June 25, 2007

MEMORANDUM

TO: UCRA Board of Directors

FROM: Bob Pitcher

RE: Analysis of §14504a(c) – Preemption of Intrastate Fees and Renewals

At the NCSTS meeting this month, there was discussion of the extent of the UCR Act's preemption of state requirements and taxation on interstate carriers holding intrastate operating authority. I offered to analyze the relevant federal statutory provisions in order to attempt to clarify the issue.

In what follows, I discuss the issue and the interpretation of the law, and then set out the statute itself, with annotations. This is intended only to further the Board's discussion of the matter with reference to the statute.

Discussion

The part of the Act that sets out the restrictions on the states in regard to the renewal of intrastate operating authority held by motor carriers that also hold interstate authority, as well as the imposition of fees on such carriers, is subsection (c) of section 14504a of Title 49, U.S. Code, as enacted by section 4305 of the Unified Carrier Registration Act.

In general, subsection (c) specifies the areas which Congress intends to preempt the states from regulating or taxing. There are five such areas, set out, respectively, in paragraph (1), subparagraphs (A), (B), (C), and (D), and paragraph (2). Subparagraphs (A), (B), and (C) all address aspects of the repealed Single State Registration System and the bingo stamp system until recently used by many states in the regulation of exempt and private motor carriers. Subparagraph (D) and paragraph (2) are relevant to the area under analysis.

It may be useful first to delineate what class of carriers are covered by the preemptions in these two provisions. It is very broad. The class covered is stated in terms of Subchapter I of Chapter 135 of Title 49, U.S. Code, which has in the past related only to federally regulated interstate for-hire carriers. However, the UCR Act itself broadened the reach of that part of the Code to encompass interstate private and exempt carriers for purposes of § 14504a. The preemption, therefore, covers the broad range of interstate carriers that hold intrastate authority, essentially all such carriers except those specifically exempted later in these provisions of the law.

Within its specific area, the preemption is also a broad one: A state may not make any requirement of an interstate carrier for the annual renewal of the carrier's right to operate intrastate, specifically including the payment of any fee or making any filing related to insurance. There are no excepted requirements or taxes that a state may still impose in this area.

There are only two conditions for a carrier to enjoy the benefit of the preemption. The first is that the carrier must be registered with the U.S. DOT – the preemption does not apply, that is, to a carrier operating in interstate commerce without proper federal operating authority or a DOT number. Second, the carrier must be in compliance with state requirements on intrastate carriers with respect to (1) the regulation of motor vehicle safety, (2) highway routing for oversize and overweight loads and hazmat cargoes, and (3) the maintenance of minimum amounts of financial responsibility. It should be noted that the conditions are stated in terms of the carrier covered by the preemption, not its vehicles. There is no distinction made here or elsewhere in these provisions between vehicles that may operate interstate and those that do not.

Only four types of intrastate operation are exempted from the preemption; states, that is, may still impose requirements, including taxes or fees, for the annual renewal of the intrastate authority of these kinds of carriers, even if a carrier holds interstate authority,: commuter bus service, household goods moving, nonconsentual towing, and the transportation of waste and recyclables. These kinds of operation may typically be issued distinct types of intrastate authority.

Paragraph (2) of subsection (c) is admittedly problematic. It says that a state may not impose any tax or fee on an interstate carrier that also holds intrastate authority that is not imposed on a purely interstate carrier. (It is said that Congressional staff made an error in drafting this provision, and that the intent was to make those carriers with dual authorities exempt from taxes from which solely intrastate carriers were exempt. It would seem, however, that a state could not constitutionally impose a tax – without federal authorization, that is – on even a subset of interstate carriers if its intrastate carriers were not also subject to that tax.) A state may not tax an interstate carrier with intrastate authority any differently than it taxes an interstate carrier without intrastate authority. There are no exceptions.

Conclusion

The suggestions at the NCSTS meeting that a carrier may be subjected to state regulations or taxation because (1) it has not registered for UCRA or paid the UCRA fees, (2) some of its vehicles operate only intrastate, (3) or it has not included its intrastate vehicles in the count it reported for UCRA, are not borne out by the statute, which seems to include no language which makes any such distinctions or exceptions to the general preemption of state regulation and taxation.

§ 14504a Unified Carrier Registration System plan and agreement

(a) Definitions ....

(b) Applicability of Provisions to Freight Forwarders ....

(c) Unreasonable Burden. --- For purposes of this section, it shall be considered an unreasonable burden upon interstate commerce for any State or any political subdivision of a State, or any political authority of two or more States –

(1) to enact, impose, or enforce and requirement or standards with respect to, or levy any fee or charge on, any motor carrier or motor private carrier providing transportation or service subject to jurisdiction under subchapter I of chapter 135 (in this section referred to as an "interstate motor carrier" and an "interstate motor private carrier", respectively) in connection with –

NOTES

[The definitions are not relevant here.]

[Subsection (b) is not relevant here.]

The introductory language of subsection (c) is the formula Congress employs when it intends to preempt states under the Commerce Clause of the Constitution.

The first part of paragraph (1) says that among the things a state may not do is to regulate or tax any interstate carrier in certain ways.

The term "standards" seems to have been included as a reference to the standards promulgated under the bingo stamp program and SSRS.

Subchapter I of chapter 135 of Title 49, U.S. Code, gives the U.S. DOT jurisdiction over motor carriers in interstate commerce. §4302(a) of the UCR Act expanded DOT's jurisdiction to include interstate private and exempt carriers.

The following subparagraphs specify the areas of preemption.

(A) ...;

(B) ...;

(C) ...; or

[(A), (B), and (C) are areas of motor carrier regulation from which states are now preempted. All of them represent aspects of the bingo stamp program and SSRS: (A) registering the carrier's interstate operating authority with a state, (B) filing the carrier's federal insurance coverage with a state, and (C) filing the name of a local agent with a state.]

(D) the annual renewal of the intrastate authority, or the insurance filings, of the motor carrier or motor private carrier, or other intrastate filing requirement necessary to operate within the State if the motor carrier or motor private carrier is –

(i) registered under section 13902 or section 13905(b); and

(ii) in compliance with the laws and regulations of the State authorizing the carrier to operate in the State in accordance with section 14501(c)(2)(A); except with respect to –

As a separate area from which states are preempted from regulating or taxing, (D) needs to be read as a continuation of the introductory language at the beginning of subsection (c) and paragraph (1). That is, the preemption applies with respect to ANY interstate motor carrier.

There is NO language here that implies that the preemption depends on whether a carrier has registered and paid fees under UCRA, or on whether specific vehicles operated by the carrier are operated wholly intrastate, or on whether the carrier has included its intrastate vehicles in the count of its vehicles under UCRA. There is simply no language in the law to that effect, and so the preemption is not limited by those circumstances.

The only limitations on the extent of the preemption are in the following clauses, (i) and (ii). These say that if a carrier is registered with the U.S. DOT as either a for-hire carrier (§13902) or a private or exempt carrier (§13905(b)) and is in compliance with state laws regulating intrastate carriers with respect to safety, routing for hazmats or oversize/overweight loads, or insurance or self-insurance (§14501(c)(2)(A)), the carrier is covered by the preemption.

(I) intrastate passenger service provided by motor carriers of passengers that is not subject to the preemption provisions of section 14501(a);

(II) motor carrier of property, motor private carriers, brokers, or freight forwarders, or their services or operations, that are described in subparagraphs (B) and (C) of section 14501(c)(2);

(III) the intrastate transportation of waste or recyclable materials by any carrier; or

(2) to require any interstate motor carrier or motor private carrier that also performs intrastate operations to pay any fee or tax [from] which a carrier engaged exclusively in interstate operations is exempt.

The following language sets out some types of motor carrier operation which are exempted from the preemption; that is, these are operations which a state MAY subject to intrastate authority renewal requirements or fees. These seem all to be kinds of operation which are typically issued distinct types of operating authority.

The first kind of operation exempted from the preemption is intrastate commuter bus service (clause I);

The second exemption is for transportation of household goods (clause II, §14501(c)(2)(B));

The third exemption is for nonconsentual towing (clause II, §14501(c)(2)(C)); and

The fourth and last kind of operation that is not subject to the preemption is intrastate transportation of waste or reyclables (clause III).

Paragraph (2) of subsection (c) is a separate area of state preemption: A state may not impose any tax on a carrier that is both an interstate and an intrastate carrier that a purely interstate carrier is exempt from.