



AMERICAN TRUCKING ASSOCIATIONS

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March 24, 2009

Ms. Linda K. Argo, Director
Department of Consumer & Regulatory Affairs
Government of the District of Columbia
941 North Capitol Street, NE
Washington, DC 20002

Dear Ms. Argo:

I am writing you concerning recent demands made by the Department of Consumer and Regulatory Affairs upon motor carriers incorporated in other states and engaged solely in interstate commerce in the District of Columbia to the effect that these carriers must obtain a General Basic Business License from the District, retain a registered agent or attorney in fact in the District, and file annual reports and pay associated fees or face significant legal sanctions. The American Trucking Associations (ATA) believes that the Department's demands on foreign motor carriers who conduct solely interstate commerce in the District of Columbia are unjustified and open to legal challenge under the U.S. Constitution. We request that Department to cease making such demands and notify those motor carriers upon which such demands have been made that they need not comply with them.

ATA is the national trade association of the American trucking industry. It is a united federation of motor carriers, state trucking associations, and national trucking conferences created to promote and protect the interests of the motor carrier industry. ATA's membership includes more than 2,000 trucking companies and suppliers of motor carrier equipment and services. Directly and indirectly through our affiliated organizations, ATA encompasses over 37,000 companies and every type and class of motor carrier operation. As the national representative of the trucking industry, ATA is vitally interested in matters affecting state licensing, tax, and other requirements on interstate motor carriers.

It is our understanding that over the last months, the Department has sent notices to interstate motor carriers that are registered to pay the District's corporate business taxes, advising them that under the recent Business License Processing Adjustment Act of 2008 they must obtain a Basic Business License from the District. This entails a detailed filing with the Department and the maintenance of a registered agent or attorney in the District. There is an application fee and an annual fee, amounting in all to \$275 for an initial license application.

The United States Supreme Court established long ago that a state may not, under the Commerce Clause of the United States Constitution, require an entity engaged within its borders solely in interstate commerce to be licensed as a condition of doing that business.¹ More recently, in *Eli Lilly & Co. v. Sav-on-Drugs, Inc., et al.*,² the Court confirmed this rule in a case involving a New Jersey requirement.

¹ The "Drummer Cases," listed in part in *Memphis Steam Laundry v. Stone*, 342 U.S. 389, 392-93, at n.7.

² 366 U.S. 276 (1961).

Good stuff.



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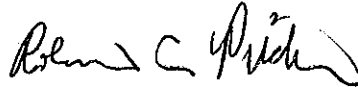
There, the Court said, "It is well established that New Jersey cannot require Lilly to get a certificate of authority to do business in the State if its ... trade is limited to its wholly interstate sales...."³

Subsequent to the *Eli Lilly* case, the Supreme Court again affirmed its view that a state may not require a purely interstate business to qualify to do business. In *Allenberg Cotton Co., Inc. v. Pittman*,⁴ the Court said, "In short, appellant's contacts with [the State] do not exhibit the sort of *localization or intrastate character* which we have required in situations where a State seeks to require a foreign corporation to qualify to do business."⁵

The United States District Court for the District of Columbia has adopted the rule in *Allenberg Cotton* in holding that a business based in Maryland could not be subjected to the District's business licensing regime.⁶ The court found in that case that, "[The company] has not sufficiently localized its operations here to justify any registration requirement that the District of Columbia might impose."⁷

For these reasons, then, ATA believes that the District's demands that motor carriers doing solely interstate business in the District of Columbia obtain Basic Business Licenses are unconstitutional. We request that the District cease to make these demands and notify carriers that may have received such demands that they need not comply with them.

Sincerely,



Robert C. Pitcher
Vice President, State Laws

cc: The Honorable Adrian M. Fenty,
Mayor of the District of Columbia
Anne Ferro, President, MMTA
P. Dale Bennett, Executive VP, VTA

³ Id., at 279.

⁴ 419 U.S. 20 (1974).

⁵ Id., at 33. Italics supplied.

⁶ *Trenwyth Industries, Inc. v. Burns & Russell Co. of Baltimore City*, 701 F.Supp. 852 (D.C.D.C. 1988).

⁷ Id., at 855.