

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date October 11, 1962

To Ernest H. Johnson, State Tax Assessor

Dept. Bureau of Taxation

From John W. Benoit, Asst. Atty. General

Dept. " " "

Subject Sales Tax Treatment of Linotype Composition

Your memorandum of September 19, 1962, is answered below.

Facts:

Maine printers, when in need of linotype composition, enter into transactions with any one of several available Maine firms supplying composition whereby such firms transfer linotype composition under invoices containing language indicating that the metal involved remains the property of the vendor. The invoice language used by two firms supplying such composition reads:

"The metal accompanying above jobs is the property of Harmon C. Crocker, Inc. No outright purchase of metal is permitted. This metal or metal of similar standard must be returned to us within 30 days E.O.M. However, we reserve the right to recall our metal at any time. The above conditions terminate all previous agreements."

"For metal shipped to you by this invoice, a like quantity of metal must be returned. No outright purchase of metal permitted. Any outstanding metal balance will be penalized one cent a pound for each month held in excess of 30 days."

The printers enter into such transactions for the reason that they lack linotype facilities in their shops.

In addition to the composition, these firms furnish, under the same terms as set forth above, lead spacing strips or slugs.

Question:

Whether these transactions are sales of tangible personalty to the printers, or whether they constitute merely a service charge for the composition?

Ernest H. Johnson, State Tax Assessor

October 11, 1962

Law, Cases, and Texts:

Our Sales Tax Law contains the following definition in section 2:

* * * * *

"Sale' means any transfer, exchange or barter, in any manner or by any means whatsoever, for a consideration in the regular course of business and includes leases and contracts payable by rental or license fees for the right of possession and use, but only when such leases and contracts are deemed to be in lieu of purchase by the State Tax Assessor."

* * * * *

Further, the Uniform Sales Act defines a sale to be "an agreement whereby the seller transfers the property in goods to the buyer for a consideration called the price."

The words "transfer," "exchange," and "barter" are defined in Black's Law Dictionary, 4th Edition thusly:

"Transfer. n. An act of the parties or of the law, by which the title to property is conveyed from one person to another."
(Emphasis mine).

"Transfer. v. To convey or remove from one place, person, etc. to another; pass or hand over from one to another; specif., to make over the possession or control of (as, to transfer a title to land); sell or give."

"Exchange. To barter; to swap. To part with, give or transfer for an equivalent. Act of giving or taking one thing for another."

"Barter. A contract by which parties exchange goods or commodities for other goods."

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Our law is similar to that of Iowa wherein a "sale" is "any transfer, or exchange, barter, conditional or otherwise, for a consideration." When the question arose in Iowa as to taxability of the plate manufacturer on his purchases of metal plates and types, the Court held that the taxpayer is engaged in rendering a service to its customers, and as such purchased the metal not for resale but for consumption resulting in a levy against the taxpayer on its purchases. See: Matter of Mammsetter M & L Co., Inc., reported in P-H (Iowa) State and Local Tax Service, page 23,017 (1949). In Matter of Mammsetter, a case decided by the State Tax Commission, the corporation requested "a ruling as to the tax liability of that company on monotype and linotype service and photo-offset plates made for customers of said corporation where the title to the type metal and offset plates remains in the corporation." The commission found, inter alia, that:

* * * * *

"* * * said corporation retains title of all metal used in the performance of the service to its several customers; that because of the retention of title to the type metal and metal plates, said corporation is performing a service and is not engaged in selling tangible personal property and that the gross receipts from such sales are not taxable under the provisions of the retail sales tax law.

* * * * *

* * * "said corporation is liable for the use tax on such metal and plates which it procures outside the state and is also liable for sales tax on such metal and plates which it procures in the State of Iowa."

Typekrafters, Inc. v. City of Philadelphia, 34 D. & C. 82, (1939) is a case with similar facts. There, a typesetter purchased type metal which he set up for a printer, delivering it to the printer for a sufficient period to enable him to reproduce the composition charging him for the value of the services rendered in setting up the type and also an arbitrary amount for the metal, which was refunded on the return of the type. Under the Philadelphia City Sales Tax Ordinance the

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transaction constituted a sale. Note the definition of "sale" in the ordinance:

"The word 'sale' or 'selling' means any transfer of title or possession or both, exchange or barter, license to use or consume, conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor, and may 'include the rendering of any service specified in Section 2 of this ordinance * * * ."

The Court in Typekrafters Inc. said at page 85:

* * * * *

"In the case where the typesetter furnishes the type metal and sets the type and delivers it to the printer for use by the latter, it is so obviously a transfer of possession of property belonging to the typesetter or a license to use the same, that * * * discussion is unnecessary to show that such a transaction is within the very definition of a sale (as defined by the ordinance)." (Emphasis and parenthesis mine).

Continuing, the Court in Typekrafters, Inc., said:

"Similarly, it is equally clear, in the case where the printer furnishes the type metal which is set by the typesetter, that all the typesetter does is perform a service on property belonging to the printer, and that the transfer is therefore not a sale within the meaning of the (ordinance)." (Parenthesis mine).

The question whether a transaction is a "sale" or not depends not upon the amount of the consideration involved, but upon the nature of the transaction. Typekrafters, Inc., supra. That Court found no problem with the fifteen cent per pound deposit required by the typesetter because the deposit existed only for the purpose of insuring return of the metal and was "not part of the consideration for the transfer of the metal to the printer."

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"Retail sales and use taxes are, generally speaking, limited to transfers of tangible personal property for purposes other than resale by the purchaser. * * * it ordinarily becomes necessary to distinguish between a sale, which is taxable, and the rendition of services, which is nontaxable." II Tax Law Review, 262.

The invoice language (quoted at the outset under "Facts:") read in conjunction with the Uniform Sales Act and its provisions relating to intention of parties indicates the intention of the sellers to be that of retention of title to the linotype composition.

We both recognized that the quoted invoice language expresses the intention of but one party; the typesetter. However, it seems unnecessary to consider the intention of the printer. It is a general proposition of law that the question of intention is one of fact, and that what is meant by intention is expressed intention. See: Williston on Sales, section 261. The expressed intention of the typesetters, from a reading of their invoices, negates the occurrence of a sale of the type metal.

I am returning to you your memorandum re the Bath Printers of September 12, together with the photostatic copies of invoices to Bath Printers from Harmon C. Crocker, Inc. and Northeastern Composition Company.

JWB:epd

STATE OF MAINE

Inter-Departmental Memorandum Date September 19, 1962

To John W. Donoh, Assistant Attorney General

Dept. Bureau of Taxation

From Ernest H. Johnson, State Tax Assessor

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Subject Sales tax treatment of linotype composition

In conducting an audit of Bath Printers, Inc., we have found several transactions involving the purchase of linotype composition. The printer in question does not have any linotype facilities in his shop. When he needs linotype composition, therefore, he purchases it from one of several firms. Invoices from these firms, namely Harnett C. Greaser, Inc., and Northeastern Composition Company, are attached hereto. You will note that at the bottom of the invoice the supplier indicates that the metal involved remains the property of the vendor, and that the metal involved or a like quantity of similar metal, must be returned to the supplier in due course.

The question is whether the transaction represents a sale of tangible personal property to the printer, or merely a service charge for the composition on the theory that the composition must be returned to the supplier after use in printing. This opinion is requested because apparently in 1953 this office took the position, without benefit of formal opinion, that such composition charges represented service charges, while in 1960 on audit of Northeastern Composition Company this ruling, again without benefit of formal opinion, was reversed and the transactions were treated as sales of tangible personal property. I might add that the assessment resulting from the audit of Northeastern Composition Company in 1960, at which time these charges were considered taxable, was paid without reconsideration being requested.

In addition to the composition, these companies also furnish, under the same terms as to return of metal or replacement of metal, lead spacing strips or slugs. Would the answer be the same with respect to these, as with respect to the composition?

EHJ:j