

R00010

DOCUMENT RESUME

00366 - [A0100010] (Restricted)

[Payment of Freight Charges by IRS]. B-186805. October 1, 1976.
4 pp.

Letter to Herleine P. Joyner, Authorized Certifying Officer,
Internal Revenue Service; by L. Mitchell Dick, Assistant General
Counsel.

Issue Area: Federal Procurement of Goods and Services:

Reasonableness of Prices Under Negotiated Contracts and
Subcontracts (1904).

Contact: Office of the General Counsel: Transportation Law.

Budget Function: Commerce and Transportation: Ground
Transportation (404).

Organization Concerned: Atlas Van Lines, Inc.

Authority: Transportation Act of 1940, as amended (49 U.S.C.
66(a)). Transportation Act of 1941 (55 Stat. 875, 876; 31
U.S.C. 82). 21 Comp. Gen. 1128; 52 Comp. Gen. 83; 53 Comp.
Gen. 429; Government Rate Tender I.C.C. 1-X; Berger v.
Dynamic Imports, Inc., 274 N.Y.S. 2d 537. Shannon Spring Bed
Manufacturing Co. v. North American Van Lines, Inc.

00366



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

Do not make available to public

OFFICE OF GENERAL COUNSEL

B-186805

October 1, 1976

Herleine P. Joyner
Authorized Certifying Officer
Internal Revenue Service
2 Penn Center Plaza
Philadelphia, Pennsylvania 19102

Dear Ms. Joyner:

We refer to your letter of June 22, 1976, with enclosures, in which you request an advance decision by the Comptroller General of the United States on the question whether the Internal Revenue Service (IRS) should pay freight charges of \$44,584.19 to Atlas Van Lines, Inc. (Atlas), for the transportation of 418,210 pounds (12 trailer loads) of tax forms from a Government contractor's facility in Philadelphia, Pennsylvania, to the IRS Distribution Center in Richmond, Virginia, on Government bill of lading No. K-0788612, dated February 9, 1976.

The statutory authority under which this Office may render a decision to a certifying officer (section 3 of the Act of December 29, 1941, 55 Stat. 876, 31 U.S.C. 82d) limits us to instances involving a question of law with respect to payment on a specific voucher presented to him for certification prior to payment of the voucher. The voucher must also accompany the submission to this Office. See 21 Comp. Gen. 1128 (1942); 52 *id.* 83 (1972); 53 *id.* 429 (1973). The original voucher apparently has been retained in your office. Further, section 322 of the Transportation Act of 1940, as amended, 49 U.S.C. 66(a), provides, generally, that carriers' bills for transportation charges shall be paid upon presentation and prior to audit by the General Services Administration, and the section 2 of the Act of December 29, 1941, 55 Stat. 875, as amended, 31 U.S.C. 82(c), contains this proviso:

"That the Comptroller General shall relieve such certifying officer or employee of liability for an overpayment for transportation services made to any common carrier covered by section 66 of Title 49 whenever he finds that the overpayment occurred solely because the administrative examination made prior to payment of the transportation bill did not include a verification of transportation rates, freight classifications, or land-grant deductions."

However, we offer the following comments which you may find useful.

B-186805

You state in your letter that the transportation arose from the default action of an IRS Contracting Officer against the Government contractor on February 4, 1976. As a result of the default the IRS found it necessary to move the tax forms from the contractor's plant in Philadelphia, Pennsylvania, to the IRS Distribution Center in Richmond, Virginia. Due to the condition and location of the forms (many apparently were loose and unbound and located on upper floors of the facility), IRS had the forms packed and brought to the loading area prior to their movement to Richmond. While these types of services are not normally performed by general commodities carriers they are available from them or from other sources for an additional charge. However, IRS prepared the Government bill of lading and contracted with McClain Moving Company, a household goods carrier and agent of Atlas, to perform the transportation of the tax forms to the IRS Distribution Center.

Atlas claims transportation charges for the movement of the tax forms at the household goods carriers' rate of \$6.61 per 100 pounds, a metropolitan area charge of \$2,091.05, an elevator charge of \$2,509.26 and other accessorial charges. Total freight charges claimed by Atlas for the transportation are \$44,584.19. Atlas cites Section 3 of Government Rate Tender I.C.C. No. 1-X as the basis for its transportation charges and Section 2 of the same rate tender, Items 120D, 340A, 270D, 300C and item 220, as the basis for the accessorial charges.

Household goods are defined by the Interstate Commerce Commission in Practices of Motor Common Carriers of Household Goods, 17 M.C.C. 467 at page 505 (1939). Among other things, the definition includes:

"(2) FURNITURE, FIXTURES, EQUIPMENT AND THE PROPERTY OF STORES, OFFICES, MUSEUMS, INSTITUTIONS, HOSPITALS, OR OTHER ESTABLISHMENTS, when a part of the stock, equipment, or supply of such stores, offices, museums, institutions, hospitals, or other establishments; . . .".

This part of the definition is interpreted by the Commission in that decision as not including:

"* * * the stock-in-trade of any establishment, whether consignor or consignee, other than used furniture and used fixtures, except when transported as an incident to the removal of the establishment, or a portion thereof, from one location to another."

We do not believe that the transportation of 418,210 pounds of tax forms from a Government contractor's facility to an IRS Distribution

Center could be classified as transportation "incident to the removal of the establishment, . . . from one location to another." To justify the claimed charges, Atlas must show that the "specialized handling and equipment usually employed in moving household goods" was required for the completion of the transportation.

On the present record, the only justification for the assessment of household goods carriers' rates rests on the necessity for packing the material at origin. This was a cumbersome and expensive task that would have been required prior to the transportation of the tax forms by any carrier. The performance of this service alone cannot justify the assessment of household goods carriers' rates.

In our opinion Atlas did not have the operating authority to transport the shipment; it did so without legal authority and in violation of the Interstate Commerce Act.

Contracts in violation of the Interstate Commerce Act have been held to be unenforceable; Berger v. Dynamic Imports, Inc., 274 N.Y.S. 2d 537 (N.Y.C. Cir. Ct. 1966). Contra: Ets-Hokin & Galvan, Inc. v. Maas Transport, Inc., 380 F.2d 258, 260 (8th Cir. 1967) cert. den. 389 U.S. 977 (1967). Some courts have held such contracts to be void. Van-Pak, Inc. v. Cavalier Storage Corp., 208 A.2d 620, 622 (D.C. Ct. App. 1965); Shirks Motor Express Corp. v. Forster Transfer & Rigging Co., 133 A.2d 59, 64 (Md. 1957).

We have adopted the view expressed in the Berger case: that even though the contract is unenforceable, the carrier can recover quantum meruit for its services because the shipper has received the benefit of those services. See Shannon Spring Bed Manufacturing Co. v. North American Van Lines, Inc., 61 M.C.C. 73 (1952). And we normally measure quantum meruit by using the usual or going rates of other duly authorized carriers for the same or similar services.

The linehaul rate which would have been applicable to the transportation if performed by a duly authorized general commodities carrier is \$1.49 per 100 pounds (class 40), with a truckload minimum weight of 30,000 pounds, pursuant to Item 153250 of the National Motor Freight Classification and Middle Atlantic Conference Tariff 500-A. This results in a freight charge of \$6,231.33. The accessorial charges assessed by Atlas seem reasonable; they are: metropolitan area charge - \$2,091.05; elevator charge - \$2,509.26; labor-overtime charge - \$4,119.55; loading charge - \$1,820 and a packing charge of \$6,400.65. If your agency is satisfied, we see no reason why payment of \$23,171.84 could not be made to Atlas, on a quantum meruit basis.

B-186805

We are returning the enclosures to your letter.

Sincerely yours,

L. Mitchell Dick

L. Mitchell Dick
Assistant General Counsel

Enclosures

cc: Mr. Donegan Mann
General Legal Services
Internal Revenue Service
Room 4704
1111 Constitution Avenue, N.W.
Washington, D.C. 20224