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## Commerce Clause

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*U.S. CONST. art. I, § 8, cl. 3:*

*The Congress shall have Power . . . to regulate Commerce .  
... among the several States . . .*

**SUPREME COURT  
ST. LAWRENCE COUNTY**

**In re 8,662.5 Liters of Liquor<sup>1</sup>  
(decided September 30, 1999)**

Petitioner, the New York State Department of Taxation and Finance moved for an order confirming the temporary seizure of 8,662.5 liters of liquor and the tractor trailer in which it was hauled through New York State.<sup>2</sup> Respondent opposed the confirmation of the seizure and sought dismissal of the complaint, arguing lack of probable cause for the seizure, and lack of jurisdiction vis a vis the Commerce Clause of the United States Constitution.<sup>3</sup> The Supreme Court held that: (1) claimant did not rebut the statutory presumption created by the alleged absence of a Standard Manifest Form for liquors was imposed for sale or use in state by a non-registered distributor; and, (2) requiring the transporter to carry and present the form did not violate the commerce clause.<sup>4</sup>

On October 2, 1993 a tractor trailer and its liquor cargo were impeded by low-hanging overhead electrical wires.<sup>5</sup> Law enforcement agents of the St. Regis Mohawk Tribe came to the scene, assisted in extricating the truck, and discovered the identity of the shipment. They notified the New York State Police, whose officers then escorted the truck to the local State Police barracks.<sup>6</sup>

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<sup>1</sup> 690 N.Y.S. 2d 411 (Sup. Ct. St. Lawrence County 1999).

<sup>2</sup> *Id.*

<sup>3</sup> U.S.C.A. Const. Art. I § 6.

<sup>4</sup> *In re 8,662.5 Liters of Liquor*, 690 N.Y.S. 2d at 411.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 412.

The police sought the assistance of an Excise Tax Investigator from the New York State Department of Taxation and Finance, Office of Tax Enforcement who discovered that the driver was not carrying the statutorily-required manifest form for liquors.<sup>7</sup> Moreover, after the Excise Tax Investigator interrogated the truck driver, she determined that none of the individuals or entities involved in the shipment were registered as New York State liquor distributors.<sup>8</sup> This gave rise to the inevitable conclusion that the liquor was being unlawfully imported into New York State.<sup>9</sup> Liquor cargo picked up in New Hampshire was being transported to an unspecified location in either Florida or Georgia, and neither the route chosen by the driver nor the documents on board substantiated its ultimate destination.<sup>10</sup> New York Tax Law imposes criminal sanctions for improper importation of liquor.<sup>11</sup>

Respondent argued that the scope of the State's regulatory and tax jurisdiction is limited to transactions involving persons subject to New York's taxing jurisdiction,<sup>12</sup> and therefore the laws and

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> N.Y. TAX LAW § 424(1)(g), providing in pertinent part:

[I]t is presumed that liquors are possessed for the purpose of sale in this state if the quantity of liquors possessed in this state, imported or caused to be imported in this state or produced, distilled, manufactured, compounded, mixed, or fermented in this state exceeds ninety liters. Such presumption may be rebutted by the introduction of substantial evidence to the contrary.

*Id.*

<sup>10</sup> *In re 8,662.5 Liters of Liquor*, 690 N.Y.S.2d at 412.

<sup>11</sup> N.Y. TAX LAW art. 37 § 1813(f), (h), (j) providing in pertinent part:

Criminal sanctions are imposed in the event importation of liquor into New York State for sale or use therein is by a person not registered as a liquor distributor by the Department of Taxation and Finance, or by one who fails to possess a properly completed liquor transport manifest, or by one who knowingly possess liquor within the State upon which the tax has not been paid or assumed by a registered liquor distributor.

*Id.*

<sup>12</sup> *In re 8,662.5 Liters of Liquor*, 690 N.Y.S.2d at 412. See N.Y. TAX LAW § 1845(d)(4) (McKinney 1998) providing in pertinent part: "The court in which

regulations respecting seizure and forfeiture apply only to liquor imported into New York for sale or use.<sup>13</sup> However, the respondent did not offer any admissible evidence indicating that the liquor was destined for delivery out of state to substantiate its argument that the shipment is beyond the scope of Tax Law 1845.<sup>14</sup> The court found that the burdens placed upon respondent are not undue.<sup>15</sup> They are not being called upon to disprove a positive, something well within its abilities and uniquely within its own knowledge.<sup>16</sup>

Tax Law 428 requires an operator of a motor vehicle transporting in excess of ninety liters of liquor into New York to possess a MT- 132.<sup>17</sup> Respondent conceded that no such form was

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a forfeiture action is pending may dismiss said action in the interests of justice upon an application as provided for herein." *Id.*

<sup>13</sup> *In re 8,662.5 Liters of Liquor*, 690 N.Y.S.2d at 412.

<sup>14</sup> *Id.* See N.Y. TAX LAW § 1845(a) (McKinney 1998) which provides in pertinent part:

(a) Temporary seizure. Whenever a police officer designated in section 1.20 of the criminal procedure law or a peace officer designated in subdivision four of section 2.10 of such law, acting pursuant to his special duties, shall discover more than ninety liters of liquors which are imported for sale or use in the state, where the person importing or causing such liquors to be imported is not registered as a distributor under section four hundred twenty-one of this chapter, such police officer or peace officer is hereby authorized to seize and take possession of the vehicle or other means of transportation used to transport such liquors.

*Id.*

<sup>15</sup> *In re 8,662.5 Liters of Liquor*, 690 N.Y.S.2d at 413.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* Form MT-132 contains inter alia:

name and address of person from whom such liquors were received and the date and place of receipt of such liquor and the name and address of every person to whom such operator is to make the delivery of the same and the place of the delivery, together with the number of liters to be delivered to each person, and, if such liquor is being imported into the state in such motor vehicle or such other means of transport, of the distributor importing or causing such liquors to be imported into the state and such information as the Commissioner may require pursuant to rule or regulation.

*Id.*

completed or carried in the trade and that the driver was unable to present the Manifest as prescribed by statute.<sup>18</sup> To the extent that Tax Law 428(2) permits presumptions to arise where the manifest is absent, the temporary seizure is permissible and the burden shifts to demonstrate the load was not for sale or use within the State's borders.<sup>19</sup> Thus, the court reasoned that compelling a transporter driving through New York State to possess Form MT-132 is akin to Arkansas requiring a driver to obtain a permit to ship liquor through its state.<sup>20</sup> However, the court reasoned that the driver should be able to present admissible evidence as to the destination of the liquor.

The New York State courts apply the New York Tax Laws,<sup>21</sup> which specifically state "seizure of the liquor, along with its means of transportation is authorized in the event the importation in excess of ninety liters is caused by a person not registered as a

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<sup>18</sup> *Id.* See N.Y. TAX LAW § 428 (2) (McKinney 1998) which provides in pertinent part:

Every person transporting alcoholic beverages within this state, whether such transportation originates within this state when required by the tax commission, shall keep a true accurate record of all alcoholic beverages so transported, showing such facts with relation to such alcoholic beverages and their transportation as the tax commission may require from any person returns of all or any part of the information shown by such records.

*Id.*

<sup>19</sup> *In re 8,662.5 Liters of Liquor*, 690 N.Y.S.2d at 412.

<sup>20</sup> *Id.* See *Duckworth v. State of Arkansas*, 314 U.S. 390, (1941) (holding that a penal provision requiring a liquor transporter shipping through Arkansas, a "dry" state, to possess a "permit," is valid).

<sup>21</sup> *Id.* See N.Y. TAX LAW § 1813 Art. 37 (McKinney 1998) which provides in pertinent part:

(j) imposes criminal sanctions in the event importation of liquor into New York State for sale or use therein is by a person not registered as a liquor distributor by the department of Taxation and Finance, or by one who fails to possess a properly completed liquor transport manifest, or by one who knowingly possesses liquor within the state upon which the tax has not been paid or assumed by a registered liquor distributor.

*Id.*

distributor.”<sup>22</sup> The definitional section of Article 18 of the Tax Law defines a “distributor” as one importing or causing to be imported liquors into New York State for sale or use therein.<sup>23</sup> Absent importation of liquors into this State for sale or use within the State, one cannot be considered a “distributor” within the existing statutory framework.<sup>24</sup>

In sum, federal and New York law are similar with respect to treatment of the commerce clause of the United States Constitution.<sup>25</sup> Requiring a transporter to carry and present a manifest form for liquors, containing truthful and proper information respecting a liquor shipment traversing New York State, without more, is not unduly burdensome nor is it preempted by Federal law as being barred by the Interstate Commerce Clause of the United States Constitution.<sup>26</sup> Requiring a statutorily mandated form to accompany a load of liquor has neither the effect of imposing taxes nor of imposing significant burdens upon the shipment so as to do violence to the commerce clause of the United

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<sup>22</sup> N.Y. TAX LAW §1813 Art. 37 (McKinney 1998).

<sup>23</sup> N.Y. TAX LAW §1813 Art. 18 (McKinney 1998).

<sup>24</sup> *In re 8,662.5 Liters of Liquor*, 690 N.Y.S.2d at 412.

<sup>25</sup> *Id.*

<sup>26</sup> U.S.C.A. Const. Art. I. § 8 cl.3 (McKinney 1998), providing in pertinent part:

[A] state may not prohibit transportation of liquors to its territory in interstate commerce but can lawfully impose restrictions upon interstate transportation by requiring designation of definite routes of travel, bonds, or permits; furthermore, when liquor in interstate commerce is diverted in state traversed to unlawful purpose or use, initial character of shipment does not clothe those in possession with immunity from prescribed penalties or oust jurisdiction of state courts either as to person or property.

*Id.*

States Constitution.<sup>27</sup>

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<sup>27</sup> U.S.C.A. Const. Art. 1 § 8 cl. 3 (McKinney 1998) This section provides in pertinent part:

Transportation of intoxicating liquors from one state through another state is within protection of this clause and such transportation is not subject to state interference, regardless of whether state to which liquor is being shipped prohibits sale and traffic in such liquors.

*Id.*