

-----Original Message-----

**From:** Mines, Paull

**Sent:** Wednesday, February 24, 1999 4:01 PM

**To:** Alan H. Friedman (E-mail); Gerry Andert (E-mail); Jeff Friedman (E-mail); Jerry Oxford (E-mail); John Feldmann (E-mail); John Parrish (E-mail); John Warren (E-mail); Karen J. Boucher (E-mail); Lennie Collins (E-mail); Leonard M Hamilton (E-mail); Mark E. Wainwright (E-mail); Marshall C. Stranburg (E-mail); Mona Ezell Shoemate (E-mail); Paull Mines; Philip M. Plant (E-mail); René Y. Blocker (E-mail); Richard E. Truman (E-mail); Richard E. V. Harris (E-mail); Roxanne Bland; Roy E. Crawford (E-mail); Scott J. Heyman (E-mail); Ted Spangler (E-mail); Terry Frederick (E-mail); Tom Bowen (E-mail); Tom Yamachika (E-mail); William\_Lunka (E-mail)

**Subject:** Adams Express Supporting Presumption of All Property Within a Business Entity

I offer the following in support of my contention that Adams Express Co. v. Ohio, 165 U.S. 194 (1897), supports presumption #4 ("It shall be presumed, subject to rebuttal, that sufficient dependency or contribution exists between business entities or segments thereof to form a unitary business enterprise when \* \* \* (4) when the business segments are in the same entity."):

In Adams Express, the T/P claimed that the tax reached property that had nothing to do with its express business and that was outside Ohio's jurisdiction to tax. ("[C]ompany \* \* \* owns real and personal property of great value aside from the appliances of its express business, which is not held or taxable in the State of Ohio, and some of which is not taxable at all \* \* \*.") In rejecting the T/P's claim, the Court (apparently applying the Due process Clause) among other things noted, "Presumptively, all the property of the corporation or company is held and used for the purposes of its business \* \* \* ." While acknowledging there could be circumstances where some portion of the property of an express company might have to be excluded, the T/P failed in its burden: "[T]he difficulty in the cases at bar is that there is no showing of any such separate and distinct property which should be [excluded], and its existence is not to be assumed." The companies need to establish special circumstances and failing that, "[T]he presumption is that all their property is directly devoted to their business."

PAULL MINES

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