all.[424] Thus, where airplanes are continually in and out of a state during the course of a tax year, the entire fleet may be taxed by the domicile state.[425]

Conversely, a nondomiciliary state, although it may not tax property belonging to a foreign corporation that has never come within its borders, may levy a tax on movables that are regularly and habitually used and employed in that state. Thus, although the fact that cars are loaded and reloaded at a refinery in a state outside the owner's domicile does not fix the situs of the entire fleet in that state, the state may nevertheless tax the number of cars that on the average are found to be present within its borders.[426] But no property of an interstate carrier can be taken into account unless it can be seen in some plain and fairly intelligible way that it adds to the value of the road and the rights exercised in the state.[427] Or, a state property tax on railroads, which is measured by gross earnings apportioned to mileage, is constitutional unless it exceeds what

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[424] Southern Pacific Co. v. Kentucky, 222 U.S. 63 (1911). Ships operating wholly on the waters within one state, however, are taxable there and not at the domicile of the owners. Old Dominion Steamship Co. v. Virginia, 198 U.S. 299 (1905).

[425] Noting that an entire fleet of airplanes of an interstate carrier were "never continuously without the [domiciliary] State during the whole tax year," that such airplanes also had their "home port" in the domiciliary state, and that the company maintained its principal office therein, the Court sustained a personal property tax applied by the domiciliary state to all the airplanes owned by the taxpayer. Northwest Airlines v. Minnesota, 322 U.S. 292, 294–97 (1944). No other state was deemed able to accord the same protection and benefits as the taxing state in which the taxpayer had both its domicile and its business situs. Union Transit Co. v. Kentucky, 199 U.S. 194 (1905), which disallowed the taxing of tangibles located permanently outside the domicile state, was held to be inapplicable. 322 U.S. at 295 (1944). Instead, the case was said to be governed by New York *ex rel.* New York Cent. R.R. v. Miller, 202 U.S. 584, 596 (1906). As to the problem of multiple taxation of such airplanes, which had in fact been taxed proportionately by other states, the Court declared that the "taxability of any part of this fleet by any other state, than Minnesota, in view of the taxability of the entire fleet by that state, is not now before us." Justice Jackson, in a concurring opinion, would treat Minnesota's right to tax as exclusively of any similar right elsewhere.

[426] Johnson Oil Co. v. Oklahoma, 290 U.S. 158 (1933). Moreover, in assessing that part of a railroad within its limits, a state need not treat it as an independent line valued as if it was operated separately from the balance of the railroad. The state may ascertain the value of the whole line as a single property and then determine the value of the part within on a mileage basis, unless there be special circumstances which distinguish between conditions in the several states. Pittsburgh C.C. & St. L. Ry. v. Backus, 154 U.S. 421 (1894).

[427] Wallace v. Hines, 253 U.S. 66 (1920). For example, the ratio of track mileage within the taxing state to total track mileage cannot be employed in evaluating that portion of total railway property found in the state when the cost of the lines in the taxing state was much less than in other states and the most valuable terminals of the railroad were located in other states. *See also* Fargo v. Hart, 193 U.S. 490 (1904); Union Tank Line Co. v. Wright, 249 U.S. 275 (1919).