy word for “location,” situs controls whether or not property is subject to tax in a particular jurisdiction. The two appellate decisions are worth noting both for the law and for the property involved: one case concerned a \$35 million jet airplane, the other \$25 million worth of carnival rides and games. Taken together, the two cases demonstrate that property can have tax situs here in North Carolina even if it spends most of the year—and maybe even all of the year—in other states. How can that be?

To answer this question, take a look at the situs provisions in N.C.G.S. 105-304. The general rule is that tangible personal property such as planes and business equipment is taxable at the residence of the owner. (A corporation’s residence is its principal place of business in North Carolina.) A big exception exists for business property that is “more or less permanently located” at a site other than the owner’s principal place of business. In that case, the property has situs in the jurisdiction where it is located. For example, computers used at a bank branch in Iredell County are taxable in Iredell County despite the fact that the bank’s headquarters are in Mecklenburg County. Similarly, copiers owned by a Durham County business but leased to a law firm located in Orange County are taxable in Orange County.

Here’s how these rules were applied to the jet plane and carnival games. *In re: SAS Institute, Inc.* concerned a plane bought by a Wake County corporation in November 2002. At the time of purchase, the plane was in South Carolina. In December 2002, it flew to Delaware for installation of custom-fit interior furnishings. The plane remained there for nearly nine months until the up-fit was completed in September 2003, when it flew to North Carolina for the first time and was hangared in Wake County.

SAS first listed the jet for taxation in Wake County for 2004, claiming that the plane’s 2003 tax situs was Delaware based on the exception to the general situs rule for property located at a site other than the owner’s principal place of business. The county disagreed.

Both the Property Tax Commission and the Court of Appeals ruled in favor of Wake County, despite the fact that the plane was not in the jurisdiction on the listing date (January 1, 2003) and was in North Carolina for fewer than four months. First, the court pointed out that GS 105-304 explicitly states that the absence of the property from North Carolina on January 1 is only prima facie and not conclusive evidence that the property has situs elsewhere. Second, the court observed that for the plane to have situs in Delaware rather than at SAS’s principal place of business in Wake County, the plane needed to be “more or less permanently located” in Delaware. The court concluded that because the plane was in Delaware only for servicing and not for SAS’s business use, the plane was not more or less permanently located in Delaware and therefore was taxable in Wake County.

The carnival games and rides at issue in *In re: Amusements of Rochester, Inc.* are owned by the same company that provided attractions at this year’s North Carolina State Fair. Each year since 2002, the owner has stored the equipment in Pender County from late October to mid-April and then taken the equipment on the road to carnivals in Virginia, Maryland, Pennsylvania and New York for the rest of the year. Pender County claimed the property has had situs there since 2002; the owner claimed the property has tax situs in New York (its state of incorporation and home to its corporate headquarters) or in one of the other states in which it used the equipment.

As in the SAS case, the Property Tax Commission and the Court of Appeals found in favor of the county, despite the fact that the property was located outside of the state for more than half of the year. The court observed that on the owner’s certificate of authority to operate in North Carolina, the owner listed Pender County as its principal place of business. The

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general situs rule would then require taxation of the carnival equipment in that county. The exception for property more or less permanently located at a site outside of North Carolina did not apply because the equipment continually moved from state to state. The equipment never gained situs in any of those states, a conclusion confirmed by the owner's admission that it did not pay property tax on the equipment in any of those other states. (Full disclosure: despite the School's policy of scrupulous impartiality, I admit to some satisfaction at this result. Other parents of young children who have spent wads of cash on State Fair ride tickets can understand why, I'm sure.)

The carnival company has appealed its case to the N.C. Supreme Court. (SAS did not, perhaps because there was only one year of tax at issue in that appeal.) Assuming that Pender County prevails at the Supreme Court, which I think is likely, these two cases show that property can be taxable in North Carolina even if it is in the state for only a short time—or perhaps for no time at all.

Consider a plane owned by a North Carolina business that flies from state to state throughout the year and does not have a single "home" airport. Because that plane would not be "more or less permanently located" elsewhere, the general situs rule would require that it be taxed at the owner's principle place of business in North Carolina. This would be true even if the plane never once touched North Carolina soil. Tax officials should keep this principle in mind when determining what movable business property has tax situs in their jurisdictions.

## Links

- [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_105/GS\\_105-304.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_105/GS_105-304.html)
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