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VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND,
DIVISION II

B. J. McADAMS, INCORPORATED,

Plaintiff

v.

IN CHANCERY
NO. _____

COMMONWEALTH OF VIRGINIA,
WILLIAM H. FORST,
THE STATE CORPORATION COMMISSION

and

THOMAS P. HARWOOD, JR.,
JUNIE L. BRADSHAW and
PRESTON C. SHANNON,

Defendants.

MOTION

Plaintiff, B. J. McAdams, Inc., by counsel, moves the Court for a temporary injunction enjoining Defendants William Forst and the State Department of Taxation from continuing their notice to the Defendant State Corporation Commission that B. J. McAdams has failed to file income tax returns with or pay income tax to the Department of Taxation or the Commonwealth of Virginia.

In support of its motion, plaintiff relies upon the bill of complaint and exhibits attached thereto filed with the Court and the attached memorandum in support of its motion.

Respectfully submitted,

B. J. McADAMS, INCORPORATED

By: Barbara B. Kessler

Counsel

Alexander Wellford
Donn G. Kessler
Christian, Barton, Epps, Brent
and Chappell
1200 Mutual Building
909 East Main Street
Richmond, Virginia 23219

804/644-7851

Of Counsel

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND,
DIVISION II

B. J. McADAMS, INCORPORATED,

Plaintiff

v.

IN CHANCERY
NO. _____

COMMONWEALTH OF VIRGINIA,
WILLIAM H. FORST,
THE STATE CORPORATION COMMISSION,

and

THOMAS P. HARWOOD, JR.,
JUNIE L. BRADSHAW and
PRESTON C. SHANNON,

Defendants.

NOTICE OF HEARING

TO: J. Marshall Coleman
Attorney General
Commonwealth of Virginia

William H. Forst
State Tax Commissioner

Thomas P. Harwood, Jr.,
Junie L. Bradshaw,
Preston C. Shannon
Chairman and Commissioners
for the State Corporation Commission

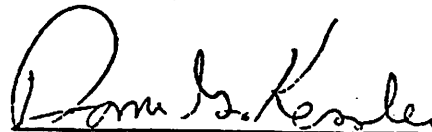
PLEASE TAKE NOTICE that a hearing on Plaintiff's Motion
for a Temporary Injunction in the above entitled matter will be
held on Tuesday, January 29, 1980, at 2:00 p.m. before the

Honorable William Spain, Judge of the Circuit Court for the
City of Richmond, Division II, 10th and Hull Street, Richmond,
Virginia.

A copy of the motion and memorandum in support thereof
is attached hereto.

B. J. McADAMS, INCORPORATED

BY:


Counsel

Alexander Wellford
Donn G. Kessler
Christian, Barton, Epps, Brent
and Chappell
1200 Mutual Building
909 East Main Street
Richmond, virginia 23219

804/644-7851

Of Counsel

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND,
DIVISION II

B. J. McADAMS, INCORPORATED,
Route 6, Box 15,
North Little Rock, Arkansas,
an Arkansas Corporation,

Plaintiff

v.

COMMONWEALTH OF VIRGINIA

and

WILLIAM H. FORST, in his
capacity as the State Tax Commissioner
for the Commonwealth of Virginia,

and the

IN CHANCERY
NO. _____

STATE CORPORATION COMMISSION

and

THOMAS P. HARWOOD, Jr.,
JUNIE L. BRADSHAW and
PRESTON C. SHANNON, in
their capacities as Chairman
and Commissioners of the State
Corporation Commission for
the Commonwealth of Virginia,

Defendants.

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF A TEMPORARY INJUNCTION

I. INTRODUCTION

On January 28, 1980, Plaintiff B. J. McAdams Inc. (hereinafter "McAdams") filed a bill of complaint for a declaratory

judgment and for injunctive relief with this Court. In such bill, McAdams prayed this Court to issue a declaratory judgment that it was not required to file corporate income tax returns with, or pay corporate income tax to the Commonwealth of Virginia or the State Department of Taxation (hereinafter "Department") and to temporarily enjoin the State Tax Commissioner and the Department from continuing their notice to the State Corporation Commission that McAdams had not filed such returns or paid such tax. McAdams now submits this memorandum of points and authorities in support of such a temporary injunction.

II. FACTS

As shown by the verified bill of complaint, McAdams is an Arkansas corporation whose only contact with Virginia is its travel over highways in Virginia to transport commodities in interstate commerce. It does not transport any commodities in Virginia intrastate, does not own any property in Virginia, does not have any offices or salesmen in Virginia, does not execute any contracts in Virginia nor store any property in Virginia. McAdams engages in interstate commerce over highways in Virginia under authority from the Interstate Commerce Commission.

In order to lawfully travel over highways in Virginia in interstate commerce, McAdams must have stamps from the State Corporation Commission. See Sections 56-304 through 56-304.14 of the Code of Virginia (1950), as amended. At all times pertinent hereto, McAdams has applied for and received such stamps from the Corporation Commission. Its present stamps, for 313 vehicles used in interstate commerce, expire on February 1, 1980. See Section 56-304.7 of the Code of Virginia.

On December 26, 1979, McAdams applied to the Corporation Commission for the renewal of its stamps and submitted the appropriate fees for such stamps. See Exhibit J attached to the bill of complaint. On January 3, 1980, the Corporation Commission returned such application and fees indicating that solely because McAdams had not filed corporate income tax returns with the State Department of Taxation, the Commission could not issue to McAdams the 313 stamps needed by McAdams to lawfully operate its vehicles in interstate commerce over highways in Virginia. The inability of the Corporation Commission to renew such stamps apparently resulted from notice from the State Tax Commissioner to the Corporation Commission that McAdams had not filed income tax returns or paid corporate income tax. See Section 56-304.5 of the Code of Virginia.

In order to have such stamps issued while the legal issue of whether McAdams had to file such returns was under consideration by this Court, McAdams contacted the Department

of Taxation asking it to withdraw its notice to the Corporation Commission while this Court was considering a petition for a declaratory judgment in this matter. This request was refused by the Department of Taxation. (See paragraphs 23 and 24 of the bill of complaint.) Such refusal by the Department of Taxation forced McAdams to request this Court for a temporary injunction to enjoin the Department and the State Tax Commissioner from continuing the notice to the Corporation Commission so that the Commission could issue the stamps to McAdams and preserve the status quo of McAdams lawfully using the highways in Virginia in interstate commerce.

III. DISCUSSION

The proper procedure for an individual to challenge the constitutionality of a tax is to file a request for a declaratory judgment. See Perkins v. Albemarle County, 214 Va. 416, 419 (1973). No request here has been made for a refund or abatement of an unlawfully imposed tax for which other statutory remedies exist. Id.

It is clear that McAdams does not have to file any corporate income tax return or report with Virginia unless it has "income from Virginia sources". See Sections 58-151.03(c) and 58-151.078 of the Code of Virginia. "Income from Virginia sources" is defined by the Code of Virginia as:

(g) "Income and deductions from Virginia sources" shall include:

(1) Items of income, gain, loss and deduction attributable to:

(i) The ownership of any interest in real or tangible personal property in this State; or

(ii) A business, trade, profession or occupation carried on in this State.

(2) Income from intangible personal property, including annuities, dividends, interest, royalties and gains from the disposition of intangible personal property to the extent that such income is from property employed by the taxpayer in a business, trade, profession, or occupation carried on in this State.

Section 58-151.02(g).

McAdams does not have any "income from Virginia sources". It has no property in Virginia, is not a Virginia corporation, and has no offices or salesmen in Virginia. Thus, it does not fall into Section 58-151.02(g)(1)(i). McAdams's only contact with Virginia is that it travels over highways in Virginia to transport goods in interstate commerce. Such contact with Virginia is insubstantial in its essence and is inseparable from interstate commerce. See Commonwealth v. Imperial Coal Co., 161 Va. 718, 723-4 (1933), reversed on other grounds, Virginia v. Imperial Coal Co., 293 U.S. 15 (1934), and Commonwealth v. Imperial Coal Co., 166 Va. 27 (1936); Dalton Adding Mach. Co. v. Commonwealth, 118 Va. 563 at 574 (1916), affirmed, 246 U.S. 498 (1918). Thus, McAdams also does not fall within Sections 58-151.03(g)(1)(ii) or 58-151.03(g)(2) and has no "income from Virginia sources".

Even if the above sections of the Code of Virginia could be construed to give McAdams "income from Virginia sources", any income tax imposed upon McAdams solely because of its use of highways in Virginia in interstate transportation would be a substantial and undue burden of interstate commerce prohibited by Article I, Section 8 of the United States Constitution. See Miller Bros. Co. v. Maryland, 347 U.S. 340 (1954).

The above cases clearly show that there is a substantial likelihood that McAdams is not required to file corporate income tax returns with Virginia. Such a question must await a full trial on the merits. Pending such trial, McAdams must obtain the new stamps from the Corporation Commission in order to lawfully transport commodities over highways in Virginia in interstate commerce. Without such stamps, which presently expire on February 1, 1980, McAdams will be forced to default on its obligations under the authority granted to it by the Interstate Commerce Commission or to operate its vehicles in Virginia illegally. See Section 56-304.11 of the Code of Virginia. If it cannot operate its vehicles in Virginia to transport commodities in interstate commerce, the public in Virginia and elsewhere will be irreparably harmed as it will be deprived of such interstate transportation of commodities.

By issuing a temporary injunction to prohibit the Department of Taxation and the State Tax Commissioner from continuing its notice to the Corporation Commission, this Court will

be preserving the status quo - the transportation of commodities in interstate commerce - while it can resolve the substantive issues presented by the bill of complaint. Without a temporary injunction, the present situation will be altered as of February 1, 1980, and McAdams and the public will be substantially and irreparably harmed.

IV. CONCLUSION

Based upon the facts and law stated above, McAdams requests this Court to issue a temporary injunction prohibiting the State Tax Commissioner and the Department of Taxation from continuing their notice to the Corporation Commission that McAdams has not filed income tax returns with or paid income taxes to the Department and/or the Commonwealth of Virginia.

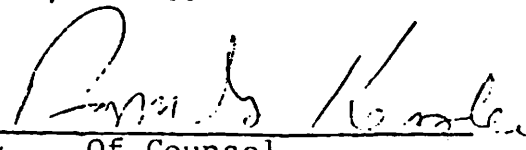
B. J. McADAMS, INCORPORATED

By:


Counsel

Alexander Wellford
Donn G. Kessler
Christian, Barton, Epps, Brent
and Chappell
1200 Mutual Building
909 East Main Street
Richmond, Virginia 23219

804/644-7851


Of Counsel

C E R T I F I C A T E

I hereby certify that a copy of the foregoing motion, memorandum and notice of hearing were hand-delivered on the 28th day of January, 1980, to J. Marshall Coleman, Esquire, Attorney General for the Commonwealth of Virginia, 1101 East Broad Street, Richmond, Virginia, 23219, William H. Forst, 2200 West Broad Street, Richmond, Virginia, and Thomas P. Harwood, Jr., Junie L. Bradshaw and Preston C. Shannon, 13th Floor, Blanton Building, Richmond, Virginia.


Donn G. Kessler

VIRGINIA:

IN THE CIRCUIT COURT OF
THE CITY OF RICHMOND, DIVISION II

B. J. MCADAMS, INC.,

February 1st, 1980

Plaintiff,

v.

IN CHANCERY
NO. A-1357-C

COMMONWEALTH OF VIRGINIA,
WILLIAM H. FORST, STATE
CORPORATION COMMISSION, THOMAS P.
HARWOOD, JR., JUNIE L. BRADSHAW
and PRESTON C. SHANNON,

Defendants.

DECREE

This cause came to be heard upon the prayer for a temporary injunction contained in plaintiff's bill of complaint in the above-entitled matter and the affidavit of B. J. McAdams in support thereof, and was argued by counsel on January 29, 1980.

UPON CONSIDERATION WHEREOF, it appearing to the Court that plaintiff is entitled to the relief of a temporary injunction prayed for, it is hereby

ORDERED, ADJUDGED and DECREED that Defendant William H. Forst be and he is hereby restrained and enjoined from continuing his notice to Defendant State Corporation Commission which prevents the Commission from issuing to plaintiff the necessary documents for plaintiff to lawfully operate its equipment in Virginia in interstate commerce.

This injunction shall be effective for ninety (90) days from the date of this order, at which time it shall stand dissolved unless prior thereto it shall have been enlarged or a further injunction shall have been granted by further order of this Court. Plaintiff shall enter into bond before the Clerk of this Court in the sum of \$2500.00 conditioned according to law.

During the period this injunction is in effect, plaintiff shall file with this Court, under seal, Virginia corporate income tax returns for the years 1973 through 1976, such returns to be opened only upon the order of this Court.

Counsel for the defendants objects and excepts to the foregoing action of the Court.

Service of this order shall not be required but copies of the order shall be mailed by plaintiff to each party and to counsel of record.

A Copy,

Teste : IVA R. PURDY, Clerk

by:  Deputy Clerk

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND,
DIVISION II

B. J. McADAMS, INCORPORATED,
Route 6, Box 15,
North Little Rock, Arkansas,
an Arkansas Corporation,

Plaintiff

v.

COMMONWEALTH OF VIRGINIA

Serve:

J. Marshall Coleman, Esquire
Attorney General
Commonwealth of Virginia
Supreme Court Building
1101 East Broad Street
Richmond, Virginia 23219

and

WILLIAM H. FORST, in his
capacity as the State Tax Commissioner
for the Commonwealth of Virginia,
2220 West Broad Street,
Richmond, Virginia,

and the

IN CHANCERY
NO. A-1357-C

STATE CORPORATION COMMISSION

and

THOMAS P. HARWOOD, JR.,
JUNIE L. BRADSHAW and
PRESTON C. SHANNON, in
their capacities as Chairman
and Commissioners of the State
Corporation Commission for
the Commonwealth of Virginia,
13th Floor, Blanton Building
Bank Street, Richmond, Virginia 23219

Defendants.

BILL OF COMPLAINT FOR INJUNCTION
AND FOR DECLARATORY JUDGMENT

Comes now your plaintiff, by Counsel, and for its complaint for injunction and for declaratory judgment, says as follows:

1. Plaintiff, B. J. McAdams, Incorporated, (hereinafter "McAdams") is a private corporation incorporated in the State of Arkansas and conducts its business at Route 6, Box 15, North Little Rock, Arkansas.

2. Defendant Commonwealth of Virginia is a sovereign state.

3. Defendant William H. Forst is the State Tax Commissioner for the Commonwealth of Virginia, and as such is the chief executive officer of the State Department of Taxation who is empowered by Sections 58-2, 58-28, 58-33 and 56-304.5 of the Code of Virginia (1950), as amended, to supervise and enforce the administration of the assessment and tax laws of Virginia, and to notify the State Corporation Commission of the failure of any person to file a state income tax return or to pay in full any state income tax required of him in order to prohibit such person from obtaining necessary documents and stamps to operate vehicles for compensation on highways in Virginia.

4. Defendants Thomas P. Harwood, Junie L. Bradshaw, and Preston C. Shannon are respectively the Chairman and Commissioners of the State Corporation Commission for the Commonwealth of Virginia (hereinafter the "Corporation Commission"), and as such are empowered by Sections 56-304 through 56-304.7 of the Code of Virginia (1950), as amended, to issue registration cards, stamps, and identification markers to allow persons to operate vehicles for compensation on highways in Virginia.

5. At all times pertinent hereto, McAdams has held various certificates of Public Convenience and Necessity under Docket No. MC-134922 and various subnumbers thereto from the Interstate Commerce Commission authorizing it to operate as a irregular route motor common carrier transporting for compensation commodities in foreign and/or interstate commerce. Copies of such certificates authorizing McAdams to engage in interstate transportation into, out of, and through Virginia are attached hereto and incorporated herein as Exhibit A.

6. At all times pertinent hereto and pursuant to the authority vested in it by the Interstate Commerce Commission, McAdams has transported commodities in interstate commerce from consignors located outside of Virginia to consignees located inside of Virginia and from consignors located inside of Virginia to consignees located outside of Virginia using highways in Virginia for such interstate transportation. Such activity is not substantial and is inseparable from McAdams's transportation of commodities in interstate commerce.

7. At all times pertinent hereto and pursuant to the authority vested in it by the Interstate Commerce Commission, McAdams has transported commodities in interstate commerce through Virginia from consignors located outside of Virginia to consignees located outside of Virginia using highways in Virginia for such interstate transportation. Such activity is not substantial and is inseparable from McAdams's transportation of commodities in interstate commerce.

8. At no times pertinent hereto, has McAdams transported commodities in intrastate transportation from any consignor located in Virginia to any consignee located in Virginia, nor has it owned any property in Virginia, stored any property in Virginia, executed any contracts in Virginia, nor had any salesmen or offices in Virginia.

9. At all times pertinent hereto, McAdams's only contact with Virginia, besides being registered with the State Corporation Commission, is to use the roads of Virginia in its transportation of commodities in interstate commerce.

10. On September 17, 1976, in response to a request for information from the State Department of Taxation (hereinafter the "Department"), McAdams informed the Department that McAdams was a motor carrier of specific commodities over irregular routes in interstate commerce, did not have facilities in Virginia and had as its only nexus with Virginia the use of

highways in Virginia for interstate commerce. McAdams further informed the Department of several of the reasons for its position that the use of highways in Virginia for interstate commerce was an insufficient nexus with the State for Virginia to impose Virginia's corporate income tax on McAdams. A copy of this letter is attached hereto and incorporated herein as Exhibit B.

11. On October 6, 1976, the Department wrote to McAdams and indicated that, while it did not question the facts enumerated in Exhibit B, the simple use of highways in Virginia subjected McAdams to the Virginia corporate income tax. A copy of this letter is attached hereto and incorporated herein as Exhibit C.

12. On November 4, 1976, McAdams responded to Exhibit C again outlining several of the reasons for its position that as a foreign corporate interstate carrier who did not have any facilities, property, or salesmen in the State and had no contacts with Virginia other than interstate transportation of commodities, it was not subject to the State's corporate income tax. A copy of this letter is attached hereto and incorporated herein as Exhibit D.

13. On November 16, 1976, the Commonwealth of Virginia, through an assistant attorney general, responded to Exhibit D, noting that it was the position of the Department

that "the conduct of the business of moving persons or freight over Virginia highways [is] . . . sufficient local activity to establish nexus for [income] taxation" and indicating that there appeared to be an "irreconcilable difference of opinion" between McAdams and the Department. A copy of this letter is attached hereto and incorporated herein as Exhibit E.

14. Eight months later, on June 28, 1977, the Department again informed McAdams that McAdams's use of highways in Virginia for transporting property in interstate commerce subjected McAdams to Virginia's income tax, and insisted that McAdams file the necessary returns within fifteen days to subject McAdams to such tax. A copy of this letter is attached hereto and incorporated herein as Exhibit F.

15. Six months later, on January 6, 1978, the Department again wrote to McAdams and insisted that McAdams was subject to the Virginia corporate income tax and that McAdams file the necessary returns within ten days to subject itself to such tax. A copy of this letter is attached hereto and incorporated herein as Exhibit G.

16. Between January 6, 1978 and October, 1979, McAdams was not informed by the Department that any further action was

going to be taken or had been taken by Defendants to require the filing of such returns and was therefore led to believe that the Department had acquiesced in McAdams's position, and that it did not expect McAdams to file any such returns.

17. At all times pertinent hereto, prior to October, 1979, McAdams had applied for and had been issued by the Corporation Commission the stamps necessary for it to operate lawfully on Virginia highways in interstate commerce pursuant to Article 8 of Chapter 12 of Title 56 of the Code of Virginia. The issuance of such stamps by the Corporation Commission constituted an admission by the Commission that McAdams used Virginia highways solely in interstate transportation as indicated by Section 56-304 of the Code of Virginia.

18. Prior to October 26, 1979, McAdams applied to the Corporation Commission to supplement the stamps it had received for 1979 to place on the pieces of equipment it owns or leases for operation over highways in Virginia in interstate commerce. In filing such check, McAdams fulfilled every requirement of Article 8 of Chapter 12 of Title 56 of the Code of Virginia in order to obtain such stamps, including, but not limited to, paying the road taxes required of it, filing the proper application and tendering the appropriate fees. A copy of the check for the stamps is attached hereto and incorporated herein as Exhibit H.

19. On information and belief, McAdams avers that prior to October 26, 1979, Forst, or someone acting for Forst, notified the Corporation Commission pursuant to Section 56-304.5 of the Code of Virginia (which is more particularly alleged hereafter in paragraph 34) that McAdams had not filed corporate income tax returns with the Department for the years 1973 through 1976.

20. On October 26, 1979, the Corporation Commission notified McAdams that, solely because McAdams had not filed corporate income tax returns with the Department for the years 1973 through 1976, the Commission could not issue to McAdams the supplemental stamps necessary for McAdams to lawfully operate trucks in interstate commerce on Virginia highways, and returned to McAdams the check for such stamps. A copy of such notice is attached hereto and incorporated herein as Exhibit I.

21. On December 26, 1979, McAdams applied to the Corporation Commission to renew for 1980 the stamps for the 313 pieces of equipment owned and/or leased by McAdams to travel on highways in Virginia in interstate commerce. In applying for such stamps, McAdams had fulfilled every requirement of Article 8 of Chapter 12 of Title 56 of the Code of Virginia in order to

renew such stamps. Copies of the application and check for the fee required for such stamps are attached hereto and incorporated herein as Exhibit J.

22. On January 3, 1980, the Corporation Commission notified McAdams that the Commission could not issue or renew the stamps necessary for McAdams to use highways in Virginia in interstate commerce until McAdams filed Virginia corporate income tax returns with the Department for the years 1973 through 1976. A copy of such notice is attached hereto and incorporated herein as Exhibit K.

23. On or about January 24, 1980, McAdams, through its counsel, contacted the Department through the Office of the Attorney General for the Commonwealth of Virginia. In such conversation, McAdams reiterated its position that it could not be made subject to the Virginia corporate income tax solely because it used highways in Virginia in interstate commerce, and did not believe it should file Virginia corporate income tax returns with the Department and thus arguably acknowledge that it was possibly subject to such tax. McAdams offered to the Department, through its counsel, that if the Department maintained the position that McAdams was subject to such tax, McAdams would file a suit for declaratory judgment in a Virginia court to resolve such controversy. McAdams proposed that pending a final ruling, the Department withdraw its notice to the Corporation

Commission which prevents the Commission from issuing to McAdams the stamps and/or other documents required for it to lawfully operate its vehicles in interstate commerce over highways in Virginia.

24. On or about October 24, 1980, Forst, through his counsel, refused to withdraw such notice to the Corporation Commission.

25. Pursuant to Section 56-304.5 of the Code of Virginia and the notice from Forst to the Corporation Commission that McAdams had not filed corporate income tax returns with the Department for the years 1973 through 1976, the Corporation Commission has not been able to and has not issued or renewed the stamps necessary for McAdams to lawfully operate its pieces of equipment over highways in Virginia in interstate commerce after February 1, 1980.

26. Pursuant to Sections 56-304, 56-304.7 and 56-304.11 of the Code of Virginia, McAdams's stamps to lawfully operate its equipment over highways in Virginia in interstate commerce will expire on February 1, 1980, and McAdams will be subject to criminal prosecution if it fulfills its obligations under its Interstate Commerce Commission authority and operates its equipment over highways in Virginia after February 1, 1980 without such stamps.

27. Section 58-151.078 of the Code of Virginia requires that only corporations organized in the Commonwealth of Virginia or "having income from Virginia sources" shall make a report to the Department containing such information as will enable the Department to enforce the Virginia income tax statutes.

28. Section 58-151.03(c) of the Code of Virginia imposes an income tax on foreign corporations having "income from Virginia sources".

29. Section 58-151.02(g) of the Code of Virginia defines in pertinent part, "income from Virginia sources" to be: (1) items of income or gain attributable to the ownership of any interest in real or tangible personal property in Virginia or to a business, trade, profession or occupation carried on in Virginia; and (2) income from intangible personal property to the extent that such income is from property employed by the taxpayer in a business, trade, profession or occupation carried on in Virginia.

30. McAdams does not own any interest in any real or tangible personal property in Virginia, and for purposes of Sections 58-151.02(g), 58-151.03(c) and 58-151.078 of the Code of Virginia, does not conduct any business, trade, profession or occupation in Virginia. McAdams's only activity in Virginia is the transportation of commodities in interstate commerce over highways in Virginia.

31. McAdams does not have any income from Virginia sources, as defined by Section 58-151.02(g) of the Code of Virginia, and thus is not required by Sections 58-151.078, 58-151.03(c) or any other section of the Code of Virginia or any rule or regulation of the Department to file any corporate income tax return with or pay any corporate income tax to the Department or to the Commonwealth of Virginia.

32. McAdams's sole use of highways in Virginia over which it carries commodities in interstate commerce is an insufficient nexus with Virginia for Virginia to impose any income tax on McAdams under Article I, Section 8 of the United States Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

33. If Sections 58-151.078, 58-151.03(c) and 58-151.02(g) of the Code of Virginia require McAdams to file any income tax return or report with, or pay any income tax to the Department or the Commonwealth solely because of McAdams's use of highways in Virginia in interstate commerce, such statutes are unconstitutional because they impose a substantial and undue burden on interstate commerce and on an instrumentality of interstate commerce, prohibited by Article I, Section 8 of the United States Constitution, and because they deprive McAdams of liberty and property without due process of law in violation of Section 1 of the Fourteenth Amendment to the United States Constitution.

34. Section 56-304.5 of the Code of Virginia provides that no stamps permitting motor common carriers to operate in interstate commerce on highways in Virginia shall be issued by the Corporation Commission if the State Tax Commissioner notifies the Corporation Commission that such carrier has failed to file income tax returns or pay any income tax required of such carrier by Chapter 4 of Title 58 (Sections 58-151.01 et seq.) of the Code of Virginia.

35. Forst's use of Section 56-304.5 of the Code of Virginia to require McAdams to file any income tax return with to the Department or to the Commonwealth of Virginia converts the stamps and fees required of McAdams by Article 8 of Chapter 12 of Title 56 of the Code of Virginia and the corporate income tax of foreign corporations into a privilege tax on McAdams's right to engage in interstate commerce over the highways in Virginia, and such a tax is unconstitutional as an undue and substantial burden on interstate commerce prohibited by Article I, Section 8 of the United States Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

36. If because of Forst's actions, McAdams is not issued the stamps required by Article 8 of Chapter 12 of Title 56 of the Code of Virginia to operate its trucks in interstate commerce over highways in Virginia before February 1, 1980, substantial and irreparable harm will be suffered by it and the general public in that:

(a) McAdams will not be permitted to transport commodities in interstate commerce over the highways in Virginia after February 1, 1980, when its present stamps expire;

(b) McAdams will lose substantial amounts of business and a substantial number of customers;

(c) McAdams will lose an unknown percentage of its annual gross revenues of \$40,000,000;

(d) McAdams will not be able to be compensated for such losses by an increase in fees unless it can obtain an approval from the Interstate Commerce Commission for such increase; and

(e) The public served by McAdams will be deprived of this service in obtaining receipt or shipment of goods in interstate commerce along routes primarily or exclusively served by McAdams.

37. An actual controversy exists between plaintiff and defendants.

WHEREFORE, plaintiff respectfully prays that this Court:

1. Issue a temporary injunction before February 1, 1980, enjoining Defendant Forst from continuing his notice to the State Corporation Commission of any failure of plaintiff to file income tax returns or reports with the Department or the Commonwealth of Virginia. Such notice prevents the Defendant State Corporation Commission from accepting the fees and application of plaintiff for the stamps and other documents required by McAdams to lawfully operate its equipment on Virginia highways for compensation and an injunction will preserve the status quo until this controversy is resolved.

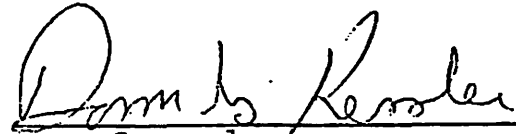
2. Enter a declaratory judgment declaring that McAdams is not required to file corporate income tax returns or reports with or pay any corporate income tax to the Department and/or the Commonwealth of Virginia;

3. Enjoin Defendants Forst and the Commonwealth from requiring plaintiff to file any corporate income tax return or report with the Department or the Commonwealth based upon its use of highways in Virginia in interstate commerce.

4. Grant to plaintiff such other relief as may be just and as this Court may deem necessary and proper to enforce the rights established by this Court's declaratory judgment and injunctions.

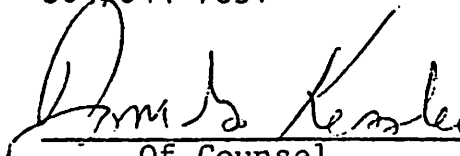
B. J. McADAMS, INCORPORATED,

By:


Counsel

Alexander Wellford
Donn G. Kessler
Christian, Barton, Epps, Brent
and Chappell
1200 Mutual Building
909 East Main Street
Richmond, Virginia 23219

804/644-7851

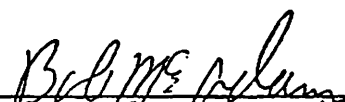

Of Counsel

AFFIDAVIT

STATE OF ARKANSAS)
) SS
COUNTY OF PULASKI)

Before the undersigned, Notary Public, duly qualified and acting in and for said county and state, appeared Bob McAdams, President of B. J. McAdams, Inc., to me well known, to be the affiant herein, who stated that he has read the above and foregoing statements and that they are true and correct to the best of his knowledge and belief.

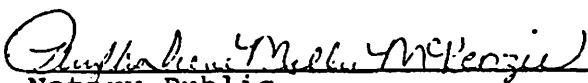
IN WITNESS WHEREOF, I hereunto set my hand this 25th day of January, 1980.



Bob McAdams, President
B. J. McAdams, Inc.

Subscribed and sworn to before me this 25th day of January, 1980.

(SEAL)



Notary Public

My Commission Expires:
December 31, 1982

V I R G I N I A:

IN THE CIRCUIT COURT OF THE CITY
OF RICHMOND, DIVISION II

B. J. MCADAMS, INCORPORATED,

Plaintiff,

v.

COMMONWEALTH OF VIRGINIA

and

WILLIAM H. FORST, State Tax Commissioner,

and the

STATE CORPORATION COMMISSION

and

THOMAS P. HARWOOD, JR.,

JUNIE L. BRADSHAW, and

PRESTON C. SHANNON,

Commissioners of the State

Corporation Commission,

IN CHANCERY

NO. A-1357-C

Defendants.

ANSWER TO BILL OF COMPLAINT
FOR DECLARATORY JUDGMENT

Come now the defendants, by the Attorney General, to answer the Bill of Complaint for Declaratory Judgment and say as follows:

1. That the allegations of paragraphs 2, 3, 4, 5, 19, 20, 22, 26, 27, 28, 29, 34 and 37 of the Bill of Complaint are admitted.
2. That the allegations of paragraphs 18, 30, 31, 32, 33, 35 and 36 of the Bill of Complaint are denied.
3. That the defendants are without knowledge of the allegations of paragraphs 1, 8 and 9 of the Bill of Complaint and can neither admit nor deny same, and call for strict proof thereof.

4. To the extent that paragraph 6 of the Bill of Complaint alleges pick-ups and deliveries within the geographical confines of the Commonwealth, it is admitted.

All remaining allegations of said paragraph 6 are denied.

5. To the extent that paragraph 7 of the Bill of Complaint alleges that plaintiff travels through Virginia, using highways in Virginia, in the transportation of commodities from consignors located outside of Virginia to consignees located outside Virginia, it is admitted.

All remaining allegations of said paragraph 7 are denied.

6. To the extent that paragraph 10 of the Bill of Complaint summarizes the contents of the September 17, 1976 letter, it is admitted.

All remaining allegations of said paragraph 10 are denied.

7. That the allegations of paragraph 11 of the Bill of Complaint are admitted, without admitting that the plaintiff's characterization of the contents of said October 6, 1976 letter is sufficient.

8. To the extent that paragraph 12 of the Bill of Complaint summarizes the contents of the November 4, 1976 letter, it is admitted.

All remaining allegations of said paragraph 12 are denied.

9. That the allegations of paragraph 13 of the Bill of Complaint are admitted, without admitting that the plaintiff's

characterization of the contents of said October 6, 1976 letter is sufficient.

10. That the allegations of paragraph 14 of the Bill of Complaint are admitted, except that any inference that the filing of returns is a prerequisite to being subject to Virginia income tax is denied.

11. That the allegations of paragraph 15 of the Bill of Complaint are admitted, except that any inference that the filing of returns is a prerequisite to being subject to Virginia income tax is denied.

12. To the extent that paragraph 16 of the Bill of Complaint states that the Department was not in further contact with the plaintiff after the Department's January 6, 1978 "final notice" letter, it is admitted. All remaining allegations of said paragraph 16 are denied.

By way of further answer, the January 6, 1978 letter specifically referred plaintiff to § 56-304.5 of the Code of Virginia (1950), as amended. It is inconceivable how such a response by the Department could be considered an acquiescence.

13. That the first sentence of paragraph 17 of the Bill of Complaint is admitted. The second sentence of said paragraph 17 is denied.

14. To the extent that paragraph 18 of the Bill of Complaint discusses plaintiff's application for stamps and tendering of a

check, it is admitted.

All remaining allegations of said paragraph 18 are denied.

15. To the extent that paragraph 21 of the Bill of Complaint discusses plaintiff's application for stamps and tendering of a check, it is admitted.

All remaining allegations of said paragraph 21 are denied.

16. That the allegations of paragraph 23 of the Bill of Complaint are admitted to the extent it summarizes the telephone conversation discussed. The correctness of the legal position stated, although requiring no response, is denied.

17. That the allegations of paragraph 24 of the Bill of Complaint are admitted, assuming that said paragraph 24 refers to January 24, 1980.

18. That the allegations of paragraph 25 of the Bill of Complaint were correct when said complaint was filed; however, pursuant to this Court's decree of February 1, 1980, the State Corporation Commission has now issued said stamps.

AND NOW, having fully answered, the defendants pray as follows:

1. That the temporary injunction issued, if still in effect, be dissolved.

2. That a declaratory judgment declaring that plaintiff is subject to the Virginia corporate income tax and required to file corporate income tax returns in Virginia be entered.

3. That the sealed returns filed by the plaintiff with the court be transmitted to the Department of Taxation for review and audit and that any liability disclosed by said returns or subsequent audit be forthwith paid by the plaintiff.

4. That other justifiable relief as may be proper to enforce the Commonwealth's rights be granted.

Respectfully submitted,

COMMONWEALTH OF VIRGINIA,
WILLIAM H. FORST, State Tax
Commissioner,
STATE CORPORATION COMMISSION,
THOMAS P. HARWOOD, JR.,
JUNIE L. BRADSHAW,
and
PRESTON C. SHANNON, Commissioners
of the State Corporation Commission

By:

John G. MacConnell
Counsel

Marshall Coleman
Attorney General of Virginia

John G. MacConnell
Kenneth W. Thorson
Norman K. Marshall
Assistant Attorneys General
P. O. Box 6-L
Richmond, Virginia 23282
(804) 257-8090

CERTIFICATE

I hereby certify that a copy of the foregoing Answer to Bill of Complaint for Declaratory Judgment was mailed, postage prepaid, to Donn G. Kessler, Esquire, Christian, Barton, Epps, Brent & Chappell, 1200 Mutual Building, Richmond, Virginia 23219, this the 22nd day of February, 1980.

John D. MacNeill

V I R G I N I A:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND, DIVISION II
March 13, 1980

B. J. McADAMS, INCORPORATED,

Plaintiff,

v.

In Chancery
No. A-1357-C

COMMONWEALTH OF VIRGINIA, et al.,

Defendants.

ORDER

This cause came to be heard upon the Motion to Dismiss filed by the State Corporation Commission and Thomas P. Harwood, Jr., Junie L. Bradshaw, and Preston C. Shannon, in their capacities as Commissioners of the State Corporation Commission.

AND IT APPEARING TO THE COURT that the State Corporation Commission and its Commissioners are no longer necessary parties defendant in this proceeding because said defendants have caused to issue the stamps necessary for B. J. McAdams, Incorporated, to operate lawfully on Virginia highways pursuant to Article 8 of Chapter 12 of Title 56 of the Code of Virginia, and that such stamps shall be and are valid through February 1, 1981; and

IT FURTHER APPEARING TO THE COURT that full, ample, and complete relief may be granted to the plaintiff if the Commonwealth of Virginia, through the State Tax Commissioner, is the sole party defendant in this action;

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND, DIVISION II

B. J. McADAMS, INCORPORATED,
an Arkansas Corporation,

Plaintiff,

v.

IN CHANCERY
NO. A-1357-C

COMMONWEALTH OF VIRGINIA, et al.,

Defendants.

STIPULATION OF FACTS

Comes now the Plaintiff, B. J. McAdams, Inc. ("McAdams"), by counsel, and Defendants Commonwealth of Virginia and William H. Forst, State Tax Commissioner ("Commissioner"), by the Attorney General, and agree and stipulate for the purposes of the declaratory judgment and injunctive relief prayed for in the above-entitled matter as follows:

1. McAdams is a private corporation incorporated in the State of Arkansas with its principal place of business located at Route 6, Box 15, North Little Rock, Arkansas.
2. Defendant Commonwealth of Virginia is a sovereign state.
3. Defendant William H. Forst is the State Tax Commissioner for the Commonwealth of Virginia, and as such is the chief executive officer of the State Department of Taxation who is empowered by Sections 58-2, 58-28, 58-33 and 56-304.5 of the

Code of Virginia (1950), as amended ("Code"), to supervise and enforce the administration of the assessment and tax laws of Virginia and to notify the State Corporation Commission of the failure of any person to file a state income tax return or report or to pay state income tax when required to do so in order to prohibit such person from obtaining necessary documents and stamps to operate vehicles for compensation on highways in Virginia.

4. Thomas P. Harwood, Junie L. Bradshaw and Preston C. Shannon are respectively the Chairman and Commissioners of the State Corporation Commission for the Commonwealth of Virginia ("Corporation Commission") and as such are empowered by Section 56-304 through 56-304.7, inclusive of the Code to issue registration cards, stamps, and identification markers to allow persons to operate vehicles for compensation on highways in Virginia.

5. At all times pertinent hereto, including but not limited to 1973 through 1979, inclusive, McAdams has held all necessary certificates and authority from the Interstate Commerce Commission to operate as an irregular route motor common carrier transporting commodities in foreign and/or interstate commerce for compensation.

6. At all times pertinent hereto, including but not limited to 1973 through 1979, inclusive, and pursuant to the authority vested in it by the Interstate Commerce Commission, McAdams has transported commodities in interstate commerce from consignors located outside of Virginia to consignees located inside Virginia and from consignors located inside Virginia to consignees located outside of Virginia using highways in Virginia.

for such interstate transportation. Such activity was the first or last step in the interstate transportation of commodities by McAdams and was not a substantial part of McAdams business as shown by paragraphs 37 through 46 inclusive of these stipulated facts.

7. At all times pertinent hereto, including but not limited to 1973 through 1979, inclusive, and pursuant to the authority vested in it by the Interstate Commerce Commission, McAdams has transported commodities in interstate commerce through Virginia from consignors located outside of Virginia to consignees located outside of Virginia using highways in Virginia for such interstate transportation.

8. At all times pertinent hereto, including but not limited to 1973 through 1979, inclusive, McAdams has been registered with the Corporation Commission to travel over highways in Virginia to transport commodities in interstate commerce. During such time and presently, McAdams has never been registered or sought to be registered with the Corporation Commission to use highways in Virginia to transport commodities in intrastate commerce nor has it transported commodities in intrastate commerce in Virginia. At all times pertinent hereto, McAdams' only nexus with Virginia was the registration stated in this paragraph and its use of highways located in Virginia to transport commodities in interstate commerce as detailed in these stipulations.

9. On September 17, 1976, in response to a request for information from the State Department of Taxation ("Department"), McAdams informed the Department that McAdams was a motor carrier of specific commodities over irregular routes in interstate commerce, did not have any income, gains, losses or deductions

attributable to the ownership of any interest in real or tangible property in Virginia, did not carry on any business, trade, profession or occupation in Virginia nor has had any income from intangible personal property employed by McAdams in a business, trade, or profession carried on in Virginia. Said letter also informed the Department that McAdams had as its only nexus with Virginia the above-stated registration with the Corporation Commission and its use of highways in Virginia for interstate commerce and that McAdams' position was that McAdams lacked a sufficient nexus with Virginia for the Department to impose Virginia's corporate income tax on McAdams. Such letter was received by the Department. A copy of such letter is attached hereto and incorporated herein as Exhibit A.

10. On October 6, 1976, the Department wrote to McAdams and indicated that while it did not question the facts enumerated in Exhibit A, it believed that solely the use of highways in Virginia for the transportation of commodities in interstate commerce subjected McAdams to the Virginia corporate income tax. Such letter was received by McAdams. A copy of this letter is attached hereto and incorporated herein as Exhibit B.

11. On November 4, 1976, McAdams responded to Exhibit B again outlining several of the reasons for its position that as a foreign corporate interstate carrier with the facts stated in paragraph 9 above, McAdams was not subject to the State's corporate income tax. Such letter was received by the Department. A copy of this letter is attached hereto and incorporated herein as Exhibit C.

12. On November 16, 1976, the Commonwealth of Virginia, through an assistant attorney general, responded to Exhibit C,

noting that it was the position of the Department that "the conduct of the business of moving persons or freight over Virginia highways [is] . . . sufficient local activity to establish nexus for [income] taxation" and indicating that there appeared to be an "irreconcilable difference of opinion" between McAdams and the Department. Such letter was received by McAdams. A copy of this letter is attached hereto and incorporated herein as Exhibit D.

13. Eight months later, on June 28, 1977, the Department informed McAdams it believed that McAdams' use of highways in Virginia solely for transporting commodities in interstate commerce subjected McAdams to Virginia's income tax, and insisted that McAdams file the necessary returns within fifteen days. Such letter was received by McAdams. A copy of this letter is attached hereto and incorporated herein as Exhibit E.

14. Six months later, on January 6, 1978, the Department wrote to McAdams and stated that it believed McAdams was subject to the Virginia corporate income tax and that McAdams should file the necessary returns within ten days. Such letter was received by McAdams. A copy of this letter is attached hereto and incorporated herein as Exhibit F.

15. Between January 7, 1978 and October, 1979, the Department did not inform McAdams and McAdams did not receive any indication from the Department that any further action was going to be taken or had been taken by Defendants to require the filing of such returns or reports. Due to the length of time between its receipt of Exhibit F and October, 1979, McAdams believed that the Department had acquiesced in McAdams' position and believed that the Department did not expect McAdams to file any such

returns or reports. The Defendants contend that such a belief on the part of McAdams was unreasonable.

16. In order to use highways in Virginia for the above-described interstate transportation of commodities, McAdams must apply for and obtain stamps and other documents from the Corporation Commission pursuant to Article 8, Chapter 12 of Title 56 of the Code.

17. At all times pertinent hereto, prior to October, 1979, and including but not limited to 1973 through 1978, inclusive, McAdams had applied for and had been issued by the Corporation Commission the stamps and documents necessary for it to operate lawfully on Virginia highways in interstate commerce pursuant to Article 8 of Chapter 12 of Title 56 of the Code and consistent with its authority to conduct such interstate transportation as granted by the Interstate Commerce Commission. During such period, McAdams never transported commodities in intrastate commerce in Virginia and no stamps or documents were sought by McAdams for use of Virginia highways in the intrastate transportation of commodities in Virginia.

18. Prior to October 26, 1979, McAdams applied to the Corporation Commission to supplement the stamps and documents it had received for 1979 to place on the pieces of equipment it owns and/or leases for operation over highways in Virginia in interstate commerce. In filing such application and check, McAdams fulfilled every requirement of Article 8 of Chapter 12 of Title 56 of the Code of Virginia in order to obtain such stamps and documents, including, but not limited to the paying of the road taxes required of it, filing the proper application and ten-

dering the appropriate fees. It is contended by defendants that an additional requirement to obtain such stamps and documents which was not met by McAdams was the filing of state corporate income tax returns or reports with the Department and the payment of such income taxes. It was then and presently is contended by McAdams that McAdams is not required by the Code to file such returns or reports and/or to pay such taxes and therefore, such filings and/or payments were not and are not required of McAdams to obtain such stamps and documents. A copy of the check for the supplemental stamps and documents is attached hereto and incorporated herein as Exhibit G.

19. Prior to October 26, 1979, Defendant Forst notified the Corporation Commission pursuant to Section 56-304.5 of the Code that McAdams had not filed corporate income tax returns or reports with and had not paid state corporate income taxes to the Department for 1973 through 1976 and that no stamps or documents should be issued to McAdams until such returns or reports were filed and such taxes paid. A copy of such notice is attached hereto and incorporated herein as Exhibit H.

20. On October 26, 1979, the Corporation Commission notified McAdams that, solely because McAdams had not filed corporate income tax returns or reports with and had not paid state corporate income taxes to the Department for 1973 through 1976, the Commission could not issue to McAdams the supplemental stamps and documents necessary for McAdams to lawfully operate pieces of equipment in interstate commerce on highways in Virginia and returned to McAdams the check for such stamps and documents. A copy of such notice is attached hereto and incorporated herein as Exhibit I.

21. On December 26, 1979, McAdams applied to the Corporation Commission to renew for 1980 the stamps and documents for 313 pieces of equipment owned and/or leased by McAdams to travel on highways in Virginia in interstate commerce. In applying for such stamps and documents, McAdams fulfilled every requirement of Article 8 of Chapter 12 of Title 56 of the Code in order to renew such stamps and documents. It is contended by defendants that an additional requirement to obtain such stamps and documents which was not met by McAdams was the filing of state corporate income tax returns or reports and the payment of such income taxes to the Department. It was then and presently is contended by McAdams that McAdams is not subject to file such returns or reports and/or to pay such taxes and therefore such filings and/or payments were not and are not required of McAdams to obtain such stamps and documents. Copies of the application and check for the fee required for such stamps and documents are attached hereto and incorporated herein as Exhibit J.

22. On January 3, 1980, the Corporation Commission notified McAdams that the Commission could not issue or renew the stamps and documents necessary for McAdams to use highways in Virginia in interstate commerce until McAdams filed Virginia corporate income tax returns or reports with the Department for the years 1973 through 1976. A copy of such notice is attached hereto and incorporated herein as Exhibit K.

23. On or about January 24, 1980, McAdams, through its counsel, contacted the Department through the Office of the Attorney General for the Commonwealth of Virginia. In such conversation, McAdams reiterated its position that it was and could not be subject to the Virginia corporate income tax solely

because it used highways in Virginia in interstate commerce and did not believe it should file Virginia corporate income tax returns with the Department and thus arguably acknowledge that it was possibly subject to such tax. McAdams offered to the Department, through its counsel, that if the Department maintained the position that McAdams was subject to such tax, McAdams would file a suit for declaratory judgment in a Virginia court to resolve such controversy. McAdams proposed that pending a final ruling, the Department withdraw its notice to the Corporation Commission which prevented the Commission from issuing to McAdams the stamps and/or other documents required for it to lawfully operate its vehicles in interstate commerce over highways in Virginia.

24. On or about January 24, 1980, Defendant Forst, through his counsel, refused to withdraw such notice to the Corporation Commission.

25. Pursuant to Section 56-304.5 of the Code and the previously described notice from Defendant Forst to the Corporation Commission that McAdams had not filed corporate income tax returns or reports with and/or had not paid state corporate income taxes to the Department for 1973 through 1976, the Corporation Commission was not able to issue or renew the stamps and documents necessary for McAdams to lawfully operate its pieces of equipment over highways in Virginia in interstate commerce after January 31, 1980.

26. Solely because of the decree of this Court, dated February 1, 1980, a copy of which is attached hereto and incorporated herein as Exhibit L, Defendant Forst withdrew his notice

to the Corporation Commission and the Corporation Commission issued to McAdams the stamps necessary for McAdams to lawfully operate its pieces of equipment over highways in Virginia in interstate commerce from February 1, 1980 to January 31, 1981. Pursuant to the agreement of counsel, no such notice has been sent to the Corporation Commission in 1981 and new stamps and documents were issued to McAdams by the Corporation Commission which will expire on January 31, 1982 unless such stamps and documents are renewed by the Corporation Commission. If such stamps and documents are not renewed by the Corporation Commission, McAdams will be subject to criminal prosecution if it fulfills its obligations under its Interstate Commerce Commission authority and operates its pieces of equipment solely in the interstate transportation of commodities over highways in Virginia after January 31, 1982.

27. It is the intent of Defendant Forst, pursuant to his interpretation of Section 56-304.5 of the Code to inform, and unless otherwise ordered by this Court, he will inform the Corporation Commission prior to January 31, 1982, that McAdams has not filed state corporate income tax returns or reports with and/or paid state corporate income taxes to the Department or the Commonwealth for 1973 through 1979, inclusive, or for any one or more of those years, unless McAdams files such returns or reports and pays such taxes for such years. It is the intent of Defendant Forst in so notifying the Corporation Commission to have the Corporation Commission refuse to issue such stamps and/or documents to McAdams unless such returns or reports are filed and such taxes are paid by McAdams for such years.

28. Section 56-304.5 of the Code of Virginia provides that no stamps or documents permitting motor common carriers to

operate in interstate commerce on highways in Virginia shall be issued by the Corporation Commission if the State Tax Commissioner notifies the Corporation Commission that such carrier has failed to file income tax returns or pay any income tax required of such carrier by Chapter 4 of Title 58 (Sections 58-151.01 et seq.) of the Code of Virginia.

29. The Virginia corporate income tax is not, nor does it purport to be, compensatory for the use of Virginia highways, but does purport to tax income from Virginia sources of foreign corporations as such term is defined by the Code.

30. Section 58-151.078 of the Code of Virginia requires that only corporations organized in the Commonwealth of Virginia or "having income from Virginia sources" shall make a report to the Department containing such information as will enable the Department to enforce the Virginia income tax statutes.

31. Section 58-151.03(c) of the Code of Virginia imposes an income tax on foreign corporations having "income from Virginia sources".

32. Section 58-151.02(g) of the Code of Virginia defines in pertinent part, "income from Virginia sources" to be: (1) items of income or gain attributable to the ownership of any interest in real or tangible personal property in Virginia or to a business, trade, profession or occupation carried on in Virginia; and (2) income from intangible personal property to the extent that such income is from property employed by the taxpayer in a business, trade, profession or occupation carried on in Virginia. No rule or regulation of the Department of Taxation further defines the term "income from Virginia sources".

33. At all times pertinent hereto, including but not limited to 1973 through 1979, inclusive, McAdams has not had any income, gains, losses or deductions attributable to the ownership of any interest in real or tangible property in Virginia, has not carried on any business, trade, profession or occupation in Virginia and has not had any income from intangible personal property employed by it in a business, trade or profession carried on in Virginia, with the following proviso; McAdams has transported commodities in interstate commerce over highways in Virginia which Defendants assert and Plaintiff denies is income, gains, losses or deductions attributable to the ownership of any interest in real or tangible property in Virginia, the carrying on of a business, trade, profession, or occupation in Virginia and/or is income from intangible personal property employed by Plaintiff in a business, trade, or profession carried on in Virginia for purposes of Title 58 of the Code. For the period designated in this paragraph, McAdams did not have any income from intangible personal property located in Virginia, did not transport commodities intrastate in Virginia, did not own or store any property in Virginia, did not execute any contracts in Virginia, nor did it have any salesmen or officers in Virginia. For the period designated and the reasons indicated in this paragraph, McAdams did not file any Virginia income tax return or report or pay any Virginia income tax to defendants. For the same period of time, McAdams has been subject to and has paid all Arkansas taxes required of it.

34. At all times pertinent hereto, including but not limited to 1973 through 1979, inclusive, McAdams paid all motor fuel road taxes required of it to the Commonwealth of Virginia

for its use of highways in Virginia in the interstate transportation of commodities. At all times pertinent hereto, no such taxes were required to be paid or were paid by McAdams for the intrastate transportation of commodities in Virginia as McAdams did not and does not presently transport commodities intrastate in Virginia. Neither the payment or subjecting of McAdams to the motor fuel road tax determines whether McAdams is subject to any Virginia corporate income tax.

35. If McAdams does not have to file state corporate income tax returns or reports to Defendants and/or is not subject to the Virginia state corporate income tax, the Code of Virginia would not permit Defendant Forst to notify the Corporation Commission of McAdams' failure to file such returns or reports and/or to pay such tax for 1973 through 1979, inclusive, or any one or more of these years, and would not permit the Corporation Commission to refuse to issue all necessary documents to McAdams to use highways in Virginia for the interstate transportation of commodities.

36. If Defendant Forst notifies the Corporation Commission that McAdams has not filed Virginia state corporate income tax returns or reports and/or paid Virginia state corporate income taxes for 1973 through 1979, inclusive, or any one or more of such years, substantial and irreparable harm will be suffered by McAdams and by the general public in that:

(a) McAdams will not be permitted to lawfully transport commodities in interstate commerce over highways in Virginia after January 31, 1982, when its present stamps expire;

(b) McAdams will lose substantial amounts of business and a substantial number of customers;

(c) McAdams will lose approximately \$618,131.54 in annual gross revenues;

(d) McAdams will not be able to be compensated for such losses by an increase in fees unless it can obtain an approval from the Interstate Commerce Commission for such an increase; and

(e) The public served by McAdams will be deprived of McAdams' service in obtaining receipt or shipment of goods in interstate commerce along routes primarily or exclusively served by McAdams.

37. For the years 1973 through 1977, inclusive, McAdams carried an average of 35 (thirty-five) shipments per year to designations inside Virginia from points of origin outside of Virginia and carried an average of 7 (seven) shipments per year to designations outside of Virginia from points of origin inside Virginia. Such average number of shipments are representative of the number of such shipments in each year from 1973 through 1977, inclusive.

38. In 1978, McAdams carried 40 (forty) shipments to designations inside Virginia from points of origin outside of Virginia and carried 9 (nine) shipments to designations outside Virginia from points of origin inside Virginia.

39. In 1979, McAdams carried 51 (fifty-one) shipments to designations inside Virginia from points of origin outside

Virginia and carried one shipment to a designation outside Virginia from a point of origin inside Virginia.

40. In each of McAdams' trips to designations inside of Virginia from points of origin outside of Virginia during the years of 1973 through 1979, inclusive, the designation in Virginia was not the ultimate destination for such vehicle or McAdams left Virginia without a shipment of property on board.

41. At all times pertinent hereto, including but not limited to 1973 through 1979, inclusive, approximately 95% of the miles traveled by McAdams in Virginia in the interstate transportation of commodities were "bridge miles", as such term is hereinafter defined. The remaining five percent of such miles were traveled to deliver commodities from consignors located outside of Virginia to consignees located inside Virginia or from consignors located inside Virginia to consignees located outside of Virginia.

42. At all times pertinent hereto, including but not limited to 1973 through 1979, inclusive, approximately 60% of all miles traveled by McAdams in the interstate transportation of commodities in the United States were bridge miles. The remainder of such miles traveled were traveled in any one or more of the 50 states to deliver commodities from consignors located outside of that state to consignees located inside that state or from consignors located inside that state to consignees located outside of that state.

43. In the interstate transportation of commodities, McAdams' pieces of equipment traveled the following miles for 1974 through 1979, inclusive:

<u>Year</u>	<u>Total Intercity Mileage Traveled</u>	<u>Intercity Mileage Traveled in Virginia</u>
1974	9,096,058	249,224
1975	8,673,136	138,727
1976	13,408,102	259,657
1977	20,660,618	253,716
1978	27,126,050	435,328
1979	35,182,928	1,103,670

The miles indicated in this paragraph reflect all highway miles traveled, including miles on toll roads. The mileage indicated as traveled in Virginia includes "bridge miles" as well as miles traveled from consignors located outside of Virginia to consignees located in Virginia and from consignors located inside Virginia to consignees located outside of Virginia.

44. In the interstate transportation of commodities, McAdams' pieces of equipment traveled the following percentage of miles on highways in Virginia as compared to total miles traveled for 1974 through 1979, inclusive:

<u>Year</u>	<u>Percent of Total Miles Traveled in Virginia</u>
1974	2.74%
1975	1.60%
1976	1.94%
1977	1.23%
1978	1.60%
1979	3.14%

The percentage of miles indicated in this paragraph is based upon all miles traveled on highways in the interstate transportation of commodities in 1973, including toll roads.

45. The miles and percentages reported in paragraphs 42 and 43 are representative of the miles and percentage of such miles traveled by McAdams in the interstate transportation of commodities in 1973.

46. At all times pertinent hereto, including but not limited to 1973 through 1979, inclusive, the roads in Virginia primarily used by McAdams in the interstate transportation of commodities were Interstate Highway Nos. 81, 83, 95, 64, 70, 66 and 77 and U.S. Highway Nos. 15, 33, 58 and 460.

47. The term "bridge miles" wherever used herein refers to miles traveled through Virginia or through any single state from a point of origin outside of that state to a designation outside of that state without any pick-ups or deliveries of commodities in that state. The Defendants do not stipulate that such term is synonymous with the term "vehicle miles" as defined by §58-151.050 of the Code.

48. The term "pieces of equipment" wherever used herein refers to motorized power sources used to pull trailers in interstate commerce over roadways.

49. The term "tax reports" wherever used herein refers to Virginia State tax returns with all attachments thereto.

50. The facts contained in paragraphs 42, 43, and 44 are stipulated to by Defendants for purposes of this litigation only.

51. McAdams' only source of revenue is generated by its transportation of commodities in interstate commerce.

52. McAdams charges its customers for transporting commodities in interstate commerce by the weight of such commodities and by the mile traveled. Such charges vary by the commodity to be transported and by the distance to be traveled. Thus, if a non-exempt commodity is to be transported 1,000 miles, the charge may be One Dollar (\$1.00) per hundred weight; but if the same commodity is to be transported 3,000 miles, the charge may be more than One Dollar (\$1.00) per hundred weight.

53. Most of McAdams' trucks are not owned by McAdams but are owner-operated. McAdams charges its customers a fuel surcharge for the miles traveled by such owner-operated vehicles. The money collected from such surcharge is passed directly on to the owner-operators.

54. The above stipulated facts are all of the evidence which is to be presented to the Court in the above-entitled matter.

B. J. McADAMS, INC.

By Don B. Kender
Counsel

WILLIAM H. FORST

State Tax Commissioner

By John P. MacGill
Assistant Attorney General

Eugene D. Anderson
Attorney at Law

910- 17th Street N.W. - Washington, D. C. 20006.

202 296-2560

September 17, 1976



Mr. Frank J. Mirke
Corporate Income Tax Division
Department of Taxation
P.O. Box 6-L
Richmond, Virginia 23282

Re: B.J. McAdams, Inc.
Tax No. 0776390 - Virginia File B-44180

Dear Mr. Mirkle:

This letter is in response to your request for information made on September 2, 1976, in regard to the above-referenced motor carrier. This office is in receipt of a copy of a letter from Edward A. Dore, Director of Income Tax Division, Department of Taxation, in regard to the above-referenced matter. This letter and attachment indicate the Department's position as to non-resident motor carriers.

At first reading the Dore letter would seem to indicate that the state of Virginia is attempting to change the law in regard to state taxation of interstate commerce. However, upon more closely examining the situation, as indicated by you, the state of Virginia is simply attempting to identify motor carriers whose operations in Virginia are such that they should pay Virginia income tax. B.J. McAdams, Inc. is not one of these carriers.

B.J. McAdams, Inc. presently does not have authority to originate any traffic in the state of Virginia. ^{1/} B.J. McAdams, Inc., hereinafter referred

1/

In Interstate Commerce Commission Docket MC-134922, Sub 26, B.J. McAdams did originate traffic in Virginia, However, this authority was sold in 1975.

Mr. Frank J. Mirkle
September 17, 1976
Page 2



to as McAdams, does not participate in joint-line or interline traffic out of the state of Virginia. McAdams maintains no facilities in the state of Virginia. McAdams is a motor carrier of specific commodities over irregular routes in interstate commerce. B.J. McAdams is engaged exclusively in interstate commerce when it is within the state of Virginia. McAdams does have authority under Docket MC-134922, Subs 14, 29, 55, 70 and 93 to transport specific commodities into the state of Virginia. However, McAdams has not been transporting loads on these subs for a considerable length of time. The great majority of all McAdams trucks moving through the state of Virginia are hauling exempt commodities. These trucks travel primarily Interstate 81 and U.S. Highway 50. The trucks make stops for fuel only. The main stops for these trucks are located at Bristol, Roanoke, Raphine and Winchester, Virginia. The pro rata rate of total miles for the state of Virginia to total McAdams mileage is 1.60%.

The main issue here seems to be whether the use of Virginia highways is a sufficient nexus to subject such users to Virginia income tax. It is well established that labels are not controlling in determining the constitutionality of a tax. The courts will determine for themselves the practical operation of such a tax. ^{2/} The Code of Virginia, §56-304-5 states that no warrants, exemption cards, registration cards or stamps shall be issued until applicants for such have filed returns or paid in full taxes required under Title 58 of the Virginia Code. Title 58 of the Virginia Code, §151-050, subjects motor carriers of property or passengers to income tax on a pro rata basis. This section together with §56-304.5 effectively prevents motor carriers from transporting commodities into, through or out of the state of Virginia unless they have filed and/or paid this income tax. The enforcement of such provisions would amount to

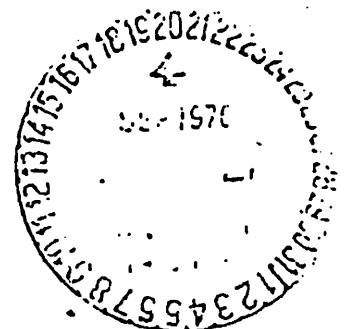
^{2/} See: Railway Express Agency, Inc. v. Virginia, 347 U.S. 359 (1954).

Mr. Frank J. Mirkle
September 17, 1976
Page 3

a privilege tax and an undue burden on interstate commerce if the motor carrier is engaged exclusively in interstate commerce. 3/

The federal courts have struck down under the Commerce Clause, state taxes upon business that was exclusively interstate in character. As stated previously, the state of Virginia is of the opinion that the mere use of highways is a sufficient nexus. This very contention was discussed in Miller Bros. Company v. State of Maryland, 347 U.S. 340 (1954). Mr. Justice Jackson stated as follows:

"The course of decisions does reflect at least consistent adherence to the one time honored concept; that due process requires some definite link, some minimum connection between a state and the person, property or transaction it seeks to tax. Thus the court has frequently held that domicile or residence more substantial than mere presence in transit or sojourn, is an adequate basis for taxation, including income, property, and death taxes." (344-345, emphasis added)



3/ A case in point with the instant situation is Spector Motor Service, Inc. v. Dennis P. O'Connor, Tax Commissioner, 340 U.S. 602 (1951); in Spector the state of Connecticut attempted to collect a tax upon the franchise of corporation for the privilege of carrying on or doing business in that state. The Supreme Court found that the petitioner was engaged only in interstate transportation. That it was authorized by the Interstate Commerce Commission to do certain interstate trucking and by the Connecticut Public Utility Commission to do part of such interstate trucking in Connecticut. The Court stated that the all-important "operating incident"

Mr. Frank J. Mirkle
September 17, 1976
Page 4

It would appear from the above-quote that the mere presence or sojourn through a state is insufficient nexus. 4/

In September, 1959, the U.S. Congress enacted Public Law 86-272. 5/ Public Law 86-272 has been construed to limit the ability of states to classify certain activities as minimum contacts. Section 382 of this law prohibits states, or any political subdivision thereof, from assessing or imposing any net income tax on any person on income received from interstate commerce. Although this law has dealt mostly with interstate purchase and sales activity, it may be construed to cover motor carriers engaged in interstate commerce. 6/

3/ of the tax did not exist because there were no intrastate commerce activities by the petitioner. The Court concluded that although the taxing power is inherent in sovereign states, these states delegated to the federal government of the United States the exclusive power to tax those privileged to engage in interstate commerce. See: U.S. Constitution, Article I, §8, Clause 3.

4/ The case law on this point would substantiate the statement by Justice Jackson. See: McGuire v. Trefry, 353 U.S. 12 (1919); Lawrence v. State Tax Commission, 286 U.S. 276 (1931); Guarantee Trust Co. v. Virginia, 304 U.S. 19 (1938) as examples.

5/ 78 Stat. 555, U.S.C.S. §381 et. seq.

6/ For recent cases involving this law see: Evco v. Franklin Jones, 409 U.S. 91 (1972); Allenburg Colton Co. v. Pittman, 419 U.S. 20 (1974); Roadway Express, Inc. v. Director, Division of Tax, 50 N.J. 471 (S. Ct. N.J., 1967); Clairol, Inc. v. Kingsley, 109 N.J. 22, 262 A 2d 213 (S. Ct. N.J., 1970). These cases substantiate the point of the necessity of minimum contact. The public law 86-272 has been interpreted to be a limited prohibition based on the legislative approach being negative rather than positive in inference. See: U.S. Code Congressional Administrative News, 86 Cong., First Sess., (1959), pp. 2548, 2551.

Mr. Frank J. Mirkle
September 17, 1976
Page 5

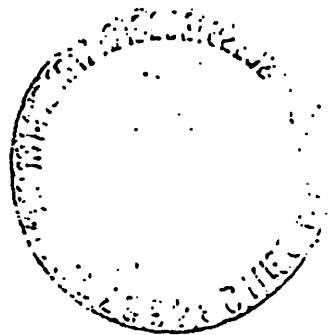
In conclusion, it is the opinion of this office, based on the facts provided, that B.J. McAdams, Inc. should not be held liable for the Virginia income tax. We would appreciate disposition of this matter as expeditiously as possible. If we may be of any further assistance please do not hesitate to contact this office.

Sincerely yours,



Eugene D. Anderson

Copy: B.J. McAdams



October 6, 1976

Mr. Eugene D. Anderson
910 17th Street, N.W.
Washington, D. C. 20006

Re: B. J. McAdams, Inc.
Tax No. 0776390 -
Virginia File B-44180

Dear Mr. Anderson:

Your letter of September 17, 1976, to Mr. Frank J. Merkai has been forwarded to me for response. I hope I will be able to clarify for you the rationale upon which the Commonwealth of Virginia feels that it has jurisdiction to tax motor carriers who derive income through use of Virginia highways. While the Department of Taxation does not question any of the statements you have made regarding McAdams' activity in Virginia, it nevertheless maintains that McAdams is subject to the Virginia income tax on motor carriers based on its mileage traveled in Virginia.

You have suggested that the main issue is whether use of Virginia highways provides sufficient nexus to subject motor carriers to Virginia income tax. This test was discussed in the case of Northwestern States Portland Cement v. State of Minnesota and T. V. Williams v. Stockham Valves and Fittings, Inc., 358 U.S. 450 (1959). The Department maintains that on the basis of the rationale and language in that decision that the Virginia income tax on motor carriers is validly imposed. Under the due process clause, a state has power to impose taxes upon instrumentalities of interstate commerce when the tax in practical operation has relation to opportunity, benefits or protection conferred or afforded by the taxing state. Braniff Airways, Inc. v. Nebraska State Board, etc. 347 U.S. 590 (1954). A motor carrier which earns its income carrying freight or passengers over highways is clearly contemplated by this language. Virginia provides many services which enable motor carriers to operate efficiently and profitably in the movement of freight or passengers through the state.

Mr. Eugene D. Anderson
October 6, 1976
Page 2

You also contend that §§ 58-151.050 and 56-304.5 of the Code of Virginia (1950), as amended, operate in such a way as to convert the income tax to a prohibited privilege or license tax. Section 56-304.5 is a regulatory provision, intended to aid the State Corporation Commission in the regulation of motor carriers which use the highways of Virginia. It provides that no registration card will be issued until the applicant has paid certain state taxes. Additionally, no registration card is to be issued to a motor carrier, in the event the Tax Commissioner notifies the State Corporation Commission that the motor carrier has not paid its income taxes. In Spector Motor Service v. O'Connor, 340 U.S. 602, 71 S.Ct. 508 (1951), the Supreme Court declared that where the incidence of a tax was on the privilege of conducting an interstate business, the tax was unconstitutional. Here, the incidence of the income tax is on net income, not on the privilege of conducting an interstate business.

Section 56-304.5 permits the Tax Commissioner to authorize the State Corporation Commission to withhold a registration certificate for failure to pay the income tax. The Commissioner is not required to pass on this information, and it is contemplated that this remedy will be invoked only as a last resort, after normal income tax collection procedures have failed. As it applies to the income tax, § 56-304.5 is merely a supplemental aid in the collection machinery and cannot be considered to have converted the income tax into a tax on the privilege of doing business in Virginia.

The case of Miller Brothers Co. v. Maryland 347 U.S. 340 (1954) has no application in determining the validity of an income tax on motor carriers. That case involved a situation where the State of Maryland tried to compel an out-of-state retail merchant to collect its use tax. The Supreme Court ruled that Maryland did not have jurisdiction to require an out-of-state retailer to be its collection agent. As you have noted, the Court stated that "mere presence in transit or sojourn" is not sufficient to provide a basis for taxation. In traveling over Virginia's highways a motor carrier is conducting its business activity and earning a profit. Consequently, a motor carrier establishes a much more substantial presence in Virginia than that regarded as inadequate by the Court in Miller Bros.

Public Law 86-272 also has no bearing on this case. As you have recognized, that law is a limited prohibition which prohibits a state from taxing an entity whose only activity in Virginia is the solicitation of sales. A motor carrier does not even engage in sales activity, and in any event, its profit-earning activity in Virginia clearly exceeds the jurisdictional test set forth in P.L. 86-272.

Mr. Eugene D. Anderson
October 6, 1976
Page 3

I hope that this letter has clearly set forth the position of the Department of Taxation in this matter. If I can be of any further service to you, please feel free to write.

Sincerely,

William J. West, Supervisor
Corporation Tax Section
Income Tax Division

WJW:shs

Eugene D. Anderson
Attorney at Law

910- 17th Street, N.W. - Washington, D. C. 20006

202 296-2550

9:4'
November 4, 1976

Mr. William J. West,
Supervisor
Corporate Tax Section
Income Tax Division
Department of Taxation
Commonwealth of Virginia
Richmond, Virginia 23282

Re: B.J. McAdams, Inc.
Tax No. 0776390
Virginia File No. B-44180

Dear Mr. West:

This letter is in response to your letter of October 6, 1976, re above. Perhaps a conference is in order. The reason I suggest this is because B. J. McAdams, Inc. has no objection to paying those taxes it owes Virginia (it has already paid \$6,489.23 to Virginia for the first nine months of this year just for the privilege of using Virginia's highways), but, under the cases you cite in your letter, ^{1/} B.J. McAdams, Inc. is not liable for a tax on its income.

The cited cases concern a tax on net income from interstate operations of multi-state corporations engaged in "local activities." The cases require a minimum of employees stationed within the taxing state and real estate, owned or leased. B.J. McAdams, Inc. has neither. Furthermore, a review of the background and legal basis for the Supreme Court holdings reveal a consistent position in regard to the amount of activity necessary to subject a corporation to jurisdiction of a state for income tax purposes.

1/

Northwestern Portland Cement Company v. Minnesota and T.V. Williams v. Stockham Valves and Fittings, Inc., 358 U.S. 450 (1959); Braniff Airways, Inc. v. Nebraska State Board, 347 U.S. 590 (1954).

Mr. William J. West
November 4, 1976
Page 2

The facts relied upon in the cited cases may be summarized as follows:

- (1) regular and systematic solicitation of orders
- (2) maintenance of sales offices and equipment
- (3) employment of personnel on a local basis
- (4) personnel conducted substantial solicitation order receipt and forwarding of transactions to the corporate headquarters
- (5) orders and sales were made on a delivered customer location basis
- (6) the involved corporations maintain regular contact with customers within the particular state attempting to impose the tax

Justice Clark summarized the holding of the Supreme Court in the Northwestern Portland Cement case by stating:

"We conclude that net income from the interstate operations of a foreign corporation may be subjected to state taxation provided the levy is not discriminatory and is properly apportioned to local activities within the taxing state forming sufficient nexus to support the same."
(at page 452, emphasis added)

The Court noted that the above-listed activities "form a sufficient nexus between such a tax and transactions within a state for which the tax is an exaction." 2/

The Court further states that corporations must be involved in local events to forge "some definite link, some minimum connection" sufficient to satisfy due process

2/

Northwestern Portland Cement Company v. Minnesota,
supra at 464.

Mr. William J. West
November 4, 1976
Page 3

requirements. ^{3/} In summary, the cases cited by the Virginia Department of Taxation presuppose sufficient local activities to establish the nexus. Further, all parties involved in the cases cited were conducting extensive local activities within the taxing state. The Virginia Department of Taxation concedes that the activity of McAdams in Virginia is limited to use of Virginia highways.

The Virginia Department of Taxation cites Braniff Airways, Inc. v. Nebraska State Board, 347 U.S. 590 (1954) as additional precedent for the imposition of the involved income tax. Therein the Supreme Court stated:

"The basis of the jurisdiction is the habitual employment of the property within the state. ...this leaves it in the position of other carriers such as rails, boats and motors that pay for the use of local facilities so as to have the opportunity to exploit the commerce, traffic and trade that originates in or reaches Nebraska. Nebraska certainly affords protection during such stops and these regular landings are clearly a benefit to appellant." ^{4/}

Such language is the rationale and basis for state road use taxation.

^{3/} :
Northwestern Portland Cement Company v. Minnesota, supra at 465; Miller Bros. Company v. Maryland, 347 U.S. 340, 344-345 (1954) wherein the Court articulated the limits of state jurisdiction for tax purposes. The Court stated: "The course of decisions does reflect at least consistent adherence to the one time honored concept; that due process requires some definite link, some minimum connection between a state and the person, property or transaction it seeks to tax. Thus, the court has frequently held that domicile or residence more substantial than mere presence in transit or sojourn, is an adequate basis for taxation, including income, property, and death taxes." (emphasis added)

^{4/}
Braniff Airways v. Nebraska State Board, supra at 601. Further citing Johnson Oil Refining Company v. Oklahoma, 290 U.S. 158, 162 (1933) additional citations omitted.

Mr. William J. West
November 4, 1976
Page 4

. As I stated, perhaps a conference is in order. I suggest this in order to clarify this matter for good because it seems so clear that McAdams is not subject to Virginia income tax.

Sincerely,

A handwritten signature in dark ink, appearing to read "Eugene D. Anderson", written in a cursive style.

Eugene D. Anderson
Attorney for
B. J. McADAMS, INC.

ANDREW P. MILLER

ATTORNEY GENERAL

ANTHONY F. TROY

CHIEF DEPUTY ATTORNEY GENERAL

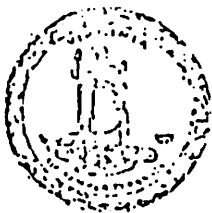
ELMO S. HARR, III

WALTER A. McFARLANE

JAMES E. KULP

D. PATRICK LACY, JR.

DEPUTY ATTORNEYS GENERAL



OFFICE OF THE ATTORNEY GENERAL
SUPREME COURT BUILDING
1101 EAST BROAD STREET
RICHMOND, VIRGINIA 23219
804-780-2071

STUART H. QUINN
RICHARD W. C. WITHERLAND
GILBERT W. HARRIS
BURNETT MILLER, III
WALTER A. MANTON, JR.
LINWOOD F. WELLS, JR.
WILBURN C. DODDING, JR.
WARTH C. THOMAS
JOHN F. RICH
CHARLES A. TRIPLE
GILMAN D. HORTON, JR.
J. THOMAS STEGER
JOHN J. DAVIS, JR.
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M. STUART SATCHEL
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EDWARD F. HOLDE
MICHAEL CAMPILONGO
MARY YANCEY SPENCER
RONALD W. TAY
PAUL J. PUGH
GUY W. HOPKINS, JR.
K. MARSHALL COOK
ASSISTANT ATTORNEYS GENERAL

November 16, 1976

Eugene D. Anderson, Esquire
910 17th Street, N.W.
Washington, D. C. 20006

Re: B. J. McAdams, Inc.

Tax Number 0776390

Virginia File No. B - 44180

Dear Mr. Anderson:

This letter is in response to your letter of November 4, to Mr. William J. West concerning the income tax liability of B. J. McAdams, Inc. You have indicated that you wish to have a conference concerning this matter, and of course we would be willing to have you come to Richmond and express your views to us personally. In connection with such a conference, it may be desirable for you to submit an application for administrative review pursuant to Section 58-1118 of the Code of Virginia (1950), as amended.

I have reviewed the correspondence between Mr. West and yourself, and it appears that there is disagreement as to the application and meaning of language in certain cases, as such language bears on the ability of the Commonwealth of Virginia to tax interstate motor carriers. For example, on page 2 of your letter you cite language from the Northwestern Portland Cement case. You have taken the position that Justice Clark's summary of the holding of the Supreme Court in that case precludes the taxation of motor carriers such as B. J. McAdams, Inc., by the Commonwealth of Virginia. The Department of Taxation is of the opinion that the language enables the Department to assess the tax. It is clear that the tax is not discriminatory, for it is imposed upon all motor carriers. Further, it is properly apportioned, according to the mileage formula, to local activity in Virginia. The Department considers the conduct of the business of moving persons or freight over Virginia highways

Eugene D. Anderson, Esquire

November 16, 1976

Page 2

as sufficient local activity to establish nexus for taxation. The Department of Taxation is of the opinion that the cases cited do support the imposition of the tax, while you feel that such activity is insufficient to allow the Commonwealth to impose its income tax.

As I indicated above, you are most welcome to appear before us in person and explain your position more fully. However, it appears that there is an irreconcilable difference of opinion concerning the interpretation of certain language in Supreme Court cases. You have interpreted the language to bar taxation of the income of interstate motor carriers, while the same language is relied upon by the Department of Taxation as a basis to support such taxation.

Most sincerely,



Glenn R. Moore
Assistant Attorney General

GRM:afr



COMMONWEALTH of VIRGINIA

June 28, 1977

DEPARTMENT OF TAXATION

RICHMOND 23282

Mr. Eugene D. Anderca
Attorney-at-Law
910 17th Street, NW
Washington, D. C. 20005

Re: B. J. McAdams, Inc.
Virginia Income Tax returns
1973, 1974, and 1975

Dear Mr. Anderca:

This is in reply to past correspondence concerning the filing of Virginia income tax returns for the above years and Mr. Glenn R. Moore's letter in reply to your letter of November 4, 1976.

We again point out that the Commonwealth of Virginia has taken the position that the activity of transporting passengers or property through the State of Virginia gives rise to Virginia source income for motor carriers and that such mileage in Virginia constitutes a "Nexus" sufficient for the imposition of tax. This position in our estimation is legally sound and defensible.

May we further point out, Section 58-40, Code of Virginia, states:

"Whenever any taxpayer liable under the law to file a State tax return with the Department of Taxation shall fail or refuse on demand to file a correct and proper return, the Department may make an estimate of the amount of taxes due the State by such taxpayer, from any information in its possession, and assess the taxes, penalties and interest due the State by such taxpayer." And Section 58-304.5, Code of Virginia;

"No warrant, exemption card, registration card or stamp shall be issued unless the applicant certifies that he has made all road reports and paid all road taxes due from him under Articles 12 (Section 58-627 et seq.) and 13 (Section 58-638 et seq.) of Chapter 12 of Title 58 of the Code of Virginia, nor shall any such warrant, exemption card, registration card or stamp be issued if the State Tax Commissioner shall have notified the Commissioner that the applicant has failed to file any return or pay in full any tax required of him". Under Chapter 4 (Section 58-151.01 et seq;) of Title 58 of the Code of Virginia.

Mr. Eugene D. Anderson

Page 2

June 28, 1977

In view of our position and under the Tax Code of Virginia, we are again requesting full compliance with the Virginia Income tax laws and anticipate the previously requested delinquent returns will be completed and forwarded to this Department within the next fifteen days. If the Department of Taxation has not received the above requested returns within this period, we will proceed to assess the delinquent years based on the information now presently available to the Department under Section 58-40, Code of Virginia.

Section 58-304.3 as noted in the above paragraph, permits the State Tax Commissioner to authorize the State Corporation Commissioner to withhold a registration certificate for failure to pay the income taxes due. It is contemplated that this remedy will be invoked after normal collection procedures have failed.

Sincerely,

C. V. K.
Corpora
Incor
(804)

CVK/E

January 6, 1978

B. J. McAdams, Inc.
c/o Eugene D. Anderson
Attorney for B. J. McAdams, Inc.
910 17th Street, N.W.
Washington, D.C. 20006

Gentlemen:

This is to give you final notice of the Virginia income tax requirements. A statement of the pertinent statutes and positions of the Department is enclosed.

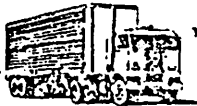
On several occasions in the past, this matter was brought to your attention. However, we have no record of having received the required returns or any satisfactory explanation.

If we do not hear from you within ten days from the date of this letter, action will be taken under Section 56-304.5 of the Code of Virginia.

Sincerely,

William J. West, Supervisor
Corporation Tax Section
Income Tax Division

WJW/pw



COAST-TO-COAST TRUCK SERVICE
Route #6 Box 15
North Little Rock, Arkansas 72118

B. J. McA MS



76053

DATE October 4, 19 79 ⁸¹⁻¹¹₈₂₀

PAY TO THE ORDER OF Virginia Corporation Commission \$ 55.00.

B.J. McADAMS 55 00 00

DOLLARS



UNION NATIONAL BANK
LITTLE ROCK, ARKANSAS

B.J. McADAMS

AMOUNTS IN EXCESS OF 3,000.00 MUST BE COUNTERSIGNED

Diane Price

⑈076053⑈ ⑆082000112⑆ 77⑈651⑈061⑈

rb



COMMONWEALTH of VIRGINIA

*Department of Taxation
Richmond 23282*

August 23, 1979

Mr. R. Polk Gordon, Jr., Director
Transportation Division
State Corporation Commission
P. O. Box 1158
Richmond, Virginia 23209

Re: Failure to file State Corporation Tax Returns for 1973 through 1976

Dear Mr. Gordon:

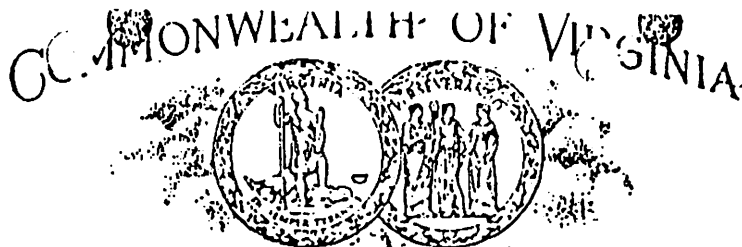
Pursuant to Section 56-304.5 of the Code of Virginia, you are hereby notified that the motor carriers on the attached list have failed to file returns required under Chapter 4 of Title 58 of the Code of Virginia.

Sincerely,

W. H. Forst
State Tax Commissioner

Motor Carriers

B J McAdams Inc
Rt 6 Box 16
North Little Rock Ar 72118



HAYWOOD L. MOORE
DIRECTOR
804-786-1698

D. L. McPHERSON
DEPUTY DIRECTOR
804-786-2418

WILLIAM S. FULCHER
MANAGER-ROAD TAXES
804-786-2704

M. D. PARSLEY
MANAGER-REGISTRATIONS
804-786-2821

STATE CORPORATION COMMISSION
MOTOR CARRIER OPERATIONS DIVISION
(REGISTRATIONS) P. O. BOX 1158
(ROAD TAXES) P. O. BOX 1159
RICHMOND, VIRGINIA 23209

October 26, 1979

B-44180

B. J. McAdams, Inc.
Route 6, Box 15
North Little Rock, Arkansas 72118

Gentlemen:

This is with reference to our letter of October 11, 1979 in which we advised that we would be unable to issue you additional operating authority until you have filed State Corporation Tax Returns for 1973 through 1976.

Pursuant to our letter we have received from you photostat copies of your motor fuel road tax reports for those years. Please be advised that the State Corporation Tax Returns are not the same as your motor fuel road tax reports. It is requested that you contact Mr. C. V. Kinnard, Telephone 804-786-5735, with the Department of Taxation concerning these returns.

76-0600

804-257-8000 -

Your Check No. 76053 in the amount of \$55 is herewith returned to you and should be re-submitted for the issuance of stamps after you have cleared your account with the Department of Taxation.

Yours very truly,

M. D. Parsley

M. D. Parsley
Manager-Registrations

MDP
cl
enclosure



COAST-TO-COAST TRUCK SERVICE
Route #6 Box 15
North Little Rock, Arkansas 72118

B. J. McADAMS



78297

DATE December 26, 19 79

81-11
820

PAY TO THE ORDER OF Virginia Corporation Commission \$ 939.00

B.J. McADAMS 939.00

00

DOLLARS

UNION NATIONAL BANK
LITTLE ROCK, ARKANSAS

B.J. McADAMS
AMOUNTS IN EXCESS OF 3,000.00 MUST BE COUNTERSIGNED

Volume Price

⑈078297⑈ ⑈082000112⑈ 77⑈651⑈061⑈

Please Detach Before Depositing

OTHER RECEIPT NECESSARY

78297

B. J. McADAMS
NORTH LITTLE ROCK, ARKANSAS

When Detached and Paid, The Above Check
Becomes A Receipt In Full Payment Of The
Following Account.

PERIOD ENDING	HOURS WORKED	RATE	AMOUNT EARNED	TAX DEDUCTIONS			OTHER DEDUCTIONS			Total Deductions	AMOUNT OF CHECK	
				State Tax	F.I.C.A.	With.Tax						
	REG											
	O.T.											
DATE	1141	DESCRIPTION					AMOUNT	DISCOUNT		OTHER DEDUCTIONS		NET AMOUNT
							%	AMOUNT	FOR	AMOUNT		
12/26/79		VA Stamp Renewal 294 Cont. & Comp. Stamps 19 Nash. Trk. Co., Inc.(Trip Lease) 313 @ \$3.00 ea.= \$939.00					939.00					939.00

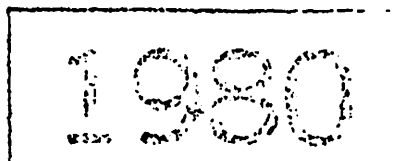
APPLICATION FOR REGISTRATION OF OPERATING AUTHORITY AND IDENTIFICATION OF VEHICLES

(ICC REGULATED CARRIERS OF PROPERTY AND PASSENGERS)

ANNUAL FILING REQUIRED

* 03199

O: STATE CORPORATION COMMISSION
MOTOR CARRIER OPERATIONS DIVISION
P. O. BOX 1158
RICHMOND, VIRGINIA 23209



11/26/79
8/23/79

0 002 25515

B J MCADAMS INC

RT 6 BOX 15

NORTH LITTLE ROCK AR 72118

THIS IS YOUR FILE NUMBER;
USE IT WHEN WRITING OR
CALLING THIS OFFICE.

F-710302979-4

B 44193
DATE 12/26/79

IF THE NAME OR ADDRESS OF THE APPLICANT HAS BEEN
CHANGED PLEASE CHECK BOX.

THE ABOVE APPLICANT HEREBY APPLIES FOR THE ISSUANCE OF IDENTIFICATION STAMP(S) FOR THE REGISTRATION AND IDENTIFICATION OF THE VEHICLES WHICH THE APPLICANT INTENDS TO OPERATE OR DRIVE-AWAY OPERATIONS WHICH IT INTENDS TO CONDUCT IN INTERSTATE COMMERCE OVER THE HIGHWAYS OF VIRGINIA. EACH IDENTIFICATION STAMP ISSUED BY THE COMMISSION ON OR AFTER NOVEMBER FIRST, SHALL BE VALID FROM DATE OF ISSUANCE AND SHALL BEAR AN EXPIRATION DATE OF THE FIRST DAY OF FEBRUARY OF THE SUCCEEDING CALENDAR YEAR.

NO. STAMPS REQUESTED	\$1.00 IDENTIFICATION STAMP(S) PASSENGER.
313	\$3.00 IDENTIFICATION STAMP(S) FREIGHT.
	\$ 313 FEE ENCLOSED.

MAKE CHECK PAYABLE TO TREASURER OF VIRGINIA

THE VEHICLES TO BE OPERATED ARE TO BE DESCRIBED BELOW ON THE VEHICLE IDENTIFICATION LIST.

LIST ONLY BUSES, TRACTORS, AND TRUCKS. DO NOT LIST VIRGINIA LICENSED VEHICLES THAT WILL BE OPERATED IN INTRASTATE COMMERCE IN VIRGINIA.

VEHICLE IDENTIFICATION LIST*

MAKE	TYPE	SERIAL	STATE LICENSED	CO. NO.	LEAVE BLANK
KEN	Trac	246985J	CA	21	
WHT	Trac	124594	CA	27	
WHT	Trac	124597	CA	33	
WHT	Trac	124600	CA	39	
KEN	Trac	253254J	CA	71	
KEN	Trac	253255J	CA	73	
KEN	Trac	253256J	CA	75	
KEN	Trac	253257J	CA	77	

IF ADDITIONAL SPACE IS NEEDED, ATTACH SEPARATE SHEET. ANY CARRIER LIST CONTAINING THE SAME INFORMATION WILL BE ACCEPTABLE.

TOTAL NUMBER OF VEHICLES LISTED: 313 TOTAL STAMPS FOR UNLISTED VEHICLES 0

LIST OF VEHICLES IS NOT REQUIRED TO BE LISTED FOR DRIVEAWAY OPERATIONS.

(APPLICATION TO BE COMPLETED AND SIGNED ON REVERSE SIDE)

(OVER)

APPLICATION FOR REGISTRATION OF OPERATING AUTHORITY

APPLICANT B. J. McAdams, Inc. 501 758-0227
FULL NAME OF CARRIER HOLDING AUTHORITY FROM ICC AREA CODE PHONE NUMBER
STREET Route 6, Box 15 P. O. BOX _____

CITY North Little Rock STATE Arkansas ZIP 72118

ICC OPERATING AUTHORITY NO: MC 134922 TYPE ROUTE: ☐ REGULAR
☒ CERTIFICATE ☐ PERMIT ☐ TEMPORARY AUTHORITY ☒ IRREGULAR

TYPE OF CARRIER:

☐ PROPERTY ☐ PASSENGER ☒ COMMON ☐ CONTRACT ☐ DRIVEAWAY ☐ CHARTER

ADDRESS OF PRINCIPAL OFFICE:

STREET Rt. 6, Box 343 CITY North Little Rock STATE Arkansas ZIP 72118

IF CORPORATION, GIVE STATE IN WHICH INCORPORATED Arkansas DATE OF INCORPORATION 8/31/64

NAME OF PRESIDENT Bob McAdams SECRETARY OF CORPORATION Lee McAdams

IF PARTNERSHIP, GIVE NAMES AND ADDRESSES OF ALL PARTNERS:

ENTER SOC. SEC. # OR FED. EMPLOYER
ID. # (INCLUDE ALL HYPHENS)

71-0362979

APPLICANT APPOINTS THE SECRETARY OF THE COMMONWEALTH OF VIRGINIA, OR THE PERSON LIVING IN VIRGINIA
NAMED BELOW, AS AGENT FOR SERVICE OF PROCESS AND ORDERS:

NAME C. Hobson Goddin

ADDRESS 200 W. Grace St., Richmonds DY 23220

APPLICANT CERTIFIES THAT INSURANCE, SURETY BOND OR EVIDENCE OF SELF-INSURANCE COVERING APPLICANT
FOR BODILY INJURY AND PROPERTY DAMAGE LIABILITY IN THE AMOUNTS REQUIRED BY THE INTERSTATE COM-
MERCE COMMISSION HAS BEEN FILED WITH THAT COMMISSION AND THAT THE INSURANCE, SURETY BOND OR EVI-
DENCE OF SELF-INSURANCE IN EFFECT IS VALID IN THE COMMONWEALTH OF VIRGINIA.

APPLICANT FURTHER CERTIFIES THAT ALL TAXES DUE THE COMMONWEALTH OF VIRGINIA ARE PAID AND ALL ROAD
TAX REPORTS REQUIRED HAVE BEEN FILED.

I, THE UNDERSIGNED, DO CERTIFY THAT I AM AUTHORIZED TO EXECUTE THIS DOCUMENT ON BEHALF OF THE AP-
PLICANT; THAT ALL INFORMATION FURNISHED IS TRUE AND CORRECT.

ATTACH LIST OF TERMINALS IN
VIRGINIA AND WHERE LOCATED.

SIGNATURE Ruth Ann Clark

TITLE Secretary

APPLICANT SHALL NOT KNOWINGLY PERMIT ANY UNAUTHORIZED USE OF IDENTIFICATION STAMP(S) ISSUED PUR-
SUANT TO THIS APPLICATION.

FRD		W90WVGK0527	CA	813	
FRD	Trac	W90WVGK0528	CA	815	
FRD	Trac	W90WVGK0529	CA	817	
FRD	Trac	W90WVGK0530	CA	819	
FRD	Trac	W90WVGK0531	CA	821	
FRD	Trac	W90WVGK0532	CA	823	
FRD	Trac	W90WVGK0533	CA	825	
FRD	Trac	W90WVGK0534	CA	827	
FRD	Trac	W90WVGK0535	CA	829	
FRD	Trac	W90WVGK0536	CA	831	
FRD	Trac	W90WVGK0537	CA	833	
FRD	Trac	W90WVGK0538	CA	835	
FRD	Trac	W90WVGK0539	CA	837	
FRD	Trac	W90WVGK0540	CA	839	
FRD	Trac	W90WVGK0541	CA	841	
FRD	Trac	W90WVGK0542	CA	843	
FRD	Trac	W90WVGK0543	CA	845	
FRD	Trac	W90WVGK0544	CA	847	
FRD	Trac	W90WVGK0545	CA	849	
PBT	Trac	96016NK	CA	9	
WHT	Trac	HM082762	CA	10	
KEN	Trac	2013	CA	42	
KEN	Trac	121659	CA	53	
KEN	Trac	126836	CA	56	
KEN	Trac	131206 GL	CA	61	
WHT	Trac	105424	CA	64	
WHT	Trac	CA210ZL105425	CA	65	

WHT	Trac	90039	CA	66	
PBT	Trac	93406KN	CA	71	
PBT	Trac	82424KN	CA	72	
KEN	Trac	162590S	CA	75	
KEN	Trac	162591S	CA	76	
PBT	Trac	113032NK	CA	78	
WHT	Trac	CA213HL1090431	CA	79	
KEN	Trac	174854S	CA	81	
KEN	Trac	163843S	CA	83	
KEN	Trac	170866	CA	84	
KEN	Trac	1797623	CA	85	
FRO	Trac	W90WVGK0521	CA	801	
FRT	Trac	123121	CA	2351	
FRO	Trac	W90WVGK0522	CA	803	
KEN	Trac	260302K	CA	2357	
KEN	Trac	260303K	CA	2359	
KEN	Trac	260304K	CA	2361	
KEN	Trac	260305K	CA	2363	
KEN	Trac	260307K	CA	2365	
PBT	Trac	123704N	CA	2369	
INT	Trac	18195	CA	2371	
INT	Trac	12351	CA	2373	
FRO	Trac	W90WVGK0523	CA	805	
KEN	Trac	273245K	CA	2383	

PBT	Trac	61255P	CA	2397	
FRD	Trac	W90WVGK0524	CA	807	
INT	Trac	22286	CA	2401	
INT	Trac	15783	CA	2403	
FRT	Trac	169445	CA	2409	
WAR	Trac	1102818	CA	2413	
FRD	Trac	VBG9334	CA	2419	
FRD	Trac	W90WVGK0525	CA	809	
KEN	Trac	260720J	CA	2423	
KEN	Trac	127624	CA	2427	
WHT	Trac	1027173	CA	2429	
WHT	Trac	1027172	CA	2431	
KEN	Trac	255298	CA	2433	
INT	Trac	16771	CA	2203	
FRT	Trac	168568	CA	2411	
KEN	Trac	254147K	CA	2501	
KEN	Trac	254148K	CA	2503	
KEN	Trac	254941K	CA	2505	
KEN	Trac	254150K	CA	2507	
KEN	Trac	254242K	CA	2509	
KEN	Trac	254943K	CA	2511	
KEN	Trac	254149K	CA	2513	
KEN	Trac	254151K	CA	2515	
FRD	Trac	W90WVGK0526	CA	811	

NAME	TYPE	GEN ID	UNIT	COIN	REMARKS
INT	Trac	E2327JGa12975	CA	475	
INT	Trac	E2327JGa12976	CA	477	
WHT	Trac	ZF098726	CA	2055	
PBT	Trac	41988N	CA	2057	
WHT	Trac	14617	CA	2081	
PBT	Trac	82000N	CA	2097	
KEN	Trac	1683545	CA	1067	
KEN	Trac	275382J	CA	1115	
PBT	Trac	62670N	CA	1173	
WHT	Trac	124576	CA	1183	
MAC	Trac	16900	CA	1213	
WHT	Trac	133391	CA	1259	
MAC	Trac	30169	CA	1261	
FRD	Trac	32250	CA	1275	
KEN	Trac	255024K	CA	1285	
Ken	Trac	2 81533K	CA	2425	
FRT	Trac	183076	CA	1333	
PBT	Trac	87209N	CA	1349	
INT	Trac	19486	CA	1375	
KEN	Trac	254013K	CA	2001	
KEN	Trac	244757M	CA	2005	
WHT	Trac	106989	CA	2013	
KEN	Trac	1687845	Ca	2021	
FRT	Trac	155757	CA	2041	
FRT	Trac	154936	CA	2043	
INT	Trac	12933	CA	2217	

INT	TRac	17249	CA	2219	
INT	Trac	17921	CA	2221	
Ken	Trac	206300K	CA	2217	
PBT	Trac	27034N	CA	2251	
GMC	Trac	568073	CA	2265	
PBT	Trac	101386N	CA	2283	
PBT	Trac	115273N	CA	2291	
FRT	Trac	154008	CA	2297	
FRT	Trac	158048	CA	2303	
Ken	Trac	206300K	CA	2319	
INT	Trac	16129	CA	2319	
Mac	Trac	700502	CA	2321	
KEN	Trac	1706273	CA	2331	
KEN	Trac	273742	CA	2333	
INT	Trac	E2327JGA12934	CA	393	
INT	Trac	E2327JGA12935	CA	395	
INT	Trac	E2327JGA12936	CA	397	
INT	Trac	E2327JGA12937	CA	399	
INT	Trac	E2327JGA12938	CA	401	
INT	Trac	E2327JGA12939	CA	403	
INT	Trac	E2327JGA12940	CA	405	
INT	Trac	E2327JGA12942	CA	409	
INT	Trac	E2327JGA12943	CA	411	
INT	Trac	E2327JGA12944	CA	413	

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INT	Trac	E2327JGA12947	CA	419	
INT	Trac	E2327JGA12948	CA	421	
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INT	Trac	E2327JGA12971	CA	467	
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INT	Trac	E2327JGA12974	CA	473	
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INT	Trac	E2327JGA12178	CA	321	
INT	Trac	E2327JGA12183	CA	323	
INT	Trac	E2327JGA12193	CA	325	
INT	Trac	E2327JGA12198	CA	327	
INT	Trac	E2327JGA12205	CA	329	
INT	Trac	E2327JGA12212	CA	331	
INT	Trac	E2327JGA12219	CA	333	
INT	Trac	E2327JGA12225	CA	335	
INT	Trac	E2327JGA12234	CA	337	
INT	Trac	E2327JGA12979	CA	339	
INT	Trac	E2327JGA12243	CA	341	
INT	Trac	E2327JGA12251	CA	343	
INT	Trac	E2327JGA12910	CA	345	
INT	Trac	E2327JGA12911	CA	347	
INT	Trac	E2327JGA12912	CA	349	

INT	Trac	E2327JGA12913	CA	351	
INT	Trac	E2327JGA12914	CA	353	
INT	Trac	E2327JGA12915	CA	355	
INT	Trac	E2327JGA12916	CA	357	
INT	Trac	E2327JGA12917	CA	359	
INT	Trac	E2327JGA12918	CA	361	
INT	Trac	E2327JGA12919	CA	363	
INT	Trac	E2327JGA12920	CA	365	
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INT	Trac	E2327JGA12929	CA	383	
INT	Trac	E2327JGA12930	CA	385	
INT	Trac	E2327JGA12931	CA	387	
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INT	Trac	E2327JGA12933	CA	391	
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KEN	Trac	260493J	CA	235	
KEN	Trac	260494J	CA	237	
KEN	Trac	265805K	CA	239	
KEN	Trac	265806K	CA	241	

KEN	Trac	265807K	CA	243	
KEN	Trac	265808K	CA	245	
KEN	Trac	265809K	CA	247	
KEN	Trac	265810K	CA	249	
KEN	Trac	265811K	CA	251	
KEN	Trac	265812K	CA	253	
KEN	Trac	265813K	CA	255	
KEN	Trac	265814K	CA	257	
KEN	Trac	265815K	CA	259	
KEN	Trac	265816K	CA	261	
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KEN	Trac	265818K	CA	265	
KEN	Trac	265819K	CA	267	
KEN	Trac	265820K	CA	269	
KEN	Trac	265821K	CA	271	
KEN	Trac	265822K	CA	273	
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INT	Trac	11384	CA	279	
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INT	Trac	12132	CA	291	
INT	Trac	12136	CA	293	
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INT	Trac	12143	CA	297	
INT	Trac	12147	CA	299	

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INT	Trac	12153	CA	303
INT	Trac	12156	CA	305
INT	Trac	12160	CA	307
INT	Trac	12164	CA	309
INT	Trac	12167	CA	311
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KEN	Trac	258098K	CA	171
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KEN	Trac	260470J	CA	189

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KEN	Trac	260473J	CA	195	
KEN	Trac	260474J	CA	197	
KEN	Trac	260475J	CA	199	
KEN	Trac	260476J	CA	201	
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KEN	Trac	260489J	CA	227	
KEN	Trac	260490J	CA	229	
KEN	Trac	260491J	CA	231	
KEN	Trac	253253J		79	
KEN	Trac	253259J	CA	81	
KEN	Trac	253260J	CA	83	
KEN	Trac	253261J	CA	85	
KEN	Trac	253262J	CA	87	

KEN	Trac	256656	CA	91	
KEN	Trac	256657	CA	93	
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KEN	Trac	256661	CA	101	
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KEN	Trac	256666	CA	111	
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KEN	Trac	258074K	CA	123	
KEN	Trac	258075K	CA	125	
KEN	Trac	258076K	CA	127	
KEN	Trac	258077K	CA	129	
KEN	Trac	258078K	CA	131	
KEN	Trac	258079K	CA	133	
KEN	Trac	258080K	CA	135	

KEN	Trac	258081K
KEN	Trac	258082K
KEN	Trac	258083K
KEN	Trac	258084K
KEN	Trac	258085K
KEN	Trac	258086K

CA	137	
CA	139	
CA	141	
CA	143	
CA	145	
CA	147	

HAYWOOD L. MOORE
DIRECTOR
804-786-3698
D. L. McPHERSON
DEPUTY DIRECTOR
804-786-3418



WILLIAM S. FULCHER
MANAGER-ROAD TAXES
804-786-2704
M. D. PARSLEY
MANAGER-REGISTRATIONS
804-786-2821

STATE CORPORATION COMMISSION
MOTOR CARRIER OPERATIONS DIVISION

(REGISTRATIONS) P. O. BOX 1158
(ROAD TAXES) P. O. BOX 1159
RICHMOND, VIRGINIA 23209

January 3, 1980

B-44180

B. J. McAdams, Inc.
Route 6, Box 15
North Little Rock, Arkansas 72118

Gentlemen:

We have received your MC-1-C application with a \$55 check to cover the issuance of stamps; however, as of this date, we have been advised that you still have not filed State Corporation Tax Returns for 1973 through 1976.

We will be unable to issue the requested authority until these tax returns have been filed. As we advised you in our letter of October 26, 1979, you should contact Mr. C. V. Kinnard of the Department of Taxation, Telephone Number (804) 257-8000. concerning this matter.

We are returning your fee at this time.

Yours very truly,

B. T. Trice, Jr.

Tax and Applications Examiner

BTT
mm
enc.

VIRGINIA:

IN THE CIRCUIT COURT OF
THE CITY OF RICHMOND, DIVISION II

B. J. MCADAMS, INC.,

February 1st, 1980

Plaintiff,

v.

IN CHANCERY

NO. A-1357-C

COMMONWEALTH OF VIRGINIA,
WILLIAM H. FORST, STATE
CORPORATION COMMISSION, THOMAS P.
HARWOOD, JR., JUNIE L. BRADSHAW
and PRESTON C. SHANNON,

Defendants.

DECREE

This cause came to be heard upon the prayer for a temporary injunction contained in plaintiff's bill of complaint in the above-entitled matter and the affidavit of B. J. McAdams in support thereof, and was argued by counsel on January 29, 1980.

UPON CONSIDERATION WHEREOF, it appearing to the Court that plaintiff is entitled to the relief of a temporary injunction prayed for, it is hereby

ORDERED, ADJUDGED and DECREED that Defendant William H. Forst be and he is hereby restrained and enjoined from continuing his notice to Defendant State Corporation Commission which prevents the Commission from issuing to plaintiff the necessary documents for plaintiff to lawfully operate its equipment in Virginia in interstate commerce.

This injunction shall be effective for ninety (90) days from the date of this order, at which time it shall stand dissolved unless prior thereto it shall have been enlarged or a further injunction shall have been granted by further order of this Court. Plaintiff shall enter into bond before the Clerk of this Court in the sum of \$2500.00 conditioned according to law.

During the period this injunction is in effect, plaintiff shall file with this Court, under seal, Virginia corporate income tax returns for the years 1973 through 1976, such returns to be opened only upon the order of this Court.

Counsel for the defendants objects and excepts to the foregoing action of the Court.

Service of this order shall not be required but copies of the order shall be mailed by plaintiff to each party and to counsel of record.

A Copy,

Teste : I A R. PURDY, Clerk

by: 

Deputy Clerk

V I R G I N I A:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND, DIVISION II

B. J. McADAMS, INC.,

Plaintiff,

v.

In Chancery
No. A-1357-C

COMMONWEALTH OF VIRGINIA, et al.,

Defendants.

FINAL DECREE

This cause came on June 25, 1981, to be again heard upon the papers formerly read; upon the answer of the defendants; upon the stipulation of facts, all facts having been stipulated; upon the memoranda filed by the parties; and was argued by counsel.

Upon consideration whereof, and under the particular facts appearing in this case which show that plaintiff's activities in Virginia are insubstantial in their essence, inseparable from its interstate activities and de minimis, and without reaching the constitutional issues, the Court is of the opinion that under such facts and under the authority of Commonwealth of Virginia v. Imperial Coal Sales Co., Inc., 161 Va. 718 (1934), plaintiff is entitled to the relief prayed for and does not have income from Virginia sources as defined by the Code of Virginia (1950), as amended.

WHEREFORE, it is ADJUDGED, ORDERED AND DECREED that B. J. McAdams, Inc., is not required by State law to file any income tax returns or to pay any corporate income tax to the Commonwealth of Virginia for the years 1973 through 1979, inclusive; and it is

FURTHER ADJUDGED, ORDERED AND DECREED that since B. J. McAdams, Inc., is not subject to filing any such return or paying any such tax, defendant Forst does not have authority to notify the State Corporation Commission that plaintiff has failed to file any such return or to pay any such tax for the years 1973 through 1979, inclusive; and it is

FURTHER ADJUDGED, ORDERED AND DECREED that plaintiff shall continue to lodge State corporate income tax returns under seal with this Court until further order of the Court; and it is


FURTHER ADJUDGED, ORDERED AND DECREED that, pursuant to the oral representation made to this Court by defendants, through counsel, on June 25, 1981, that defendants would not attempt to require plaintiff to file any income tax return or to pay any income tax to defendants nor would they seek to notify the State Corporation Commission of any failure by plaintiff to file such return or pay such tax unless and until defendants are successful on an appeal from this decree, there is no cause to issue an injunction against defendants.

The bond entered with the Clerk of this Court in this cause is hereby released.

The defendants' objections to the Court's findings and holdings are hereby noted.

The Clerk of the Court shall mail certified copies of this Final Decree to respective counsel for the parties at the addresses noted below.

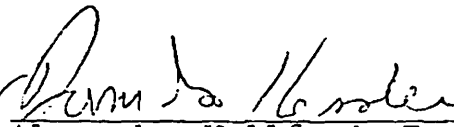
ENTER: 8/13/81



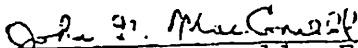
Judge

We ask for this:

Ent. Chy. O.B. 95 pg. 29

cc mailed 8/13/81 { 
Alexander Wellford, Esquire
Donn G. Kessler, Esquire
Christian, Barton, Epps, Brent & Chappell
1200 Mutual Building
Richmond, Virginia 23219
Counsel for B. J. McAdams, Inc.

Seen and objected to:



John G. MacConnell, Esquire
Assistant Attorney General
Commonwealth of Virginia
P. O. Box 6-L
Richmond, Virginia 23282
Counsel for Defendants

V I R G I N I A:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND, DIVISION II

B. J. McADAMS, INC.,

Plaintiff,

v.

In Chancery
No. A-1357-C

COMMONWEALTH OF VIRGINIA, et al.,

Defendants.

NOTICE OF APPEAL

Pursuant to Rule 5:6 of the Rules of the Supreme Court of Virginia, the defendant, Commonwealth of Virginia, Department of Taxation, hereby gives notice that it will apply to the Supreme Court of Virginia for a writ of error from the final order entered herein on August 13, 1981.

No transcript or statement of facts, testimony or other incidents of the case will hereafter be filed as the original papers and exhibits (including various stipulations of facts and certain exhibits) lodged in the clerk's office of the trial court automatically constitute the record on appeal, pursuant to Rule 5:8(a) of the Rules of the Supreme Court of Virginia.

Dated this 4th day of September, 1981.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TAXATION

By: John E. McAdams
Counsel

Marshall Coleman
Attorney General of Virginia

John G. MacConnell
Kenneth W. Thorson
Assistant Attorneys General
P. O. Box 6-L
Richmond, Virginia 23282
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CERTIFICATE

I hereby certify that a true copy of the foregoing Notice of Appeal was mailed to Donn G. Kessler, Esquire, Christian, Barton, Epps, Brent & Chappell, 1200 Mutual Building, Richmond, Virginia 23219, pursuant to Rule 1:12 of the Rules of the Supreme Court of Virginia, this 4th day of September, 1981.

John G. MacConnell
Assistant Attorney General

ASSIGNMENTS OF ERROR

Pursuant to Rule 5:21 of the Rules of the Supreme Court of Virginia, counsel for the appellant, the Commonwealth of Virginia, Department of Taxation, assigns and relies upon the following assignments of error on its petition for appeal from the decision of the Circuit Court of the City of Richmond, Division II:

1. The trial court erred in relying upon the authority of Commonwealth of Virginia v. Imperial Coal Sales Co., Inc., 161 Va. 718 (1933), and ruling that McAdams did not have income from Virginia sources as defined by the Code of Virginia.

2. The trial court erred in according continuing vitality or validity to the decision rendered in Commonwealth of Virginia v. Imperial Coal Sales Co., Inc., 161 Va. 718 (1933).