[Vanderbilt Law Review](https://scholarship.law.vanderbilt.edu/vlr)

Volume 11
Issue 4 *Issue 4 - A Symposium on Motor Carriers*

Article 3

10-1958

Licensing Interstate Vehicles: State Cooperation or Federal Intervention?

Jess N. Rosenberg

Follow this and additional works at: https://scholarship.law.vanderbilt.edu/vlr

Part of the Transportation Law Commons

Recommended Citation

Jess N. Rosenberg, Licensing Interstate Vehicles: State Cooperation or Federal Intervention?, 11 *Vanderbilt Law Review* 1007 (1958)
Available at: https://scholarship.law.vanderbilt.edu/vlr/vol11/iss4/3

This Symposium is brought to you for free and open access by Scholarship@Vanderbilt Law. It has been accepted for inclusion in Vanderbilt Law Review by an authorized editor of Scholarship@Vanderbilt Law. For more information, please contact mark.j.williams@vanderbilt.edu.

LICENSING INTERSTATE VEHICLES: STATE COOPERATION OR FEDERAL INTERVENTION?

JESS N. ROSENBERG*

Roads have been an essential part of transportation since man began to travel and to take his goods with him. This fact is sometimes obscured by the intense current preoccupation with motor vehicles which are often regarded as the cause of roads rather than instruments for utilization of roads. In any event, it is true that, with the advent of the motor vehicle, highways have become an increasingly important part of the nation's transportation system. That this tendency and importance will continue and even be accelerated is portended by the creation of the National System of Interstate and Defense Highways[1] and the state road programs now being undertaken in connection therewith. Under these circumstances it is certain that the interstate movement of persons and goods by motor vehicle will be expanded far beyond present activity and that licensing of interstate commercial vehicles and procedures to accommodate free movement of such vehicles will receive more attention from state governments as developments progress.

In the words of the Federal Highway Administrator, the problem of the states is the reconciliation of two "praiseworthy" objectives: "First, that of insuring the free movement of vehicles in interstate commerce; and second, that of requiring that all vehicles traveling in the state pay their due shares of user taxes for the support of the state's roads and streets."[2] He has also expressed the thought that "an increasing awareness of the federal road-user taxes will bring about a trend toward somewhat greater uniformity in states' schedules."[3] He further indicates that, the federal government having become "a very active partner in the taxation of interstate movements," controversies which now exist at the state level concerning taxation and reciprocity of vehicles moving in interstate commerce may be abated; that the congressional action directing highway tax studies should "spur" the states toward greater uniformity and settlement of interstate highway tax difficulties.[4]

These statements leave little doubt that, at the federal level, definite consideration is being given to the possibility of intervention by the

* General Counsel, Western Highway Institute. Member, Washington State Bar.

1. 70 Stat. 378, 381 (1956), 23 U.S.C. § 157 (1956, Supp. 1957).
2. H.R. Doc. No. 106, 85th Cong., 1st Sess. 58 (1957).
3. *Ibid.*
4. *Id.* at 61.

national government in the event that the states fail to deal adequately with the interstate vehicle problem.

In the past, states have attempted to meet this problem of interstate vehicle movement by granting reciprocal exemptions from licensing requirements.[5] Recent developments among various groups of states would seem to indicate that there is considerable doubt as to the adequacy of "simple" reciprocity in the light of the great increase in interstate commercial vehicle use.

The principle of reciprocity, under which a vehicle properly licensed in its home state may travel in all other states without the payment of any additional license charge, has received general acceptance throughout the nation. It is now applied universally with respect to private passenger automobiles. The principle is also generally accepted with respect to commercial vehicles but its application has been severely restricted in many states for several reasons that deserve consideration:

(1) Residence of the owner of a commercial vehicle is not always readily ascertainable, nor is residence of a business owner always the place where the vehicle is principally used. Ownership determination of commercial vehicles for licensing purposes is further complicated by the common practice of leased operations of great variety.

(2) The pattern of commercial vehicle taxation varies so widely that it is difficult to establish a mutual exchange of benefits which are actual reciprocals, each of the other, between any two given states.

(3) The great number and differing nature of governmental agencies administering commercial vehicle tax, regulatory and reciprocity laws immensely complicate the task of achieving mutuality.

The enumerated considerations encompass for the most part the areas within which conflicts among the states have arisen. Generally, the states have attempted to solve difficulties concerning reciprocity by various bilateral agreements or informal understandings. These arrangements have been reasonably satisfactory in the past.[6] The complicating factors listed above, however, when added to the tremendous increase in all types of commercial vehicles since World

5. RECIPROCITY COMM., AMERICAN ASS'N. OF MOTOR VEHICLE ADMINISTRATORS, STATE MOTOR VEHICLE REGULATION AND TAXATION AND THEIR EFFECT ON THE NON-RESIDENT (1947).

6. A number of "barrier" studies have been published, however, which consider vehicle and carrier taxes along with many other types of barriers. Some outstanding examples are:

(1) Truitt, *Interstate Trade Barriers in the United States*, 8 LAW & CONTEMP. PROB. 209 (1941). (This article is included as one in a symposium on governmental marketing barriers.)

(2) U. S. BUREAU OF AGRICULTURAL ECONOMICS, DEPT. OF AGRICULTURE, INTERSTATE BARRIERS TO TRUCK TRANSPORTATION (1950).

(3) UNIVERSITY OF ARIZONA, BARRIERS TO THE INTERSTATE MOVEMENT OF AGRICULTURAL PRODUCTS BY MOTOR VEHICLE IN THE ELEVEN WESTERN STATES (1953).

War II and the pressures for accelerated highway financing, have placed this type of reciprocity structure under increasing strain. Disparity in types of laws and also with respect to dollar levels of tax payments have added further stress.

In the years during and following the war, attention of officials at various levels of government has been increasingly directed toward possible solutions and they have been joined in this effort by various highway user organizations.[7] All of this activity can be characterized as attempts to insure the free flow of commerce while insuring the payment of a "fair share" to the states. It thus becomes evident that the problem of interstate vehicle taxation is no different from the problems encountered in taxation of other interstate property or industrial activity. It is pertinent, therefore, in dealing with taxation of interstate vehicles and reciprocity, to examine consideration previously given to this very basic problem of constitutional law.

The commerce clause[8] authorizes Congress to regulate commerce "among the several states." This authorization, even in the absence of action by Congress, has been held to act as a proscription on the taxing power of the states.[9] Thus, in the absence of congressional rules, and as a practical matter, the standards by which the legal validity of state taxes on interstate commerce may be determined are established by decisions of the United States Supreme Court. Inasmuch as the personnel of the court, the economic aspects of interstate commerce and the opinions of the Court change from time to time, the legal rules applicable to taxation of interstate commerce have also changed from time to time.[10] Under these circumstances and in the

7. (a) *Interstate Trade Barriers Affecting Motor Vehicle Transportation,* S. Doc. No. 81, 79th Cong. 1st Sess. (1944).
(b) See note 5 *supra.*
(c) Proceedings, 20th Annual Conference of American Motor Vehicle Administrators (1952).
(d) COMMITTEE ON HIGHWAY USE TAXES, 20TH ANNUAL CONFERENCE, NATIONAL ASS'N. OF TAX ADMINISTRATORS, A PRACTICAL PROGRAM TO IMPROVE TAXATION OF INTERSTATE HIGHWAY USE (1952).
(e) AMERICAN TRUCKING ASS'NS., INC., TAXATION OF INTERSTATE TRUCKS, THE POSITION, POLICIES AND RECOMMENDATIONS OF THE TRUCKING INDUSTRY (1954).
(f) Resolution adopted by the National Governors' Conference (1954):

> "It is the position of the Governors' Conference that some type of working agreement among the states must be developed, whether by uniform legislation, interstate compact, or otherwise, which will preserve the right of each state to devise its own tax system to meet its highway finance needs and, at the same time provide a cooperative method of allocating the taxation of heavy commercial vehicles traveling interstate." PROCEEDINGS OF THE GOVERNORS' CONFERENCE (1954).

(g) RESEARCH DEPT., NATIONAL HIGHWAY USERS CONFERENCE, THE FREE FLOW OF INTERSTATE TRAFFIC AND MOTOR VEHICLE RECIPROCITY (1957).

8. U. S. CONST., art. I, § 8.

9. Freeman v. Hewit, 329 U.S. 249, 252 (1946).

10. An interesting discussion of the effect of court shifts in this field is to be found in Lockhart, *Gross Receipts Taxes on Interstate Transportation and Communication,* 57 HARV. L. REV. 40 (1943). See also Rosenberg, *Future of Gross Receipts Taxes,* REVENUE ADMINISTRATION NATIONAL ASS'N. OF TAX ADMINISTRATORS (1947).

absence of any undertaking by the Congress to set forth the appropriate rules by legislative act, the states and interstate taxpayers must proceed under court announced rules, subject at all times to review and possible reinterpretation.

So much has been written, both in decisions and commentary, on the subject of state taxation of interstate commerce that to here attempt exhaustive treatment would be both impossible and pointless.[11] Review of a few central points may be helpful, however, in outlining the present status of state tax power vis-a-vis interstate motor vehicles.

From the initial premise established by the Court, that states may not unduly burden interstate commerce, we find that numerous decisions have resolved this holding into various corollary formulations. These are the court-made rules which today govern the validity of state taxes as they affect interstate commerce:[12]

(a) A state may not single out interstate commerce for a special tax burden.
(b) A state may not discriminate against interstate commerce and in favor of its local trade.
(c) A state may not impose a tax which exposes interstate commerce to the actuality or risk of a total burden, by that state and other states which is cumulative, discriminatory or special.[13]

Inasmuch as we are here concerned with highway user taxes, it should next be recognized that, while the rules just reviewed have been fully applicable to cases concerning the taxing power of the states, such application has been limited where the regulatory power or the police power of the states has been questioned. In such cases, the United States Supreme Court has seemed to consider the state authority to be "concurrent" authority as distinguished from Congress's "exclusive" authority in the taxation field.[14]

It may be surmised that this dichotomy reflects a judicial view that purely fiscal burdens can be evaluated in judicial proceedings whereas police or regulatory policies affect states internally in many complex ways not likely to be fully explored in the record of a single case. In any event, there has been a clear indication that the present Court

---

11. HARTMAN, STATE TAXATION OF INTERSTATE COMMERCE (1953) is an outstanding compendium in this field.

12. Lockhart, *op. cit. supra* note 10, at 95; Brabson, *Multistate Taxation of the Transportation Industry,* 18 OHIO ST. L.J. 22, 24 (1957). Any attempt at simplification or generalization with respect to the plethora of decisions in this field is useless for any purpose except perspective. The statement above represents the author's perspective.

13. A nice statement of some practical considerations to be weighed by the court in such cases is presented by Justice Rutledge in his special concurring opinion, International Harvester Co. v. Dept. of Treasury, 322 U.S. 340, 349 (1944).

14. Hartman, *op. cit. supra* note 11, at 260.

considers that the states can do much more that affects or constricts the flow of interstate commerce under their regulatory or police powers than under the taxing power.[15]

Taxation of commercial vehicles moving in interstate commerce has been under consideration by the United States Supreme Court on a number of occasions. A most significant analysis and review of the cases is to be found in Justice Frankfurter's exhaustive dissent in *Capitol Greyhound Lines v. Brice*[16] to which he has appended a chronological chart of fifteen principal previous decisions, furnishing a convenient history of the law on this subject.[17]

---

15. "A police regulation of local aspects of interstate commerce is a power often essential to a State in safeguarding vital local interests. At least until Congress chooses to enact a nation-wide rule, the power will not be denied to the State." Freeman v. Hewit, 329 U.S. 249, 253 (1946).

16. 339 U.S. 542, 548 (1950).

17. *Id.* at 561. The author's analysis of the 15 principal decisions discussed is offered for those who may be interested in this field:

Case #1, Hendrick v. Maryland, 235 U.S. 610 (1915), held that a state might charge persons engaged in interstate commerce for road use so long as such charges were reasonable and were fixed according to some uniform, fair and practical standard, since, if they met this standard there would be no burden on interstate commerce.

Case #2, Kane v. New Jersey, 242 U.S. 160 (1916), held valid a charge similar to that in Case #1 even though it imposed a full annual fee on a non-resident driving through the state in one day and even though the fees collected might result in a surplus over regulation and inspection expense.

Case #3, Clark v. Poor, 274 U.S. 554 (1927), represents the extension of Cases #1 and #2 to common carriers. Part of the carrier's case against the tax was that a sum in addition to the license fee was charged for highway use but was not entirely used therefor. The Court upheld the tax and said that, if the tax was assessed for a proper purpose, the use to which the proceeds were put was immaterial.

Case #4, Interstate Busses Corp. v. Blodgett, 276 U.S. 245 (1928), dealt with a tax of a cent a mile for highway use, proceeds to go to highway maintenance, but levied only on interstate carriers. A different tax was assessed on intrastate operators (3% of gross, which gave exemption from 2% net which interstate carriers had to pay). The law was upheld against the contention that it was an attempt to regulate interstate commerce or at least to discriminate against it. The court held that factual proof of a disproportionate economic burden was not made, nor was it shown that no reasonable relationship existed between the charge and the value of the privilege granted. (No clue was given as to the type of proof necessary.)

Case #5, Sprout v. South Bend, 277 U.S. 163 (1928), held invalid a seat fee ordinance on for hire busses as applied to an interstate carrier for the reason that the charge was unrelated to the cost incurred or value of use of streets and there was no requirement that the funds were to be applied for street maintenance or construction.

Case #6, Interstate Transit, Inc. v. Lindsey, 283 U.S. 183 (1931), involved a flat fee on interstate busses which was held invalid because it was not shown to be levied only for use of highways (authority of Case #4) nor the proceeds allocated for highway purposes (authority of Case #3). The court further pointed out that there was no relationship between the tax formula and the degree of use.

Case #7, Continental Baking Co. v. Woodring, 286 U.S. 352 (1932), sustained a gross-ton mile assessment on a private carrier moving in interstate commerce on the theory that there was a relationship between the levy and the use.

Case #8, Hicklin v. Coney, 290 U.S. 169 (1933), resulted in a finding of

Analysis of this decision and the cases discussed and reviewed by both majority and dissenting opinions makes it apparent that in such "regulatory" cases the Court is at present limiting its decisions because it believes Congress, not the Court, should make the rules. The unmistakable implication is that Congress can get better over-all

---

validity for a license tax on private contract carriers graduated by truck size and weight on the presumption the charge was for use of the roads.

Case #9, Aero Mayflower Transit Co. v. Georgia Public Service Comm'n., 295 U.S. 285 (1935), held that a moderate license fee of the same amount from all carriers for upkeep of highways regardless of the extent of the actual use was proper. It was said that all received the same privilege and if the carrier didn't use it as much as others that was his own business.

Case #10, Morf v. Bingaman, 298 U.S. 407 (1936), found the court holding that a caravan licensee could not complain if the fees collected from him were not allocated to highways.

Case #11, Ingels v. Morf, 300 U.S. 290 (1937), found that a caravan fee was so far in excess of cost of facilities of regulation that interstate commerce was unduly burdened.

Case #12, Dixie Ohio Express Co. v. State Revenue Comm'r, 306 U.S. 72 (1939), embraced a challenge on the grounds that the interstate carrier did not use the roads toward the upkeep of which the taxes were expended. The court found that it was immaterial how the state chose to use the proceeds.

Case #13, Clark v. Paul Gray, Inc., 306 U.S. 583 (1939), considered another caravan statute and found the classification reasonable and the fee not disproportionate to cost of administration and policing.

Case #14, McCarroll v. Dixie Greyhound Lines, Inc., 309 U.S. 176 (1940), rejected a gasoline tax on all fuel in the tank of an interstate bus because it bore no relationship to use of the highways in the taxing state.

Case #15, Aero Mayflower Transit Co. v. Board of Railroad Comm'rs, 332 U.S. 495 (1957), upheld a tax on an interstate carrier for use of highways despite the fact that the proceeds therefrom were not specifically allocated for such purpose. The charge is for the privilege, not the use and it is immaterial what use the state makes of the proceeds.

The decision which evoked this extensive reexamination of taxes on interstate carriers involved a tax based on percentage of value of the vehicle which became due, not annually, but at the time of first registration and upon each subsequent transfer of title. The majority refused to evaluate the relationship of the tax incidence to the objective to be obtained thereby, casting the burden of such examination upon Congress. It pointed out that the Motor Carrier Act, 49 U.S.C. § 302(b) contained a declaration by Congress that nothing in that act was to be construed as affecting state tax powers and noted that carriers under the act were required to keep accounts of state taxes for road use. Presumably, the court posits congressional awareness of the situation and feels that Congress has both command of the facts and the constitutional power to regulate.

The chief point of the dissent was that "Reason precludes the notion that a tax for a privilege may disregard the absence of a 'nexus' between privilege and tax." The dissenters pointed out that in no prior case had the court upheld a tax formula bearing no reasonable relationship to the privilege of road use and emphasized that not only was the tax base irrelevant but the incidence (time of titling) also lacked relevance to privilege of use.

After criticizing the obvious effect of the majority opinion in reducing the ground of challenge to unreasonableness of amount, only, the dissent directs a most compelling argument to both Congress and state tax authorities:

". . . So long as a State bases its tax on a relevant measure of actual road use, obviously both interstate and intrastate carriers pay according to the facilities in fact provided by the State. But a tax levied for the privilege of using roads, and not their actual use, may, in the normal course of operations and not as a financial hypothesis, involve an undue

information through its investigatory processes for the purpose of "making rules" than the Court can get by way of evidence in a single proceeding.

This general view has been frankly stated by the Court:

> Courts are not possessed of instruments of determination so delicate as to enable them to weigh the various factors in a complicated economic setting which, as to an isolated application of a State tax, might mitigate the obvious burden generally created by a direct tax on commerce.[18]

The basis on which this view rests was set forth with forceful clarity in a dissent in an earlier case which had held unconstitutional a fuel tax applied to interstate motor carriers. The impropriety of the tax was unquestioned but the dissenters stated:

> Our disagreement with the opinion (majority opinion invalidating the tax) just announced does not arise from a belief that Federal action is unnecessary to bring about appropriate uniformity in regulations of interstate commerce. Indeed, *state legislation before this Court indicates quite the contrary....*
>
> Judicial control of national commerce—unlike legislative regulations—

burden on interstate carriers. While the privilege extended by a State is unlimited in form, and thus theoretically the same for all vehicles, whether interstate or intrastate, the intrastate vehicle can and will exercise the privilege whenever it is in operation, while the interstate vehicle must necessarily forego the privilege some of the time simply because of its interstate character, *i.e.*, because it operates in other states as well. In the general average of instances, the privilege is not as valuable to the interstate as to the intrastate carrier. And because it operates in other states there is danger—and not a fanciful danger—that the interstate carrier will be subject to the privilege taxes of several states, even though his entire use of the highways is not significantly greater than that of intrastate operators who are subject to only one privilege tax."[4]

(Note #4: "These dangers are heightened when the tax falls upon an interstate motor carrier authorized to operate only on a fixed route. Quite illustrative of the seriousness of the general problem are the facts concerning one of appellants here, Capitol Greyhound Lines, which is authorized by the ICC to operate a bus line over a fixed route between Cincinnati, Ohio and Washington, D.C., a distance of about 496 miles, only nine of which are over Maryland's State roads. To say that Capitol has an unlimited privilege to use Maryland's roads and is therefore being treated on a par with intrastate carriers is to ignore the admonition that 'Regulation and commerce among the States both are practical rather than technical conceptions. . . .' Galveston, Harrisburg & San Antonio R. Co. v. Texas, 210 U.S. 217, 225." *Id.* at 557.)

The dilemma in which the interstate motor carrier may find itself in respect to state and local taxes is outlined in editorial comment on the principal case in 17 A.L.R. 2d 407, 432 (1951). The body of decisions, it is pointed out, leave the carrier with "practically nothing to go on" in attempting to show excessive charge for highway use.

It is also interesting to note the further editorial comment ascribing policy motivation in such decisions to pressure of argument in support of railroads. The comment has received added significance through the recent decision of a United States District Court in Pennsylvania. Noerr Motor Freight, Inc. v. Eastern Railroad President's Conference, 155 F. Supp. 768 (E.D. Pa. 1957).

18. Freeman v. Hewit, 329 U.S. 249, 256 (1946).

> must from inherent limitations of the judicial process treat the subject by the hit-and-miss method of deciding single local controversies upon evidence and information limited by the narrow rules of litigation. Spasmodic and unrelated instances of litigation cannot afford an adequate basis for the creation of integrated national rules which alone can afford the full protection for interstate commerce intended by the Constitution. We would, therefore, leave the questions raised by the Arkansas tax for the consideration of Congress in a nation-wide survey of the constantly increasing barriers to trade among the States. Unconfined by 'the narrow scope of judicial proceedings' Congress alone can, in the exercise of its plenary constitutional control over interstate commerce, not only consider whether such a tax as now under scrutiny is consistent with the best interest of our national economy, but can also on the basis of full exploration of the many aspects of a complicated problem devise a national policy fair alike to the States and to our Union. Diverse and interacting state laws may well have created avoidable hardships. . . . *But the remedy, if any is called for, we think is within the ample reach of Congress.*[19]

Inasmuch as the author of this dissent has consistently maintained this viewpoint and, in 1950, announced the same view for the majority in *Capitol Greyhound Lines v. Brice*,[20] this earlier dissent may be considered to have compelling force today. It may be assumed that where many complicated factors, extrinsic to the litigation, are to be evaluated, the Court believes that Congress should make the rules.

The decisions make it clear that there is a need for uniform rules or standards for determining the validity of state tax laws in this field and that the Court is reluctant to formulate them. If, however, the Court continues to wait on the Congress while Congress continues, seemingly, to ignore what the Court has said, automatic improvement of the situation can hardly be expected.[21]

19. McCarroll v. Dixie Greyhound Lines, Inc., 309 U.S. 176, 185-88 (1940). (Emphasis added).

20. 339 U.S. 542 (1950).

21. A 1944 report of the Board of Investigation and Research, in considering legal and practical aspects of trade barriers, stated: "Court decisions have established that the State has the right to impose reasonable and nondiscriminatory taxes for use of its highways by vehicles engaged in both intrastate and interstate commerce. The amount of the charges and the method of collection are primarily for determination by the State itself, and so long as they are reasonable and are fixed according to some uniform, fair, and practical standard related to use, they constitute no burden on interstate commerce." S. Doc. No. 81, 79th Cong., 1st Sess. 71 (1944).

In discussing solutions of the problem (Part IV), however, the report concluded that, "Court action seems to offer no adequate measure of relief for unreasonable licensing and tax restrictions on interstate commerce." *Id.* at 73.

A staff report to the Committee on Interstate and Foreign Commerce, House of Representatives, 84th Congress, 1st Session (1955), dealing with state taxation and interstate trucking and the reciprocity problem (not published as a committee report) merely parrotted the comment of the 1944 report as to states' rights and omitted the important earlier conclusion as to the inadequacy of court action for relieving unreasonable tax restrictions on interstate commerce. Also ignored in the 1955 report is the subhead to Part III of the

How, then, can the uninterrupted interstate movement of motor vehicles be facilitated and state highway revenues be adequately protected? The problem inheres in the very nature of our federal system with its unique organization of at least 49 sovereignties and the equally unique relationships among them. There are only two avenues open for its solution. All of the sovereigns may engage in a cooperative venture to agree upon and achieve a desired result or one sovereign, the United States, may be able to persuade, direct or compel all the others toward accepting an appropriate solution. In terms of our political system, this means: (1) cooperative, joint action between or among states or, (2) congressional consideration and treatment of the problem.

A significant and interesting example of cooperative state action is the western system of proportional registration or proration.[22] This system contemplates the registration of an entire fleet of commercial vehicles in any one state for the payment of a fee proportional to mileage traveled by the fleet in that state and other states. The system has been operative in nine western states[23] since January, 1956, under a regional compact, known as the Vehicle Registration Proration and Reciprocity Agreement, which is unique among reciprocity documents.[24] Whereas the customary "agreements" have been mere statements of understanding, the proration agreement is a formal contract. The parties to it are described as "contracting states," the signatories certify that they are "officials lawfully authorized to execute this agreement" and they "mutually agree." They have prescribed terms, conditions and procedures for the registration of commercial vehicle fleets on a proportional basis in the member states. To the extent that there has been valid legislative authorization to enter into such a contract, the western proration agreement is a valid and binding interstate compact.[25]

One of the first questions raised in regard to this agreement was whether such a compact can be valid without the consent of the United States Congress, since the United States Constitution provides that no state shall enter into any agreement or compact with another

1944 booklet (p. 66). Part III is entitled, "Legal and Practical Aspects to Trade Barriers" and is subtitled, "Intelligent federal-state cooperation is the key to solution of the complex problems involved."

22. WESTERN HIGHWAY INSTITUTE, PROPORTIONAL REGISTRATION—THE WESTERN SYSTEM FOR LICENSING INTERSTATE MOTOR VEHICLE FLEETS—A BRIEF HISTORY AND EXPLANATION (1958).

23. California, Colorado, Idaho, Kansas, Montana, Nevada, New Mexico, Oregon and Washington.

24. The developments which led to adoption of the Western system have been described in Mason, *Interstate Taxation of Commercial Vehicles in the West*, COUNCIL OF STATE GOVERNMENTS, STATE GOVERNMENT, (1956), and Davis, *Developments in the Western States Relating to Reciprocity Agreements*, presented to session on economics, finance, and administration, 35th annual meeting, Highway Research Board, Washington, D. C., January 18, 1956.

25. See note 22 *supra*, App. B.

state without the consent of Congress.[26] The so-called "compact clause" would, on first reading, seem to indicate that all interstate agreements must have the consent of Congress. While this seems to have been the early view,[27] there is no question but that it is an incorrect interpretation today.[28]

In its latest consideration of the subject, the U. S. Supreme Court affirmed[29] an Illinois decision in which the Illinois court had said:

> A consideration of the authorities demonstrates that "agreements," such as those giving effect to reciprocity provisions in automobile licensing cases, are not at all the sort of "compacts" nullified by the federal Constitution. In *Dixie Wholesale Grocery v. Martin*, 278 Ky. 705, 129 S.W.2d 181, 183, it was held that a reciprocal agreement between Ohio and Kentucky for the exchange of data contained in sales tax reports was not a prohibited "compact between the states." "There are many matters upon which different states may agree that can in no respect concern the United States." *Virginia v. Tennessee*, 148 U.S. 503. In the latter case, the court said, 148 U.S. at 519, "Looking at the clause in which the terms 'compact' or 'agreement' appear, it is evident that the prohibition is directed to the formation of any combination tending to the increase of political power in the states, which may encroach upon or interfere with the just supremacy of the United States."
>
> Consideration of these and other pertinent authorities impels the conclusion that the Federal constitutional interdiction of "interstate compacts" was written into the organic law of the land in order to protect a then nascent republic from such *ententes* among powerful States as would aggrandize their political power at the expense of the compromise of national sovereignty. The provision does not inhibit those purely fiscal interstate agreements that facilitate interstate commerce and aid in execution of internal revenue policies. This is particularly true when such agreements conduce to, rather than restrain, commerce among the several States.[30]

This statement is not only a complete confirmation of the views expressed by leading students on the subject,[31] it is also rather firm authority that the nine-state Vehicle Registration Proration and Reciprocity Agreement does not violate the compact clause and that the consent of Congress is not required.[32]

---

26. U. S. CONST. art. I, § 10, cl. 3.
27. Holmes v. Jennison, 39 U.S. (14 Pet.) 540 (1840).
28. ZIMMERMAN & WENDELL, THE INTERSTATE COMPACT SINCE 1925 (1951).
29. Bode v. Barrett, 344 U.S. 583 (1953).
30. Bode v. Barrett, 412 Ill. 204, 106 N.E.2d 521, 535 (1952).
31. *Cf.* note 27 *supra;* Frankfurter & Landis, *The Compact Clause of the Constitution—A Study in Interstate Adjustments,* 34 YALE L.J. 685 (1925).
32. Zimmerman & Wendell indicate that agreements between states of the Union and foreign states or provinces are legally supportable in the same manner as above, although some additional considerations are involved. *Op. cit. supra* note 28, chap. V.

[Author's note: It has also been suggested that ratification by legislatures of the party states is requisite to a binding agreement. Where statutory delegation of authority has been given prior to execution of a compact, however, it would seem that the action of officials designated

The states that entered into the agreement did so following careful consideration and preliminary examination of the problems involved at both legislative and administrative levels and adopted a pattern of legislation which not only broadened the authority to make reciprocity agreements but also, in the majority of instances, provided for a statutory means for proportional registration on a unilateral basis.[33]

The western apportionment system applies only to fleet operations. A "fleet" is three or more commercial vehicles, two of which are tractors or power units and all of which travel in more than one state.[34] Non-fleet vehicles are accorded full reciprocity.[35] Only interstate line-haul vehicles are subject to apportionment. Vehicles used entirely within a single state, such as local pickup and delivery rigs are licensed fully in that state.

An annual proration application is accomplished in five steps, as follows:

(1) For the first step (schedule "A"[36]), the operator lists each fleet vehicle and the information required for registering that vehicle in each of the states to which the application is to be submitted.

is sufficient to consummate a binding agreement. (Atlantic & Danville Ry. v. Hooker, 194 Va. 496, 74 S.E.2d 270 (1953)].

33. The following is a chart of the statutes:

WESTERN PRORATION STATUTES

	Officers	*Reciprocity*	*Proportional Registration*	*Agreements*	*Policy Declaration*
California	Vehicle Code 139.75 et seq.	Vehicle Code 215, 217.	Vehicle Code 219.	Vehicle Code 218.	Vehicle Code 219 (h).
Colorado	CRS (1953) 13-2-1, 2.	CRS (1953) 13-5-1(2), (3); 13-5-17.	Bv virtue of Western Compact.	Construction of reciprocity statutes.	
Idaho	IC 49-144, 145.	IC 49-120.	IC 49-146 (c).	IC 49-146 (b)	IC 49-144.
Kansas	KGS Supp. 1955, 74-4301.	KGS Supp. 1955, 8-138.	KGS Supp. 1955, 8-149a (b).	KGS Supp. 1955, 74-4302.	
Montana	RCM 53-129 (2) (a).	RCM 53-129 (1).	RCM 53-625.	RCM 53-129 (3).	
Nevada	NRS 482. 395.	NRS 482. 390.	NRS 706. 810.	NRS 706. 780.	NRS 706. 750.
New Mexico	NMSA (1953) 64-12-1.	NMSA (1953) 64-6-1.	NMSA (1953) 64-3-3 (2) (c).	NMSA (1953) 64-12-3.	NMSA (1953) 64-12-2.
Oregon	ORS 481. 162.	ORS 481. 155.	ORS 481. 160.	ORS 481. 162 (2).	
Washington	RCW 46. 84. 050.	RCW 46. 16.030.	RCW 46. 84. 020.	RCW 46. 84. 060.	RCW 46. 84. 010.

34. Vehicle Registration Proration and Reciprocity Agreement. See note 22 *supra* § 16.

35. WESTERN HIGHWAY INSTITUTE, PROPORTIONATE REGISTRATION—THE WESTERN SYSTEM FOR LICENSING INTERSTATE MOTOR VEHICLE FLEETS—A BRIEF HISTORY AND EXPLANATION (1958) App. B, Vehicle Registration Proration and Reciprocity Agreement § 70.

36. Schedules referred to are part of the uniform application form used in proportional registration, reproduced in the work cited in note 22 *supra*.

The purpose of this listing is to identify the vehicles which are to be licensed for the coming year and to give the administrators the information from which fee computations can be made. This is similar to the information required for registration of vehicles in any particular state.

(2) The second step (schedule "B") is a computation, for each of the states, of fees which would be due if all of the vehicles were to be licensed in any one of them.

(3) On schedule "B," the operator reports the total number of miles operated in each of the states to which an apportionment application is to be submitted. These miles will be computed for the vehicles operated in the fleet during the twelve-month period ending on August 31 prior to the registration year for which application is made.[37] The total number of miles run by these same vehicles in all states is also reported. Then, for each state, the operator computes the percentage of total miles which were operated by his fleet in that state during the previous year. By this step, the prorate fraction—the percentage of total fleet miles operated in each of the states during the previous year—is determined.

(4) The percentage developed in step three is then applied for each state to the total dollar figure computed in step two. (schedule "B") For instance, if the application shows that 10% of the miles for a particular fleet were traveled in California during 1956, and it would take $100,000 to license every vehicle in the fleet in California for 1957, the operator will pay California $10,000. In this way, each state receives the amount of money due under its own laws for that percentage of the vehicles which, if operated entirely in that state without leaving it, would be sufficient to carry on the operation in question.

(5) The final step (schedule "C") is designating for each vehicle, specifically, the state in which it is "most frequently dispatched, garaged, serviced, maintained, operated or otherwise controlled."[38] "Base" license plates, i. e., license plates of the states in which the vehicles are "based" according to the above definition, are then issued for each fleet vehicle.[39] Since the physical operating characteristics control, a fleet operator may have all of his vehicles based in a single state, or he may have vehicles in some of them but not all or he may have some in each state.[40]

37. *Op. cit. supra* note 35, § 50.
38. *Id.* § 14.
39. Subject to administrative review. *Ibid.*
40. "Basing" for the purpose of securing license plates does not affect revenue payment to the states.

With the application (a copy is filed with each prorate state in which the fleet operates) the operator pays each state the apportioned amount due to it. Each vehicle listed in the fleet is then considered to have met all of the registration requirements of that state and is free to travel in that state in the same manner as other vehicles fully licensed there.[41]

How do the enforcement officials know whether a vehicle has complied with the requirements of proration? Under the western compact, the state in which a vehicle is based issues a full registration plate for that vehicle so that each fleet vehicle will have a basic registration plate of some state. In addition, a special proration plate is issued for each vehicle. Spaces are provided on this plate for affixing a special identification for each of the states to which that vehicle has been apportioned. If the vehicle has a Washington base plate and a prorate plate with Oregon, Idaho and California stickers, it will be visually recognized in those states as being fully licensed in each of them. The stickers are numbered and assigned, by this number, to particular fleet vehicles. They are neither interchangeable nor transferable.

If, during the course of a license year, vehicles are added to a fleet, a supplemental application is filed, one copy to each state in which the fleet operates. The information for added vehicles is the same as for an original application except that the proration percentage established in the original is used for all supplementals during that license year.

Apportionment enables the states to avoid the difficulties encountered under ordinary reciprocal exemption agreements. Non-residents do not escape responsibility. Fleet operators who use vehicles in the state make a tax contribution regardless of domicile or residence. It is, however, unnecessary for the states to be involved in the determination of very difficult legal questions concerning residence and domicile. Businesses are frequently incorporated in a particular state for tax reasons, but under apportionment arbitrary selection of residence for business purposes ceases to be a means by which tax liability can be avoided insofar as vehicle licensing is concerned.

States which are sparsely populated and which are, therefore, unlikely to be the center or home location of interstate businesses but which, nevertheless, are frequently traversed by interstate vehicles are enabled, by apportionment, to derive a fair share of appropriate annual charges from interstate vehicles.

Apportionment of annual charges places interstate vehicles and those which remain entirely within the state on a basis of absolute parity with respect to such charges. If the interstate vehicle is

41. *Op. cit. supra* note 35, § 54.

entitled to exemption, the vehicles entirely within the state may be subject to discrimination. If the interstate vehicle is required to pay the full annual charge, it, in turn, will be subjected to discriminatory treatment. For both inter and intrastate carriers, apportionment removes any element of unfair discrimination. This elimination of discrimination is important to the states because, as noted above, there has been growing concern with the possibility of federal intervention at either congressional or judicial levels under the commerce clause of the United States Constitution. If discrimination is absent, one of the chief reasons for intervention is absent.

Additionally, apportionment encourages interstate movement because it results in the equivalent of license reciprocity for commercial vehicles while at the same time affording equitable distribution of annual charges among the states on the realistic basis of actual physical presence of vehicles.

The principles for interstate vehicle licensing embodied in the Vehicle Registration Proration and Reciprocity Agreement are strikingly similar to the rules evolved under United States Supreme Court decisions relative to ad valorem taxation of carrier property such as railroad rolling stock, ships and planes. A brief historical review of the pertinent cases may serve to indicate how the Court, over a period of some years has encountered and sought to avoid, as the western plan seeks to avoid, the improper and unfair consequences of the home-port theory and the rule of mobilia personam sequuntur both for taxing jurisdictions and taxpayers.

The earliest carrier property tax cases dealt with ships. In 1854, the case of *Hays v. Pacific Mail Steamship Co.*,[42] presented to the United States Supreme Court the question of the right of the city of San Francisco to make an unapportioned assessment against ships whose home port and port of documentation were New York and whose owner was also domiciled in New York. The Court held the San Francisco tax invalid, basing the decision largely on the fact that San Francisco was not the home port of the craft. A similar basis was used to strike down an unapportioned tax levied by the city of Mobile against ships having a home port in New York and whose owner resided in New York. Two other cases, *St. Louis v. The Ferry Co.*,[43] and *Transportation Co. v. Wheeling*,[44] gave further indication that the home port of a fleet of ships was a primary consideration in determining the situs of the fleet for tax purposes. This conclusion was not surprising in view of the importance attached to the home port in various phases of admiralty law but it should be noted that in

42. 58 U.S. (17 How.) 576 (1854).
43. 78 U.S. (11 Wall.) 423 (1870).
44. 99 U.S. 273 (1878).

all these early cases the home port of the craft was also the state of domicile of the owner.

The early significance of the home port as a tax situs for ships was destroyed when the Supreme Court established the now generally accepted rule that permits a non-domiciliary state to tax watercraft which have acquired an actual situs there by being operated wholly and continuously within the state. The rule was established in 1905 in *Old Dominion Steamship Co. v. Virginia*,[45] which upheld the right of the State of Virginia to make unapportioned assessment against ships engaged in interstate commerce continuously and entirely in Virginia although the owner's domicile was Delaware and the ships were not registered in Virginia. The rule was also mentioned by the Supreme Court one year later when it held invalid an assessment by the state of Kentucky against ships and barges owned by an Illinois corporation and having a home port in Paducah, Kentucky. In the latter case, *Ayer & Lord Tie Co. v. Kentucky*,[46] the Court held that the mere fact that the vessels' home port was Kentucky was insufficient justification for taxation by that state since the owner's domicile was in another state and the craft had not acquired a permanent situs in Kentucky under the *Old Dominion Steamship Company* case. The two cases outlined above seemed to establish the rule that the state of the owner's domicile had the sole jurisdiction to tax watercraft in interstate commerce unless the ships established an actual situs in some other state.

The latter principle was further fortified by the decision of *Southern Pacific Company v. Kentucky*.[47] The Supreme Court there held that ocean going ships of a Kentucky corporation could be taxed at their full value by Kentucky even though the vessels had never been near that state. Following the *Southern Pacific* case, the principle that only the domiciliary state could tax ships operating in interstate commerce unless an actual situs had been established elsewhere was accepted by state taxing authorities and the Supreme Court was not called upon to consider any problems in this area until 1949. The taxation of other instrumentalities of commerce was the subject of litigation throughout this period and cases involving railroad rolling stock and commercial airplanes evolved the doctrine of apportionment of value to various states in which the property operated.

A long line of cases in the Supreme Court established the doctrine that railroad rolling stock could be taxed by a reasonable apportionment formula and that the state of the owner's domicile could not apply an unapportioned tax to the value of cars located permanently in other states. The doctrine was established by the U. S. Supreme

45. 198 U.S. 299 (1905).
46. 202 U.S. 409 (1906).
47. 222 U.S. 63 (1911).

Court in 1891[48] when a non-domiciliary state was permitted to tax an interstate carrier by taking as the basis of assessment such proportion of its capital stock as the number of miles of railroad over which its cars ran within the state boundaries to the total number of miles in all the states. If a taxpayer was unable to show that any specific cars or any average number of cars were located permanently outside the state of domicile throughout the tax year, however, the domiciliary state could then tax all of the cars of the railroad as was done in *New York Cent. R.R. v. Miller*.[49] The Court later, in 1944, approved a similar unapportioned tax by the state of Minnesota upon commercial airplanes owned by a Minnesota corporation and operated in several surrounding states. In that case, *Northwest Airlines, Inc., v. Minnesota*[50] about which more will be said later—the Court noted that the taxpayer had not shown that any specific planes or any average number had been permanently outside Minnesota throughout the year.

The apportionment method of taxation applied to other instrumentalities of commerce was finally applied to watercraft and the validity of this method of taxation of ships was first considered by the United States Supreme Court in *Ott v. Mississippi Valley Barge Line Co.*,[51] in 1949. Louisiana and the city of New Orleans assessed boats belonging to a Delaware corporation operating on the Mississippi and Ohio Rivers on irregular schedules. The assessment was based on the ratio between the total number of miles of the company's lines in Louisiana and the total number of miles of the entire line. In upholding the assessment, the Supreme Court held that the state of domicile of the owner of the vessels did not have the exclusive jurisdiction to tax and that the apportionment theory applied to rolling stock did not violate any constitutional provisions when applied to river boats operating in interstate commerce. The *Mississippi Valley Barge Line* case did not define the limits of the domiciliary state's authority to tax watercraft and it remained for the State of Ohio to present that question to the Court in *Standard Oil Co. v. Peck*,[52] in 1952. In effect, the Court held that it was a necessary corollary to the *Barge Line* case that the domiciliary state did not have the exclusive taxing jurisdiction when it could be shown that the property had acquired a tax situs in another state, thereby permitting an assessment in another state on an apportionment basis.

The *Northwest Airlines* case is as notable for the number of different opinions given in that 5 to 4 decision (3 concurring opinions, and

48. Pullman's Palace Car Co. v. Pennsylvania, 141 U.S. 18 (1891).
49. 202 U.S. 584 (1906).
50. 322 U.S. 292 (1944).
51. 336 U.S. 169 (1949).
52. 342 U.S. 382 (1952).

1 dissenting opinion) as it is for the principle of law announced by the decision of the Court. The late Justice Jackson, in concurring, indicated that the "home port" theory appealed to him strongly on the basis of the factual record in the case. However, he made a statement which is both interesting and important in the present context.

> The evils of local taxation of goods or vehicles in transit are not measured by the exaction of one locality alone, but by the aggregation of them. I certainly do not favor exemption of interstate commerce from its "just share of taxation." But history shows that fair judgment as to what exactions are just to the passer-by cannot be left to local opinion. When local authority is taxing its own, the taxed ones may be assumed to be able to protect themselves at the polls. No such sanction enforces fair dealing to the transient. In all ages and climes those who are settled in strategic localities have made the moving world pay dearly. This the commerce clause was designed to end in the United States.[53]

The dissenting opinion by Chief Justice Stone also contained a very fundamental statement which, in the light of recent developments, may well be the view of the present majority:

> This Court has never denied the power of the several states to impose a property tax on vehicles used in interstate transportation in the taxing state. It has recognized, as we have seen, that such instruments of interstate transportation, at least if moving over fixed routes on regular schedules, may thus acquire a tax situs in every state through which they pass. And it has met the problem of burdensome multiple taxation by the several states through which such vehicles pass by recognizing that the due process clause or the commerce clause or both preclude each state from imposing on the interstate commerce involved an undue or inequitable share of the tax burden. In *Nashville, C. & St. L. Ry. v. Browning,* 310 U.S. 362, 365, we recently considered "the guiding principles for adjustment of the state's right to secure its revenues and the nation's duty to protect interstate transportation." We declared that "The problem to be solved is what portion of an interstate organism may appropriately be attributed to each of the various states in which it functions." And, in sustaining the tax, apportioned according to mileage, upon the entire property, including rolling stock, of an interstate railroad, imposed by Tennessee, the state of the owner's domicile, in which its principal business office and over 70% of its trackage was located, we said that the state could not "use a fiscal formula . . . to project the taxing power of the state plainly beyond its borders."
>
> This Court has accordingly held invalid state taxation of vehicles of interstate transportation unless the tax is equitably apportioned to the use of the vehicles within the state compared to their use without, whether the tax is laid by the state of the domicile or another. Such an apportionment has been sustained when made according to the mileage traveled within and without the state, *Pullman's Car Co. v. Pennsylvania,* . . . or the average number of vehicles within the taxing state during the tax period. *Marye v. Baltimore & Ohio R. R.,* supra; *American Refrigerator Transit Co. v. Hall,* supra, 82; *Union Transit Co. v. Lynch,* supra.

53. Northwest Airlines, Inc. v. Minnesota, 322 U.S. 292, 307 (1944).

But if the tax is laid without apportionment or if the apportionment, when made, is plainly inequitable so as to bear unfairly on the commerce by compelling the carrier to pay to the taxing state more than its fair share of the tax measured by the full value of the property, this Court has set aside the tax as an unconstitutional burden on interstate commerce, whether it be in form on the rolling stock, *Union Transit Co. v. Kentucky*, supra; *Union Tank Line Co. v. Wright*, supra; *Johnson Oil Co. v. Oklahoma*, supra, or on the carrier's entire property, *Fargo v. Hart*, 193 U.S. 490; or on a franchise or right to do business, *Allen v. Pullman's Car Co.*, 191 U.S. 171; *Wallace v. Hines*, 253 U.S. 66; *Southern Ry. Co. v. Kentucky*, 274 U.S. 76; cf. *Norfolk & Western R. v. Pennsylvania*, 136 U.S. 114.[54]

The tenor of the dissent was that the Minnesota tax was invalid as it did not provide for apportionment and thus exposed the interstate carrier to the risk of a multiple tax burden.

The concurring opinion of Justice Black in the *Northwest Airlines* case indicated that he thought Congress, having the power to regulate commerce among the states, should do so and that, in the absence of Congressional action, the state taxing power should be upheld.[55]

A more recent case dealing with this difficult subject was, significantly enough, not a property tax case at all, but a matter involving a license tax on trucks imposed by the city of Chicago and applied by that city to interstate carriers.[56] Justice Frankfurter wrote the decision which held that the local ordinance did not run afoul of the interstate commerce clause because of lack of apportionment and, referring to his own language in the *Northwest Airlines* case, Justice Frankfurter said:

the benefits given to Northwest by Minnesota and for which Minnesota taxes—its corporate facilities and the governmental resources which Northwest enjoys in the conduct of its business in Minnesota—are concretely symbolized by the fact that Northwest's principal place of business is in St. Paul. . . . The relation between Northwest and Minnesota—a relation existing between no other State and Northwest—and the benefits which this relation affords are the constitutional foundation for the taxing power which Minnesota has asserted." 322 U.S. at 294. And the two concurring opinions in the *Northwest Airlines* case harmonize with the result we reach here. Indeed, the 'home port' theory favored by Mr. Justice Jackson, 322 U.S. at 306, fits a fleet of trucks at least as well as it does a fleet of airliners.

The central and decisive fact in this case is that respondent's business has, as much as any transportation business can have, a home. That home is Chicago. To the extent the respondent's business is not confined within the City's limits, it revolves around the City. It is fed by terminals for

54. *Id.* at 313.

55. The author of the majority opinion in Northwest Airlines was unwilling to accept this reasoning. His strong dissent in Capitol Greyhound Lines v. Brice, 339 U.S. 542 (1950), indicates that this divergence of views had not been reconciled up to that time.

56. Chicago v. Willett Co., 344 U.S. 574 (1953).

> rail and sea transportation which the City provides. It receives, much more continuously than did the airline in the *Northwest Airlines* case or the railroad in the *Miller* case, the City's protection, and it benefits from the City's public services. In the circumstances, a tax of reasonable proportions such as the one in question, *not shown in fact to be a burden on interstate commerce,* is not inconsistent with the Commerce Clause.[57]

With the decision in *Braniff Airways, Inc. v. Nebraska State Board of Equalization,*[58] the wheel has come the full turn, at least for airplanes. The U. S. Supreme Court there upheld an apportioned tax on airline property used in interstate commerce. The carrier, a Delaware corporation with principal place of business in Oklahoma, had argued that the tax was precluded under the *Northwest Airline* case unless the Court saw fit to overrule that decision. The Court answered that the facts of the *Northwest Airlines* case showed no taxable situs of the carrier's property in any other state. It also indicated that if there is taxable situs in states other than the owner's domicile, as in the *Barge Line* case, the state of the owner's domicile cannot tax all of the property, and the Court further indicated that *Standard Oil Co. v. Peck, supra,* is exactly in line with this rule.

Chicago v. Willett involved an excise tax but it is significant to note the parallel which the Court finds between that matter and the rationale of the property tax cases.[59] It makes clear once again that if only one possible tax situs is established with no showing of exposure to other tax jurisdictions the mere fact that interstate commerce is being done will not insulate against liability. The Court looks with disfavor on exemption of interstate commerce from state taxes where no undue burden is shown.

Conversely, the Court will not uphold state taxes which may result in duplicate taxation of property.[60] And it will uphold state property tax laws which relieve interstate commerce of exposure to duplicate taxation by the apportionment method.[61] The net effect of the decisions is to permit the taxing jurisdiction to disregard domicile or residence of the owner and, instead, to regard the actual physical presence of carrier property as a significant criterion in determining liability. This, of course, is exactly what the western proration system accomplishes with respect to interstate vehicle licensing.

It will be seen that the proportional registration system for vehicle licensing applies the composite rationale of the four cases; *Northwest*

57. *Id.* at 579. (Emphasis added.)
58. 347 U.S. 590 (1954).
59. In the Braniff case, *ibid.,* the author of the majority opinion in Chicago v. Willett Co. indicated that he would not vote to sustain a state tax applying an apportionment formula in the absence of a uniform apportionment formula applicable in all states.
60. See note 52 *supra.*
61. See note 58 *supra.*

Airlines, Inc. v. Minnesota, Standard Oil Co. v. Peck, Ott v. Mississippi Valley Barge Line Company, and *Braniff Airways, Inc. v. Nebraska State Board of Equalization.* Unfortunately, as we have seen through the consideration of the motor carrier cases,[62] the Court considers it to be beyond its power to evolve similar rules in the licensing field.

An agreement of ten southeastern states, recently expanded to include fourteen states,[63] has also dealt with the interstate commercial vehicle problem by providing for distributing licenses among the states which are parties to the agreement. Domicile of the owner is disregarded in determining the situs of vehicles for licensing purposes. Instead, it is recognized that a single business may have one or more business siti and vehicles are assigned, for licensing, to such siti on the basis of being principally garaged, dispatched, maintained, controlled, etc. there. The chief differences between this plan and the western system are:

(1) Western apportionment is accomplished by mathematical formula in an application to all states in which a fleet is operated. Southeastern apportionment is accomplished by licensing of vehicles by the carrier at various principal places of business in those states.

(2) The southeastern multiple situs licensing does not meet the bridge-state problem as directly as the western system.[64]

(3) The western agreement is a formal contract by which a system of vehicle registration is established. The southeastern agreement is a written statement of understanding of the terms and conditions under which license reciprocity will be extended.

There can be no question but that the two regional licensing agreements discussed indicate that cooperative action by the states can be effective. The question remains, however, whether effective solutions can be reached through state channels before the federal "active partner" becomes impatient enough to spur the states "toward greater uniformity . . . and the settlement of interstate difficulties. . . ."[65]

The means by which Congress might intervene and the extent to which such intercession might be entertained have been the subject

---

62. See note 17 *supra.*

63. The agreement covering the operation of interstate motor vehicles is reprinted in BULLETIN ADVISORY SERVICE, RECIPROCITY BETWEEN STATES, p. C (American Trucking Ass'ns, Inc.). The states involved are: Alabama, Florida, Georgia, Indiana, Kentucky, Louisiana, Maryland, Michigan, Mississippi, North Carolina, South Carolina, Tennessee, Virginia and West Virginia.

64. The problem of sparsely settled states in which very few vehicle owners have established places of business, yet which experience considerable vehicle traffic, while not peculiar to the West, does not seem to be as acute among the "14 State" group.

65. See note 2 *supra.*

of some speculation.[66] There would seem to be four general categories under which such action might be taken:

(1) Congressional delineation of conditions under which state tax laws might apply to interstate vehicles.

(2) Creation of federal interstate transportation corporations protected from multiple state taxation by proscription of federal statute or federal charter.

(3) Federal assistance to states might be made conditional upon conformance to prescribed interstate tax formulae.

(4) The Congress itself might initiate the negotiation of a single interstate compact which would be subject to its approval.[67]

In the 1944 study of the Board of Investigation of Research[68] the Congress was told that even though it had the power to control with respect to vehicles moving in interstate commerce ". . . the legal and practical limitations on this power lead irresistibly to the conclusion that the solution to this complex problem lies in a method of intelligent Federal-State cooperation." This statement is even more persuasive today insofar as interstate vehicle licensing is concerned than when it was first written.

Time and tremendous growth have made the problem larger and more complex, as we noted at the start of this article. The states have been searching for a solution among themselves and have made notable progress. The western proration system would seem to offer a desirable format since it prevents license duplication, insures interstate license revenues to all states in which such interstate vehicles operate and obviates any preoccupation with questions of residence and domicile, which are most difficult in this field. The fact remains, however, that the problem is a national one. Efforts such as those in the South and West are required for other sections of the country. The states can deal adequately with the problem, but it will require hard persistent and sustained effort by both state governments and affected industries. The process will not be automatic and, should the states falter, the assistance of their (since 1956) "active partner" can be anticipated.

---

66. See note 7 *supra*.
67. Braden, *Cutting the Gordian Knot of Interstate Taxation*, 18 OHIO ST. L.J. 57 (1957); Hartman, *op. cit. supra* note 11, at 253, 284; Rosenberg, *Interstate Commerce: To What Extent May Congress Define the Areas of State and Local Taxation?*, report, Comm. on State and Local Taxes, American Bar Ass'n (1956).
68. S. Doc. No. 81, 79th Cong., 1st Sess. 72 (1944).