

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE
THE SUPREME COURT

OF THE

UNITED STATES

CAPTION: OKLAHOMA TAX COMMISSION, Petitioner v.
JEFFERSON LINES, INC.

CASE NO: No. No. 93-1677

PLACE: Washington, D.C.

DATE: Monday, November 28, 1994

PAGES: 1-48

ALDERSON REPORTING COMPANY

1111 14TH STREET, N.W.

WASHINGTON, D.C. 20005-5650

202 289-2260

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE SUPREME COURT OF THE UNITED STATES

-----X
OKLAHOMA TAX COMMISSION, :
Petitioner :
v. : No. 93-1677
JEFFERSON LINES, INC. :

-----X
Washington, D.C.
Monday, November 28, 1994

The above-entitled matter came on for oral
argument before the Supreme Court of the United States at
10:01 a.m.

APPEARANCES:

STANLEY P. JOHNSTON, ESQ., Deputy General Counsel,
Oklahoma Tax Commission, Oklahoma City, Oklahoma; on
behalf of the Petitioner.

STEVEN D. DeRUYTER, ESQ., Minneapolis, Minnesota; on
behalf of the Respondent.

C O N T E N T S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

	PAGE
ORAL ARGUMENT OF STANLEY P. JOHNSTON, ESQ. On behalf of the Petitioner	3
ORAL ARGUMENT OF STEVEN D. DeRUYTER, ESQ. On behalf of the Respondent	26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

(10:01 a.m.)

CHIEF JUSTICE REHNQUIST: We'll hear argument now in Number 93-1677, the Oklahoma Tax Commission v. Jefferson Lines, Inc. Mr. Johnston.

ORAL ARGUMENT OF STANLEY P. JOHNSTON

ON BEHALF OF THE PETITIONER

MR. JOHNSTON: Mr. Chief Justice and may it please the Court:

Before the Court today is the question of whether the State of Oklahoma may constitutionally impose on the in-State purchaser and require the in-State vendor to collect a sales tax on the purchase of bus transportation sold within the State, the tax being measured by the full purchase price of the ticket even though the ultimate destination of the trip, or a portion thereof, is to be traveled beyond the State's borders.

The facts of the case are basically very simple. The State of Oklahoma has a general sales tax which taxes the sale of tangible personal property and certain services, including bus transportation by common carriers. This tax, as most or all common sales taxes, is imposed upon the consumer, is collected by the vendor, it is a percentage of the purchase price, and is added to that.

QUESTION: Mr. Johnston, does Oklahoma tax the

1 sale in Oklahoma of bus tickets for transportation that is
2 not at all conducted in the State of Oklahoma, that
3 neither begins nor ends in the State of Oklahoma?

4 MR. JOHNSTON: Under --

5 QUESTION: The ticket is purchased there --

6 MR. JOHNSTON: Yes, ma'am.

7 QUESTION: -- for transportation outside the
8 State. Does Oklahoma tax that?

9 MR. JOHNSTON: Your Honor, I believe it would if
10 the sale occurs in Oklahoma under the statute.

11 QUESTION: Yes, that's what I asked.

12 MR. JOHNSTON: Yes.

13 QUESTION: Assume the sale occurs there, but
14 none of the transportation.

15 MR. JOHNSTON: Yes, Your Honor, it would. Under
16 the statute, if the sale occurs in Oklahoma, then the
17 transaction is taxable in Oklahoma.

18 QUESTION: Are any such sales at issue in this
19 case, do you know?

20 MR. JOHNSTON: They are not to my knowledge,
21 Your Honor. Under the stipulations that are in the Joint
22 Appendix, beginning at page 3, the intrastate routes and
23 interstate routes that are operated or were operated by
24 Jefferson involve -- the intrastate being, of course,
25 totally within the State of Oklahoma, and according to the

1 stipulation the only sales involved in this case were
2 those which originated in Oklahoma and terminated outside
3 of the State.

4 QUESTION: The stipulation seems inconsistent
5 with something stated in the bankruptcy court opinion, and
6 I just didn't know which one to think was the correct one.

7 MR. JOHNSTON: I -- my memory of the opinion was
8 that it did recognize that Jefferson sold other types of
9 interstate trips in the State of Oklahoma. For instance,
10 round trips would be one type. The stipulation wasn't
11 part of that, but that was a stipulation that is in the
12 record, that these sales, the exact sales in question in
13 this case were all those which originated in Oklahoma and
14 extended outside the State, or had a destination outside
15 the State.

16 In that respect, Jefferson, while operating in
17 Oklahoma and selling its bus trips and selling its bus
18 tickets from various outlets and locations across the
19 State for both intrastate and interstate trips -- that is,
20 extending beyond the State's borders, collected sales tax
21 only on those bus tickets which were sold for intrastate
22 trips.

23 Jefferson, of course, had a sales tax permit
24 issued by -- as a vendor by the State of Oklahoma, the
25 Oklahoma Tax Commission, and dutifully reported all sales

1 made in Oklahoma, both intrastate and interstate trips.
2 On the sales tax report, however, Jefferson then deducted
3 those sales which were connected with interstate trips,
4 did not collect or remit sales taxes on those sales, only
5 the net.

6 Jefferson filed for bankruptcy, and office
7 audits by the tax commission of Jefferson's sales tax
8 report developed that the interstate trips, the tax was
9 not being collected or remitted, and a claim was filed.
10 Jefferson objected in the bankruptcy court to the claim.
11 The bankruptcy court sustained Jefferson's claim that it
12 violated -- that the tax on these trips violated the
13 Commerce Clause. The court, of course, analyzed the State
14 tax in view of the four-prong test of Complete Auto.

15 Analyzing and realizing that Jefferson is
16 physically present in the State of Oklahoma when it makes
17 all of these bus sales, these ticket sales, and that
18 Jefferson's customers are physically present in the State
19 when the sale is made, the bankruptcy court found that
20 this presence satisfied both the nexus requirement of
21 Complete Auto and also established that the State was
22 providing services both to Jefferson and to its customers
23 in connection with the sales transaction, and therefore
24 the fourth prong was satisfied that the tax was fairly
25 related to services provided by the taxing State.

1 As to the second prong of the Complete Auto
2 test, however, that the tax be fairly apportioned, the
3 court looked at the accepted test of whether or not the
4 tax is internally consistent. That is whether, if every
5 other State enacted the same tax, would there be multiple
6 or double taxation. The court found that there is not,
7 because, of course, a bus ticket can be sold in only one
8 State.

9 As to the second portion, however, the
10 bankruptcy court determined that the tax as it applies to
11 interstate trips was not fully -- fairly apportioned
12 because the court envisioned that the tax was essentially
13 the same as the tax in a prior case, Central Greyhound
14 Lines v. Mealey. However, in the case before this Court
15 today, we are talking about a sales tax. It is a tax on
16 the consumer. The taxable transaction is the sale itself,
17 and it is not the thing that is purchased or the use of
18 the thing purchased. In Central Greyhound --

19 QUESTION: Mr. Johnston, one more background
20 fact. In the two bankruptcy proceedings that I think
21 involved another bus company there was a statement that
22 you tax even tickets that were sold outside the State.
23 Was -- the bankruptcy judge thought that the tax reached
24 transportation of -- where the ticket was sold out of
25 State. Was that incorrect?

1 MR. JOHNSTON: I -- it's incorrect under the
2 law, Your Honor, and you're speaking of the Greyhound
3 case, which is an almost identical case which is currently
4 pending in the Fifth Circuit. The stipulations in that
5 case were a bit broader than the stipulations. They did
6 not restrict themselves to trips, only to trips
7 originating in Oklahoma and terminating outside insofar as
8 interstate trips are concerned, but the -- I'm sorry --

9 QUESTION: Does the tax reach, as the bankruptcy
10 judges seem to think, transportation sold in other States,
11 but that occurs at least in part in Oklahoma?

12 MR. JOHNSTON: No, Your Honor, it does not.
13 Under the statute and under the Oklahoma supreme court
14 decisions the Oklahoma sales tax is effective and
15 applicable only if the sale occurs in Oklahoma, and in
16 this case, that is if the trip is sold in Oklahoma. That
17 is, if I go and buy a ticket.

18 I'm not talking, of course, just the piece of
19 paper but what the ticket represents and, of course, in
20 common parlance one does not buy transportation to New
21 York, one buys a ticket to New York.

22 QUESTION: So this statement, the statute also
23 allows Oklahoma to tax transportation sold in other States
24 which occurs in Oklahoma, that's just flat wrong, is that
25 your position?

1 MR. JOHNSTON: That's just flat wrong, Your
2 Honor.

3 Under the statute and under the supreme court
4 decisions in regard to the Oklahoma sales tax, the sale to
5 be taxable in Oklahoma must occur in Oklahoma. It cannot
6 occur outside the State. It simply doesn't apply.

7 QUESTION: May I ask if your tax would cover --
8 forget interstate commerce and transportation for a
9 moment. Supposing you bought your Super Bowl tickets in
10 Oklahoma, would the tax apply, the Super Bowl being played
11 in some other State?

12 MR. JOHNSTON: Yes, Your Honor, I believe it
13 would, because my memory of the statute is that it does
14 tax admission to places of amusement, and if the sale were
15 made in Oklahoma, then it would be taxable in Oklahoma,
16 because, as with the Super Bowl ticket or a bus ticket,
17 the way people purchase these services --

18 QUESTION: And going back to Justice O'Connor's
19 question, there doesn't have to be any part of the service
20 performed within the State?

21 MR. JOHNSTON: Not in such circumstances, where
22 you have certainly physical evidence in the form of the
23 ticket, but legal evidence where the service is bought and
24 paid for and at that point the purchaser has the right to
25 the service and the right to do with that service as he

1 will.

2 The ticket, for instance, whether it be a
3 football game or a bus ticket, the purchaser once they buy
4 and pay for the ticket they can give it away, they could
5 sell it, I suppose they could leave it in a will. In
6 either case, I would also suggest that the ticket doesn't
7 have to be used. The service doesn't have to be enjoyed
8 for the transaction to have occurred and for the
9 transaction to be taxable.

10 In this case, the transportation involved
11 doesn't have to be used. It is not a tax on
12 transportation, and that is the error of the courts below
13 in their reliance upon Central Greyhound Lines v. Mealey,
14 because that was a tax on the revenues from
15 transportation. It was tax -- a gross income tax on the
16 bus company.

17 QUESTION: So, then, a travel agency doing
18 business in Oklahoma pays the tax on all the sales it
19 makes regardless of what the tickets are? In other words,
20 somebody buys tickets from an Oklahoma travel agent for
21 use going from New York to London or some place, he'd
22 still pay the tax in Oklahoma?

23 MR. JOHNSTON: If it's in regard to
24 transportation?

25 QUESTION: Yes.

1 MR. JOHNSTON: Yes, sir, under this statute. If
2 the sale occurs there, and it would be in that case, as I
3 understand the question, then it would be taxable, yes,
4 sir.

5 QUESTION: Well, exactly what is the provision
6 of the Oklahoma tax, because in answer to that question of
7 Justice Stevens, you said if it applies to transportation,
8 but then certainly a Super Bowl ticket to admit one into
9 the Super Bowl doesn't deal with transportation. What is
10 the relevant provision of the Oklahoma tax statute?

11 MR. JOHNSTON: As to transportation it is -- and
12 that's contained on pages 2 and 3 of the brief for
13 petitioner -- in section 1354, title 68 of the Oklahoma
14 statutes is the general levying statute, which levies the
15 sales tax of 4 percent, it is now 4-1/2 percent of the
16 gross receipts or gross proceeds of sale of a) tangible
17 personal property, c) transportation for hire to persons
18 by common carriers -- I've omitted the rest of that, but
19 it includes --

20 QUESTION: Well, how would that reach tickets to
21 the Super Bowl?

22 MR. JOHNSTON: In other sections or subsections,
23 rather, of the sales tax statute, the tax is levied on the
24 sale of admission to amusement -- sports and amusement
25 places. I thought I had made that clear. But it is not

1 in this subsection, but it is within the taxing statute as
2 a specifically enumerated service.

3 The courts below, both the bankruptcy court, or
4 all three of the courts, the bankruptcy court, the
5 district court on appeal, and then the Eighth Circuit
6 Court of Appeal, all held that the tax was not fairly
7 apportioned under the external consistency test. All
8 three, however, based their decisions and relied upon the
9 case of Central Greyhounds v. Mealey. As I believe I
10 earlier said, this was -- that case involved a different
11 kind of a tax, a different kind of a taxpayer, on a
12 totally different transaction.

13 The district court, I believe it was, indicated
14 that it found no substantial difference between a sales
15 tax in this case and a gross income tax in the Central
16 Greyhound case.

17 QUESTION: With respect to Central Greyhound, is
18 it your position that if New York had made that tax a tax
19 on the sale of the ticket, then it would have come out the
20 other way?

21 MR. JOHNSTON: I believe it would, Your Honor.

22 If it had been a sales tax on the consumer as
23 opposed to an income tax on the provider of the service,
24 then I believe that the focus of the constitutional
25 examination which looks at the transaction would be

1 looking at the transaction involving the consumer and his
2 purchase, as opposed to the bus company and taxing its
3 revenues from the providing of the service, and that, I
4 believe, is the difference.

5 If it had been a different tax, I believe -- if
6 it had been a tax similar to this, then the results would
7 have been different.

8 QUESTION: But as a practical matter, what's the
9 difference? The measure is the same, which is the sale
10 price of the ticket. It's exactly the same measure.

11 MR. JOHNSTON: It is, Your Honor, but I believe
12 that under all the precedents you have to look at the
13 transaction that is being taxed. In this situation, the
14 transaction that is being taxed is the purchase of the
15 service, not the providing of the service nor the making
16 of money from the providing of the service.

17 QUESTION: But there's no separate transaction
18 in Central Greyhound, is it? It's simply the moment at
19 which you do the figuring. Instead of saying the tax is
20 due when the ticket is purchased, the tax is due when you
21 add up all your gross income and find out what it is.
22 Isn't that the only difference?

23 MR. JOHNSTON: I don't believe that that is the
24 only difference. It certainly has that similarity, Your
25 Honor.

1 QUESTION: Is there -- was there any other kind
2 of income that went into gross income in Central Greyhound
3 that is -- in addition to revenue from the sale of
4 transportation?

5 MR. JOHNSTON: I'm afraid I'm not -- I'm not
6 aware that there was. If there was, I'm not aware --

7 QUESTION: Then I'm not -- then, like the court
8 below, I'm not sure what the difference is, then. Explain
9 that to me again.

10 MR. JOHNSTON: Because in Central Greyhound we
11 are talking about taxing the bus company on its revenues,
12 its gross receipts in that case, not net revenues, but
13 from the providing of -- providing its own income, the
14 generation of income, in that case more than one State.

15 QUESTION: Well, is the difference, then, that
16 in the case of the tax here, the bus company is given an
17 authorization to add on the tax up front and state it as a
18 tax when it collects it, as distinct from simply dealing
19 with it as a cost of business and passing it on sub
20 silentio when it figures the price of its ticket?

21 MR. JOHNSTON: In this case the bus company is
22 not only permitted to do that, it is required. It's a
23 provision of the statute.

24 QUESTION: Well, I realize that, but is that,
25 then, the only distinction between the two? It's up front

1 in one case and it's an unstated cost of doing business
2 which increases the cost of the ticket in the other case?

3 MR. JOHNSTON: I think that's not only correct,
4 Your Honor, but it also is constitutionally significant,
5 because --

6 QUESTION: That's the only difference. That's
7 what I'm trying to get at.

8 MR. JOHNSTON: It is the primary difference,
9 yes, sir. As far as the economic result of an income tax
10 for a corporation, of course, it is basically always going
11 to trickle down to its customers in the form of higher
12 prices for whatever the corporation is doing.

13 However, the tax on the corporation's income,
14 even though the ultimate cost of that tax may eventually
15 increase the cost of its services to the customers, for
16 instance in the Liggett & Myers case, that does not,
17 according to the court, make that a tax on the customer,
18 and I believe we have --

19 QUESTION: I thought Greyhound was a tax on the
20 company?

21 MR. JOHNSTON: Central Greyhound was, yes, sir.

22 QUESTION: And that this is a tax on the
23 purchaser, not on the company?

24 MR. JOHNSTON: Yes, sir, that is correct.

25 QUESTION: That's a big difference.

1 MR. JOHNSTON: That is the difference.

2 QUESTION: Why does that make a difference? I
3 mean, a State -- the State of New York has a big interest,
4 I take it, in the income that its own corporations make,
5 so the connection between New York and its company,
6 Greyhound, is great.

7 Here, with the sales tax, I guess Oklahoma has
8 far less interest either in the company or in the trip, so
9 if there's a difference, why does it cut in your favor?
10 Why doesn't it cut against you?

11 MR. JOHNSTON: The difference is, as far as
12 Oklahoma's interest, is that Oklahoma is levying a
13 transaction tax on the purchaser in Oklahoma and not on
14 the bus company. That transaction occurs totally within
15 the State of Oklahoma and nowhere else.

16 QUESTION: All right. Is it the case here, I'm
17 not certain, but suppose I'm in Massachusetts and my son's
18 at school in California, and I think it would be nice to
19 send him an apple every month, so I get these things in
20 the mail you do, they'll send Washington apples to
21 California once a month. Can that be taxed in
22 Massachusetts if I buy the apples in Massachusetts?
23 They're Washington apples going to California.

24 MR. JOHNSTON: I would doubt it.

25 QUESTION: The answer's no, I take it. All

1 right. Why is it any different if I buy him a haircut
2 once a month? I mean, suppose I'm in Massachusetts, I
3 think he should get a haircut out at Stanford, so there's
4 a new service, which there ought to be, that they'll give
5 him a haircut once a month.

6 (Laughter.)

7 QUESTION: I mean, does it make any difference?
8 If you can't tax the apples going from Washington to
9 California, why should you be able to tax the haircut? If
10 you can't tax the haircut, why can you tax the bus trip?
11 All of those things are bought in Massachusetts.

12 MR. JOHNSTON: I think that the difference as it
13 applies to this case, Your Honor, is that in the case of
14 tangible personal property, a sales tax on that, you're
15 taxing the transfer of the title or possession of that
16 personal property.

17 QUESTION: In all cases?

18 MR. JOHNSTON: The question is, is where does it
19 occur?

20 QUESTION: Yes, but why should there be a
21 difference, my point is, between the apples and the
22 haircut and the bus trip? They all take place totally
23 outside the State of Massachusetts, but the sales of each
24 take place within. Is there any reason they should be
25 treated differently?

1 MR. JOHNSTON: Under that situation, Your Honor,
2 yes, I believe there is, because if the sale of a ticket
3 that represents the right to the bus trip on behalf of the
4 customer, if that sale occurs in Massachusetts, according
5 to your example, then the transaction whereby I purchase
6 and acquire all the rights to the thing that I have
7 purchased, that occurs in Massachusetts, and if
8 Massachusetts has the Oklahoma-type sales tax, then it's
9 taxable there, I submit.

10 QUESTION: Why is that different from the
11 apples? All your rights to the apple are acquired in
12 Massachusetts. I really don't understand the distinction
13 you're drawing.

14 QUESTION: In fact, I thought you told me
15 earlier that the apple transaction would be taxed?

16 MR. JOHNSTON: I'm sorry, Your Honor.

17 QUESTION: I thought you told me earlier that a
18 comparable transaction to the apple transaction would be
19 subject to the tax. I asked you about a Super Bowl
20 ticket. That's -- I don't see the difference between
21 going to the Super Bowl in Miami and selling apples in
22 Miami.

23 MR. JOHNSTON: Your Honor, I think --

24 QUESTION: The right to have the event take
25 place is purchased in your State.

1 MR. JOHNSTON: Yes, Your Honor. I made the
2 distinction only between tangible personal property and
3 service to this extent, that it's well settled that for
4 tangible personal property you have the delivery of either
5 title or possession. That is -- and the right to control.

6 In the situation of the bus ticket and
7 intangibles, intangible services, then we are talking
8 about the same transaction, it's the same transfer, but it
9 is the right to have and control that service, not
10 necessarily the ultimate enjoyment.

11 For instance, it is not the tax on the eating of
12 the apple or the riding of the bus.

13 QUESTION: You have to make the distinction for
14 personal property because we've held that the State where
15 the contract for sale is made cannot impose a sales tax,
16 haven't we?

17 MR. JOHNSTON: I believe you have, Your Honor.
18 Yes, you have. If that's --

19 QUESTION: Mr. Johnston --

20 MR. JOHNSTON: -- the only --

21 QUESTION: That's the only reason for the
22 distinction I can see.

23 QUESTION: I'm still puzzled by the initial
24 question that Justice O'Connor posed and your answer to
25 it. You do have in the stipulation that here, interstate

1 routes are those which originate in Oklahoma and terminate
2 in a State other than Oklahoma.

3 MR. JOHNSTON: Yes, ma'am.

4 QUESTION: So does that stipulation mean that
5 what we have been talking about, a ticket purchased in
6 Oklahoma but for transportation between States other than
7 Oklahoma, that that is something that the statute purports
8 to reach but is not at issue in this case?

9 MR. JOHNSTON: That is correct, Your Honor.

10 QUESTION: So the only sales that are at issue
11 in this case are routes that originate in Oklahoma and
12 terminate some place else?

13 MR. JOHNSTON: That is what the stipulation
14 covers, and that's all it covers, Your Honor. I have no
15 doubt that it's possible for the sales that were reported
16 during these periods by Jefferson, some of them may have
17 been round trips -- round trip -- round trips out of the
18 State and back in. I do not know. The record doesn't
19 reflect it. The only stipulation is what we have before
20 us.

21 QUESTION: What are the case authorities that
22 you can point us to that require this distinction between
23 tangible services and the sale of goods, or intangible
24 services, rather, and the sale of goods?

25 MR. JOHNSTON: Your Honor, I --

1 QUESTION: I take it you're sticking with that
2 distinction so that if Oklahoma tries to tax a sale for
3 goods that are shipped and delivered in other States, the
4 shipment outside of Oklahoma, the delivery outside of
5 Oklahoma, the receipt outside of Oklahoma but the sale in
6 Oklahoma, I take it you say that's not taxable?

7 MR. JOHNSTON: If Your Honor -- if I understand,
8 this would be, for instance --

9 QUESTION: This is --

10 MR. JOHNSTON: -- a sale in Oklahoma --

11 QUESTION: This is the apple.

12 MR. JOHNSTON: -- of something that occurred
13 totally outside.

14 QUESTION: Yes. Justice Breyer's apple
15 hypothetical.

16 MR. JOHNSTON: Yes. Your Honor, it -- under the
17 statute, if under all the circumstances of the case the
18 sale occurred, then I believe that where the service were
19 employed or enjoyed would not make a difference under the
20 statute.

21 QUESTION: Even if this service were for the
22 delivery of tangible property? I mean, it's hard to call
23 that a service. The apple hypothetical, are you sticking
24 with the answer that that is not taxable?

25 MR. JOHNSTON: If a sale were -- if I ordered

1 the apple to be delivered from one State to another
2 State --

3 QUESTION: You complete the sale in Oklahoma,
4 but the apples are going to be shipped from Washington to
5 California.

6 MR. JOHNSTON: There is a question in my mind
7 whether in that case, although you're assuming the
8 complete -- the sale in Oklahoma. I'm not sure it would
9 be an Oklahoma sale in that case. The -- for instance, in
10 the --

11 QUESTION: Well, why is that different from
12 Justice Stevens' Super Bowl problem?

13 MR. JOHNSTON: Because in the Super Bowl
14 problem, as the question was posed, the sale was
15 completed. That is, in the State of Oklahoma, both
16 parties were there, and the transfer of the ticket
17 representing the service and giving the right to the
18 service was transferred from one to the other in the State
19 of Oklahoma. So as I understood the question, all of the
20 transaction as far as the right to the service occurred
21 within the State of Oklahoma.

22 QUESTION: Well, let's assume the same thing
23 happens with the apple hypothetical. The deal is made,
24 signed, sealed, completed in Oklahoma, and delivery and
25 receipt to take place outside of Oklahoma, delivery of the

1 goods that are the subject of the completed sales
2 contract.

3 MR. JOHNSTON: The cases with which I am
4 familiar do require that there be some sort of delivery,
5 the completion, although the statute requires transfer of
6 either title or possession in the State.

7 QUESTION: Okay. Is that the McGoldrick case?
8 What are the cases that --

9 MR. JOHNSTON: The McGoldrick --

10 QUESTION: -- you can point us to from this
11 Court that require us to make a distinction between
12 services and tangible goods, if that's the distinction you
13 want us to make?

14 MR. JOHNSTON: The McGoldrick case would be one
15 case, Your Honor, because the agreement was made first,
16 then the coal was mined or released, then it was shipped
17 from a place out of State into New York, and actual
18 physical delivery of the coal to the buying customer was
19 made in New York, so the interstate portion of that
20 delivery the Court found to be basically incidental and
21 not violative of interstate commerce.

22 Other cases to which we would point the Court's
23 attention, and we have in the brief, are those situations
24 involving, for instance, airline fuel in Wardair Canada.
25 Although the fuel was delivered and sold to the airline in

1 the State of Florida, it was actually used primarily out
2 of the State of Florida. The courts nevertheless found
3 that it was taxable certainly for domestic Commerce Clause
4 purposes. There was, of course, the foreign Commerce
5 Clause additional considerations.

6 And the similar situation in the Itel
7 Containers, where the containers leased were used
8 exclusively in foreign commerce and, of course, we believe
9 that the decision in Goldberg v. Sweet involving the
10 telephone calls is very similar to the situation in this
11 case, because in effect you had a tax there very similar
12 to a sales tax. It was of an intangible service.

13 QUESTION: What about the Court's stress of the
14 credit mechanism that was present in that case and not in
15 this case?

16 MR. JOHNSTON: I believe because of the
17 circumstances or the nature of that transaction, and the
18 statute provided the possibility as the Court noted,
19 although I believe the Court said that there was a very,
20 very slight possibility, but a possibility, that an
21 interstate telephone call could be subject to tax in two
22 States, but only two States, and the Court then, of
23 course, observed that even if there was that slight
24 possibility, then the credit provision would act to take
25 care to avoid any actual multiple taxation.

1 I believe in this case that where you have the
2 transaction -- I don't believe any other State would have
3 nexus to tax the transaction that we're talking about
4 here, and that is the sale of the trip.

5 QUESTION: But it would have -- would be able to
6 put a gross receipts tax on the company --

7 MR. JOHNSTON: It could.

8 QUESTION: -- for the miles in that State.

9 MR. JOHNSTON: It could in that event, Your
10 Honor, as I believe most bus companies are entitled to
11 various taxes, and certainly income taxes.

12 Under the scenario that is adopted by the courts
13 below, if one State taxed a bus company and another State
14 taxed a customer, that amounts to multiple taxation, then
15 obviously one of those taxes has to go, and that I believe
16 is not -- this is not what the law says, and it's
17 certainly not what we have today.

18 Most companies, if not all companies, are
19 subject to taxes on their income along with other taxes.
20 This does not, under the Commerce Clause, however, prevent
21 States from taxing their customers when those customers
22 buy products from those companies. I believe the two
23 different types of taxes are not equatable and, therefore,
24 in this case we do not have the, even the --

25 QUESTION: Thank you, Mr. Johnston. Your time

1 has expired.

2 MR. JOHNSTON: Thank you.

3 QUESTION: Mr. DeRuyter, we'll hear from you.

4 ORAL ARGUMENT OF STEVEN D. DeRUYTER

5 ON BEHALF OF THE RESPONDENT

6 MR. DeRUYTER: Mr. Chief Justice, may it please
7 the Court:

8 The practical effect of this tax and the express
9 language of the taxing statute are the same. This is a
10 tax on interstate bus transportation. However the State
11 of Oklahoma may attempt to labelize or localize the
12 activity which it seeks to impose its tax, this is a tax
13 on interstate activities which occur far beyond the
14 borders of that State.

15 Now, the lower --

16 QUESTION: Would it be the same for an income
17 tax on the revenues derived from interstate
18 transportation? Are they also exempt?

19 MR. DeRUYTER: This Court has held that income
20 tax must be fairly apportioned and has dealt with a number
21 of apportionment formulae which it requires that income
22 taxes be subjected to, so the answer to that --

23 QUESTION: But the income from interstate
24 transportation is not exempt from State taxes, is it?

25 MR. DeRUYTER: It is not exempt, no.

1 QUESTION: But you're saying that the -- that a
2 sales tax cannot be imposed on interstate transportation.

3 MR. DeRUYTER: I am not saying that a sales tax
4 cannot be imposed on interstate transportation. I am
5 simply saying that when it is imposed on interstate
6 transportation it must follow the precedents of this
7 Court, the Complete Auto requirement of fair
8 apportionment.

9 QUESTION: What about a -- supposing your bus
10 company has a route from Oklahoma City to Dallas, and the
11 bus fills up in Oklahoma City with gas, enough to take it
12 to Dallas, now can Oklahoma tax the entirety of that
13 purchase of gas even though a lot of it is going to be
14 used for transportation in Texas?

15 MR. DeRUYTER: Yes. The answer to that is yes,
16 because the total delivery of possession of that gas is
17 made within the State of Oklahoma. That's similar to the
18 Itel case and McGoldrick and a number of cases where this
19 Court, as the State of Oklahoma has said, the delivery of
20 possession and title, but principally delivery of
21 possession, gives a State the right to impose a tax.

22 QUESTION: Well, what about a tax on -- an
23 excise tax on interstate phone calls made from or to an
24 in-State address?

25 MR. DeRUYTER: That's similar to what -- the

1 situation that this Court dealt with in Goldberg.

2 QUESTION: Exactly, and what did we hold there?

3 MR. DeRUYTER: The Court held there, based on
4 the particular, different facts from this one, that --

5 QUESTION: Well, didn't we hold that the State
6 could tax those calls?

7 MR. DeRUYTER: You held that the State could tax
8 that service address.

9 QUESTION: The whole price of the call --

10 MR. DeRUYTER: That's --

11 QUESTION: -- including the portion that covered
12 the out-of-State use of the facilities of the telephone
13 company.

14 MR. DeRUYTER: That is correct.

15 QUESTION: Well, why is this different? Is it
16 any more difficult to divide up or apportion telephone
17 line charges than highways?

18 MR. DeRUYTER: The finding of the Court in
19 Goldberg -- the answer to your question is yes, this case
20 is different than the Goldberg situation. The Court in
21 that case made a finding based on the facts that there was
22 an administrative impossibility of apportionment. Here,
23 by contrast, and we cite the Central --

24 QUESTION: Well, that strikes me as being
25 insubstantial. I don't see why it's any more difficult

1 there than here. I would think you have exactly the same
2 thing.

3 MR. DeRUYTER: There were parties to that case
4 that argued that -- that it was administratively feasible
5 in Goldberg to apportion the tax between the States, but
6 the Court found, as part of its decision, that it was
7 administratively impossible.

8 Here we have the contrast where this Court in a
9 number of situations has held that it is not only
10 administratively possible but has approved judicially the
11 apportionment on the basis of mileage. In fact, in
12 Complete Auto itself, the Court indicated that it was
13 fairly apportioned because it only applied to
14 transportation within the State of Mississippi.

15 QUESTION: Well, how about Justice Stevens'
16 Super Bowl ticket purchase in Oklahoma?

17 MR. DeRUYTER: I believe that --

18 QUESTION: How do you apportion that?

19 MR. DeRUYTER: I believe that that should not be
20 subject to the Oklahoma tax because, assuming that you
21 find that the Super Bowl ticket is a service, a
22 performance, then the place where the service is performed
23 is the place that may -- that has the jurisdiction to
24 impose a tax.

25 That is what the -- by the way, the State of

1 Oklahoma supreme court in the Pioneer Telephone case has
2 so held. It has held that the place of delivery of
3 possession is the place where goods may be taxed, but the
4 place of performance is the place that can tax a service.

5 Interestingly, that case, plus the Tad Screen
6 case which we cite in our brief, are never dealt with by
7 the commission in their briefs or in its argument before
8 this Court.

9 QUESTION: Well, don't those cases suggest that
10 maybe this tax should not have been imposed as a matter of
11 State law, rather than as a matter of Federal
12 constitutional law, if you're relying on the Oklahoma
13 supreme court opinion?

14 MR. DeRUYTER: We're arguing both, Your Honor.

15 QUESTION: But don't we have to assume -- or
16 maybe we don't, I don't know -- that this tax is properly
17 imposed as a matter of State law? If it isn't, we surely
18 can save ourselves a lot of work.

19 Have you argued that it's not imposed, that as a
20 matter of State law the tax is not collectible?

21 MR. DeRUYTER: I don't believe we have. We've
22 argued in our brief that the manner in which the State has
23 applied the tax to Jefferson Bus Lines is inappropriate
24 because they have argued that they can impose their tax on
25 the sale of a ticket, the transaction or the payment, it's

1 not clear, rather than on the delivery of the service,
2 which is the operating incidence, the object of the tax,
3 and therefore we have argued that as applied, this is
4 unconstitutional.

5 QUESTION: Mr. DeRuyter, one argument that was
6 made, I think by the tax commission, was that if they were
7 able to tax the customer who is traveling on Oklahoma
8 roads, set up tolls, maybe, along the road, so they taxed
9 all of the miles within Oklahoma, that they'd probably net
10 more than they are now, when they're taxing only the
11 person who purchased the ticket in Oklahoma.

12 Have you shown that that is not so, that in fact
13 if they went on your theory of taxing people who travel
14 the roads in Oklahoma, no matter where they begin, no
15 matter where they end -- the argument is that they State
16 would collect even more if they did it that way. Have you
17 shown that that's not so?

18 MR. DeRUYTER: No, we have not shown that.
19 That -- that would be a different case. It is not before
20 the Court, and what they're -- I mean, what they're
21 suggesting is that by applying a use tax in combination
22 with the sales tax only to all miles traveled within the
23 State, they're suggesting that they would -- they would
24 get equal or more tax than they're getting here.

25 That argument, that averaging argument has not

1 been sustained by this Court. I think this spring in
2 Associated Industries the argument was made that a use tax
3 on average was fair, but this Court held that that kind of
4 analysis was not appropriate, that you must look at the
5 individual taxpayer, and that is where it is significant
6 that the tax here is imposed upon the individual
7 passenger, because to say on average, passengers are not
8 discriminated against or unfairly apportioned does not
9 solve the dilemma of the individual passenger.

10 QUESTION: Under your theory, I take it all
11 sales taxes on rent-a-cars have to be apportioned to the
12 extent the rent-a-car's being driven out of State?

13 MR. DeRUYTER: If the tax -- the answer is yes,
14 assuming the tax is imposed on the delivery of the rental
15 itself as opposed to the situation in, I believe it was
16 Itel where they -- there was a lease of containers, but
17 they said the tax was imposed on the delivery of
18 possession.

19 If the tax is like Itel, then the answer would
20 be different, but if the tax is imposed on the lease, then
21 you should have an apportionment.

22 QUESTION: And the same if you hire an attorney
23 in one State but all of the services really involve his or
24 her traveling out of State to make a report and a
25 recommendation, if there's a State service tax that has to

1 be apportioned?

2 MR. DeRUYTER: That is correct. That is what I
3 do with the State of South Dakota. I allocate my bills to
4 clients that I bill in South Dakota on the portion of the
5 services that I do in Minnesota.

6 QUESTION: How are you coming out on that with
7 the State, pretty well?

8 (Laughter.)

9 MR. DeRUYTER: But we are required --

10 QUESTION: But you think constitutionally this
11 is required?

12 MR. DeRUYTER: Yes. I look at Evco, Ingram-
13 Richardson, decisions of this Court which dealt with
14 services rendered wholly within one State, and the Court
15 said the tax is properly imposed because all of the
16 services were rendered within a single State. The same
17 thing in Complete Auto.

18 There just has not been the case that at least
19 I'm aware of where you have services rendered across State
20 lines as you have in this case.

21 QUESTION: Well, except for the telephone calls
22 in Goldberg.

23 MR. DeRUYTER: Goldberg, as I indicated,
24 administratively impossible. There the Court said that
25 there were only two States that could impose the -- that

1 had the nexus to impose the tax, and they also said that
2 to the extent there was a credit mechanism there could be
3 no multiple taxation, and therefore in discussing the
4 apportionment aspect of Complete Auto, the Court said
5 that -- that the -- that the way the telephone calls were
6 made were -- the way people understood the use of the
7 telephone was consistent with applying a tax on the user
8 in the State.

9 QUESTION: Well, if you say the taxable event is
10 the sale of the ticket, only one State can impose it,
11 isn't that so? You don't get the problem of multiple
12 taxation if the taxable event is the sale.

13 MR. DeRUYTER: I believe that you do, that by
14 saying that you impose a tax on the sale of the ticket, at
15 bottom what you are saying is that you are imposing a tax
16 on the contract, making of the contract and the making of
17 the payment.

18 In this case, we happen to have a coincidence of
19 the making of the contract and the making of the payment
20 in the State of Oklahoma, but it would be quite simple --
21 I mean, obvious in a different situation. I think Justice
22 Breyer has given us an example --

23 QUESTION: But in this situation, what other
24 State could tax the sale, do you suppose? If the purchase
25 is made in Oklahoma, and the payment of the ticket is made

1 in Oklahoma, what other State can tax the sale, in your
2 view?

3 MR. DeRUYTER: No other view can tax the act of
4 making the sale.

5 QUESTION: Right.

6 MR. DeRUYTER: However, I'm -- the -- this Court
7 has said you must look at the operating incidence of the
8 tax. The operating incidence of this tax is on the
9 measure of the tax, and the measure of the tax is the
10 gross receipts from the total trip, and therefore our
11 argument is that the -- the argument of the State of
12 Oklahoma is too narrow, that you can't look only at the
13 actual transaction, but you must look at the operating
14 incidence of the tax, and that is clearly on the total
15 gross receipts, which is not apportioned.

16 QUESTION: And your apportionment formula that
17 you suggest is mileage traveled in each State?

18 MR. DeRUYTER: The determination of an
19 apportionment formula is in essence a legislative
20 decision. There is in this case -- to answer the Goldberg
21 situation, there is in this factual situation an
22 administratively feasible method of apportionment which is
23 judicially sanctioned, and that's what we're saying.

24 QUESTION: Which is mileage?

25 MR. DeRUYTER: Which is mileage.

1 QUESTION: Well, suppose that a person
2 transfers. He takes the bus from Oklahoma to St. Louis,
3 and then has to transfer and spends a lot of time in
4 St. Louis. It would be like an airline hub, changing to a
5 different bus to go on, say, I don't know, to New Orleans.
6 Couldn't Missouri argue, well, it's not just miles,
7 because there was a hub here, and there was a bus change
8 so we get more of the tax, it's not just mileage?

9 It seems to me that mileage might not be
10 administratively feasible or necessarily fair.

11 MR. DeRUYTER: I agree in a theoretical sense
12 that that is a legislative decision. We're not asking the
13 Court --

14 QUESTION: But it's not just a legislative
15 decision if we're asking whether or not the apportionment
16 mechanism is available and feasible, because that's what
17 we need to distinguish the Illinois tax on telephone
18 calls.

19 MR. DeRUYTER: I certainly believe that
20 apportionment on the basis of mileage is not only feasible
21 but judicially sanctioned, and it was referenced as such
22 in the Illinois decision, citing Central Greyhound v.
23 Mealey.

24 QUESTION: Mr. DeRuyter, would you explain why
25 it isn't necessary for New York in the Berwind-White

1 situation to take off something because the coal traveled
2 interstate?

3 New York can tax the full value of the sale --
4 although it started some place else and value was added
5 all along the way it's the place where it ends up can tax
6 the full value. Why can't, equally with regard to
7 services, the place where it starts out tax the full
8 value?

9 Why such a difference between the treatment of
10 goods on the one hand, where we let the State tax it all
11 at the end, and here, a similar thing that the State can
12 lay its hands on, the sale of the ticket, can also tax the
13 whole thing? Why should we treat those differently?

14 MR. DeRUYTER: We argue that our position is
15 consistent. In the McGoldrick Berwind-White case, the
16 State is allowed to impose a tax on the full sale price of
17 the delivery of possession of the good. That is the
18 entire object of the transaction.

19 What we are arguing is that applying that same
20 rule to the delivery of services, that the State is
21 entitled to impose a tax on the object of the transaction,
22 which is the delivery of the services where those services
23 occur, and only the portion of those services that occur
24 in the taxing State can that State tax.

25 QUESTION: Are you saying that unlike goods,

1 where we let somebody tax the full value, nobody in an
2 interstate sale can tax the full value of the service?

3 MR. DeRUYTER: No. What I am saying is that the
4 combination of States in which the service is performed in
5 total can tax 100 percent of the value of the service.

6 QUESTION: I don't follow that. Tell me who can
7 tax the full value of a bus trip from Oklahoma to Texas.

8 MR. DeRUYTER: Assuming -- Oklahoma and Texas in
9 combination can tax 100 percent of the value of that --

10 QUESTION: But New York didn't have to worry
11 about combining with anybody in Berwind-White. It could
12 tax the full value of the sale.

13 I'm asking you, and I think you answered that
14 services, yes, one place could tax the full value of the
15 service to, but you have answered the concrete example
16 differently. You said two places could, but not one
17 place.

18 MR. DeRUYTER: I go back to what this Court has
19 said in those delivery of goods cases, that the object of
20 the transaction is the delivery of the good.

21 QUESTION: So you're then making a distinction
22 between, there isn't one place that can tax in full a
23 service that's rendered interstate, unlike goods.

24 MR. DeRUYTER: I agree with that.

25 QUESTION: Why isn't the object of the

1 transaction in this particular case the right to obtain
2 travel services at some future time, and why isn't that
3 transaction just as complete as the transaction when goods
4 are purchased?

5 MR. DeRUYTER: Because when a person purchases a
6 ticket, they don't have the full right to the object of
7 that transaction.

8 QUESTION: But they do. They've got the ticket,
9 and if the bus company won't carry them, they can sue the
10 bus company for damages. I mean, economically, it seems
11 to me, they've got the full value of the transaction, and
12 they're going to realize that value either by traveling or
13 by making the bus company pay.

14 The distinction, I suppose is, when they buy the
15 coal, the people along the line responsible for getting
16 the coal there no longer have to do anything, whereas in
17 this case people along the line in the future do have to
18 do something. Either they've got to carry them on the
19 bus, or they've got to pay up in some way, but the fact is
20 the right to the service is what he's buying, and I would
21 suppose that right is complete once he pays the money.

22 MR. DeRUYTER: I don't agree with that. I
23 believe that the delivery of the good cases essentially
24 say that when a purchaser of goods has complete dominion
25 and control on those goods, the transaction is complete,

1 whereas in the purchase of a service, the dominion and
2 control of the object of that transaction can never be
3 complete until the passenger completes their travel, and
4 if that is interrupted in the middle, they have a right to
5 a refund of the portion of the sales tax, on the portion
6 of the trip they didn't complete.

7 QUESTION: Would you agree, then, that if the
8 bus company were selling the tickets in the first place to
9 travel agents and travel agents were then selling them to
10 the travelers, that at least the transaction as between
11 the bus company and the travel agent would be complete at
12 that point, and that would be fully taxable?

13 MR. DeRUYTER: I don't believe that's the case.

14 QUESTION: Well, that isn't the case here, but
15 if that were the case, would that particular transaction
16 as between the company and the agent, as distinct from the
17 agent and the traveler, even on your theory, be fully
18 taxable without apportionment?

19 MR. DeRUYTER: I don't think so, because the
20 travel agent is simply an agent in that situation, either
21 for the passenger or for Jefferson Lines, and it should
22 not make a difference on how the transaction is taxed.

23 The object of the transaction, the object of the
24 tax and the tax is not laid on the travel agency but
25 rather it's laid on the passenger, the user of the

1 service, so I think the answer is that it passes through
2 the travel agency.

3 QUESTION: This may not be a very legally
4 persuasive argument, but it seems to me that if Oklahoma
5 were right in this case, many, many States would have
6 enacted sales taxes where none now exist on transportation
7 tickets. Do you agree with that? I mean -- let me put it
8 this way. I take it this is a unique tax, or am I
9 incorrect? Do many States tax the sale of airline tickets
10 for interstate travel, for instance?

11 MR. DeRUYTER: I think airline tickets are --
12 Congress has acted in that area, but --

13 QUESTION: The antihead tax, right? I mean,
14 that you can't have a head tax.

15 MR. DeRUYTER: Right. Right.

16 QUESTION: But what about other bus companies?
17 Is Oklahoma peculiar in taxing bus tickets, or do other
18 States do it, too?

19 MR. DeRUYTER: Jefferson operates on routes that
20 basically go north and south from the State of Minnesota.
21 The only State that we're aware of in that system that
22 imposes a tax on bus transportation is the State of
23 Missouri, which imposes a tax applicable only on
24 intrastate tickets.

25 In other words, they only impose their tax on a

1 ticket purchased for travel beginning and ending within
2 the State of Missouri, never touching another State.
3 Other than that, there may be two or three other States
4 throughout the country that seek to impose a tax on bus
5 transportation.

6 QUESTION: I'm not sure I understand the state
7 of the art on this, but if the -- or, I start out in
8 Washington, the State of Washington, and I buy a bus
9 ticket and a crate of apples, and I'm going to New York,
10 and I take it if I eat up the apples on the way, all New
11 York can tax is the two remaining ones that are with me in
12 New York. Is that the state of the law on goods? I
13 bought the whole thing, by the way, in New York. But is
14 that the state of the law on goods?

15 MR. DeRUYTER: Yes.

16 QUESTION: Yes. Okay.

17 MR. DeRUYTER: Yes, if they were all delivered
18 to New York.

19 QUESTION: Then I take it on services -- if
20 that's the state of the law on goods, then I take it on
21 services it would be the same, that New York could tax me
22 on that portion of the bus trip that takes place in New
23 York, but it couldn't tax me on the portion in Iowa any
24 more than -- on your theory any more than it could tax me
25 on the apples that I ate as I was going through Iowa.

1 MR. DeRUYTER: Exactly.

2 QUESTION: All right. But then what do you do
3 about the case of the telephone system, because with the
4 telephones I can understand that I'm in Illinois, and I
5 phone my brother in New York, and I can easily imagine I
6 got the service of talking to my brother when I was in
7 Illinois. It's as if he's sort of curled up inside the
8 receiver.

9 (Laughter.)

10 QUESTION: There's a voice there, and I hear it,
11 and so forth. But also the same thing is happening in New
12 York, so why couldn't you say, well, look, at least New
13 York and Illinois could tax this. So how do we reconcile
14 that case with what our theory was on the bus with the
15 apples? That's where I'm having -- I mean, we've got --
16 I've got it all worked out, almost but not quite.
17 That's --

18 MR. DeRUYTER: I can't answer your question
19 without reference to the Goldberg decision. There, they
20 only imposed the tax on calls charged to a service address
21 in Illinois, so there would not be a tax on a call that
22 was charged to a service address in New York. That's the
23 first part of that answer.

24 Secondly, they found as a matter of fact that it
25 was administratively impossible to allocate -- you know,

1 where the service was performed. If -- and I submit, if
2 another case came up, technology has changed that they can
3 allocate that telephone service, then I would argue that
4 telephone case would be similar to the case we have before
5 the Court today.

6 QUESTION: Why couldn't they simply have said,
7 we allocate it 50-50, one person is curled up inside the
8 telephone in Illinois, another one is curled up in New
9 York, we split it right in half, and each State could --

10 MR. DeRUYTER: I think --

11 QUESTION: What about the States in between?
12 There's nobody curled up anywhere.

13 (Laughter.)

14 MR. DeRUYTER: Are we talking buses now or
15 telephones?

16 QUESTION: Telephones.

17 MR. DeRUYTER: If we're talking telephones,
18 the -- that's similar to a tax that we cite in our
19 materials, the case out of Florida, and that's exactly
20 what they did, and that might be an appropriate
21 apportionment.

22 What this Court held in Goldberg was that the
23 State of Illinois could impose a tax on 100 percent of the
24 fees charged to a service address in Illinois.

25 QUESTION: And spoke of the problem of, the

1 difficulty of attribution.

2 MR. DeRUYTER: Exactly.

3 QUESTION: Yes, and it doesn't seem to be a
4 difficult -- I mean, it looks as though there's a very
5 simple way that they might apportion, and so the question
6 is, do we follow -- do we say, well, if it was tough in
7 the phone case, it's equally tough in this case, and say
8 there can't be an apportionment, or do we say we were
9 wrong about apportionment in the first case, it's easy in
10 each instance, and therefore we see it your way here?
11 Which way do we go?

12 MR. DeRUYTER: I've thought about -- I thought
13 about -- you know, when I've read Goldberg, my view of
14 that is simply that I don't think the State of Oklahoma
15 argues that apportionment on a mileage basis is difficult,
16 or impossible to do. They simply argue it's not relevant
17 in this case.

18 As opposed to the telephone situation, as I
19 indicated before, if the facts were different in Goldberg
20 I think the result might have been different in Goldberg,
21 and if you have the technology to allocate to States where
22 there's a real nexus to tax in Goldberg, I think you might
23 have a different -- my view of it, there would be a
24 different result.

25 QUESTION: You haven't shown that there's any

1 multiple taxation in fact in this case. In other words,
2 the transportation, say, from Oklahoma to Texas, Texas is
3 not laying a tax on that customer so that the ticket is
4 being taxed twice.

5 MR. DeRUYTER: You are correct. We have not
6 shown actual multiple taxation. We suggest that there's a
7 high possibility, particularly once the States read the
8 decision in this case, for other States to impose use
9 taxes or sales taxes with the same language that we have
10 in this case.

11 In other words, the tax here is on the rendering
12 and furnishing of services. They could impose that or a
13 gross receipts tax where a credit mechanism, for example,
14 would not --

15 QUESTION: As long as the tax is imposed on a
16 customer, how could they impose -- how could another
17 State, other than the one where the ticket is bought,
18 impose a tax? Charge it on the bus? I mean --

19 MR. DeRUYTER: How could another State impose a
20 tax on the customer?

21 QUESTION: On the passenger.

22 MR. DeRUYTER: On the passenger. A use tax, for
23 example.

24 QUESTION: How would that work? You get on the
25 bus in Oklahoma City to get off in Minneapolis. You buy

1 your ticket, you pay the sales tax. How would Minneapolis
2 collect a use tax?

3 MR. DeRUYTER: Minnesota would simply audit the
4 tickets purchased outside the State and ask for an
5 allocation on the -- assuming mileage --

6 QUESTION: On the passenger, by --

7 MR. DeRUYTER: Impose it on the passenger,
8 require that the bus company collect the tax. That's
9 typical use tax.

10 QUESTION: When they get off the bus. I see.

11 MR. DeRUYTER: Not when they get off the bus.
12 The passenger would have it -- would have it collected by
13 Jefferson, you know, when he bought the ticket in
14 Oklahoma.

15 QUESTION: But the taxable event in Minneapolis
16 is alighting from the bus?

17 MR. DeRUYTER: No. The taxable event in
18 Minnesota is the travel which commences at the Iowa border
19 and concludes at the terminal wherever they get off.

20 QUESTION: So you wouldn't be taxing the full
21 value of the ticket in Minnesota, you would just be taxing
22 an aliquot share based on mileage?

23 MR. DeRUYTER: That's what I would suggest.
24 However, if Minnesota adopted a sales tax statute
25 identical to the tax statute before the Court, I believe

1 that there's no apportionment. They could impose a tax on
2 the full value.

3 CHIEF JUSTICE REHNQUIST: Thank you,
4 Mr. DeRuyter. The case is submitted.

5 (Whereupon, at 11:01 a.m., the case in the
6 above-entitled matter was submitted.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:

OKLAHOMA TAX COMMISSION, Petitioner v. JEFFERSON LINES, INC.

CASE NO.:93-1677

and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY *Ann Marie Federico*

(REPORTER)

RECEIVED
SUPREME COURT, U.S.
MARSHAL'S OFFICE

'94 DEC -5 AIO:34