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Service Date: January 7, 1992

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER of VERN REUM, dba TIRES-R-US, Petition for Declaratory Ruling on the Applicability of Montana Motor Carrier Laws to Motor Vehicle Transportation of Used Tires and Rims for Sale, Recycling, and Storage at a Landfill Disposal Site.	)	TRANSPORTATION DIVISION DOCKET NO. T-9688 DECLARATORY RULING

INTRODUCTION

1. On September 5, 1991 the Montana Public Service Commission (PSC) issued a Preliminary Declaratory Ruling (preliminary ruling) in the above-entitled matter. The preliminary ruling is attached as Appendix "A" and, by this reference, incorporated herein in its entirety. The preliminary ruling describes the facts, question of law, and preliminary analysis relevant to this Declaratory Ruling.

2. The preliminary ruling answers several questions presented by Vern Reum, dba Tires-R-Us (Reum). Its principal holding, and the only one remaining relevant for further discussion, establishes that "the 'primary business test' is applicable to salvage, recycling, and garbage operations, when, as in all other applications, the transportation element is properly categorized as 'incidental'." See, Attachment "A," p. 7, para. 1.

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3. The preliminary ruling decided several elements of the proper determination on Reum's transportation being "incidental" -- Reum has a real nontransportation business and the transportation appears to be in the scope of this business. The only element of the test that could not be determined under the facts then presented was whether the transportation element was subordinate to the nontransportation elements. See, id., p. 6, para. 15. An answer to this question will satisfy the third element of "incidental" (being clearly subordinate) and also enable the PSC to determine if the appearance that the transportation is "in the scope of" is also true.

4. In this regard, the preliminary ruling holds that "the question of law, insofar as it deals with the 'primary business test,' cannot be answered specifically as to Reum's operations until further information is obtained." See, id., p. 7, para. 16. For this reason the PSC directed its staff to obtain further information from Reum and provide an opportunity for interested persons to comment on the information received.

5. On October 1, 1991 staff issued a Staff Inquiry to Reum. On October 21, 1991 Reum filed a response. Reum's Response contains additional given facts for the purpose of this Declaratory Ruling. On October 25, 1991 staff issued a Notice of Opportunity for Further Comment to interested persons. On November 13, 1991 Wee Haul Garbage, Inc. (Wee Haul) filed comments. On December 3, 1991 Browning-Ferris Industries of Mon-

tana, Inc. (BFI), filed comments. Reum has filed letters replying to Wee Haul and BFI.

Analysis

6. Reum's response to the PSC's staff inquiry constitutes given facts for the purpose of this Declaratory Ruling. It was requested to permit the PSC to apply the law expressed in the preliminary ruling to Reum's operations. As indicated in the preliminary ruling the remaining analysis bears on whether Reum's transportation activities are incidental (specifically, the "subordinate to" element of being "incidental") to his salvage, recycling, and garbage activities.

7. Reum has an initial investment of $13,000 in equipment (two trucks and one trailer) used for the transportation of used tires and wheels. The present value of this equipment is estimated at $11,000. Reum's annual transportation payroll is $3,120. His other transportation operating expenses total $10,937.20 annually. His annual gross revenue from the transportation element of his operations is $8,320.

8. Reum has an initial investment of $94,150 in real property (land and buildings) and equipment (tools, compressors, inflator, buffers, slicer, trucks and trailers). The present value of all of this is estimated at $133,550. Reum's annual nontransportation payroll is $36,200. His other nontranportation operating expenses total $29,992.84 annually. His annual

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gross revenue from the nontransportation elements of his operations is $66,080.

9. Comparing Reum's transportation and nontransportation aspects, it is clear that Reum's principal business investment and operation costs and revenue are in nontransportation functions. In fact, transportation is a small part of Reum's operations -- comparatively, less than ten percent of investment, less than 25 percent of operating expenses, and less than 15 percent of gross revenues. The PSC determines that Reum's transportation operations are subordinate to his nontransportation operations.

10. Wee Haul's and BFI's comments bear on Reum's operations being an unrealistic and unprofitable recycling business, disguising his true profitable venture -- a garbage business. This, however, makes no difference. This ruling bears on Reum's operations in total. In total, Reum's operations are recycling, salvage, and garbage. This ruling is not confined to the recycling aspects of Reum's business operations.

Declaratory Ruling

11. Under the facts presented and analyzed in the Preliminary Declaratory Ruling (Attachment "A") and this Declaratory Ruling, having been advised of all premises and having considered the same, the PSC determines as follows. Reum is engaged in a used tire and wheel recycling, salvage and disposal business. The business operation of recycling, salvage and disposal

is his principal business. Reum's transportation of used tires and wheels from various tire businesses to Reum's facility in Polson, Montana, for a fee, is incidental to this principal business. This transportation by Reum is unregulated private carriage as being an incident to the conduct of a nontransportation business under the primary business test.

Done and Dated this 17th day of December, 1991 by a vote of 5-0.

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BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

HOWARD L. ELLIS, Chairman

DANNY OBERG, Vice Chairman

BOB ANDERSON, Commissioner

JOHN B. DRISCOLL, Commissioner

WALLACE W. "WALLY" MERCER, Commissioner

ATTEST:

Ann Peck
Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.