

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date October 18, 1962

To Ernest H. Johnson, State Tax Assessor Dept. Bureau of Taxation
From John W. Benoit, Asst. Atty. General Dept. " " "
Subject Bates Manufacturing Company--Reg. #40002

Your memorandum of October 3, 1962 is answered below.

Facts:

Six times a year the public relations department of Bates Manufacturing Company (hereinafter called Bates), a Maine corporation, publishes the Bates Sales News (hereinafter called News) as a service to its distributors, salesmen, manufacturers and retailers using their products.

Some time prior to June 6, 1962, Bates caused a New York printer to print many thousands of a four-page work entitled "Supplement to Daily News Record Advertisement--June 6, 1962." The bulk of these supplements were enclosed with the Daily News Record (hereinafter called Record) of that date. (The Record, according to the State of Maine library files, has a circulation of 21,769; is published daily except Saturdays and Sundays; and is classified as a publication dealing with textile industries and fabrics).

Following disbursement of many of the supplements in the Record, approximately 17,000 supplements were shipped to Bates, in Maine, and inserted in the News for August 1962. These latter supplements are in issue here.

The supplement consists of enlargements of colored advertisements, giving the dates and names of magazines in which such advertisements are due to run.

No sales or use tax was paid in either New York or Maine concerning these supplements.

The field examiners believe that these supplements represent the purchase of promotional materials by Bates outside of Maine followed by use in Maine of such materials, as that word ("use") is defined in our sales and use tax law.

Questions:

(1) At the time the supplements were purchased from the printer by Bates, were they exempted by the sales and use

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tax law? Put another way, did Bates purchase a "publication" from the printer as that word is used in the sales and use tax law?

(2) Did Bates purchase from the printer a portion of a regularly issued "publication"--namely, a purchase of a portion of the News?

(3) Was there a purchase of promotional material, so that the exemption applicable to sales of regularly issued publications does not apply?

OPINION

The Law:

The applicable provision of the Sales and Use Tax Law is as follows:

"Sec. 16. Exemptions. No tax on sales, storage or use shall be collected upon or in connection with:

* * * * *

XIV. Publications. Sales of any publication regularly issued at average intervals not exceeding 3 months.

* * * * *

Cases and Textual Material:

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"Whether or not a publication comes within the exemption of newspapers, magazines, or periodicals in a sales tax statute depends, of course, upon the character of the particular publication and the provisions of the statute. 21 ALR 2d 416.

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Black's Law Dictionary, 4th Edition, defines the term "publication" thusly:

"Publication. To make public; to make known to people in general; to bring before public; to exhibit, display, disclose or reveal. (Citing a case). The act of publishing anything; offering it to public notice, or rendering it accessible to public scrutiny. (Citing cases). An advising of the public; a making known of something to them for a purpose. It implies the means of conveying knowledge or notice." (Parenthesis mine).

The definition of "periodical" is included below:

"Periodical. Recurring at fixed intervals; to be made or done, or to happen, at successive periods separated by determined intervals of time; as periodical payments of interest on a bond." Black's Law Dictionary, supra.

The California provision on this point is similar to that of this State.

"Exemption of publications. There are exempted from the taxes imposed by this part, the gross receipts from the sale of, and the storage, use, or other consumption in this State, of tangible personal property which becomes an ingredient or component part of any newspaper or periodical regularly issued at average intervals not exceeding three months and any such newspaper or periodical."

Prentice Hall, State and Local Taxes, California, p. 22,516.

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Prentice-Hall, supra, contains the following passages relative to the California situation.

* * * * *

".52 'House Organ (s)' issued regularly, consecutively for stated periods of 3 months or less are tax exempt." California, p. 21,307.

* * * * *

".62 Specific publication.--

* * * * *

'Lumber Industry of Pacific Coast', designated as a supplement to 'Monthly Review', is exempt if regularly issued within prescribed intervals." California, p. 21,307.

Argument:

Question: Whether the supplements purchased from the printer by Bates and shipped into Maine for insertion into the News constituted publications when so purchased? Answer: No.

To qualify for exemption under XIV, section 16, Sales and Use Tax Law, the following facts must exist:

- (1) A publication;
- (2) Regularly issued;
- (3) At average intervals not over 3 months.

Note that the supplements in question did not become supplements to the Record; the supplements in issue (approx. 17,000), represented the expense of those printed for insertion into the Record. It follows, therefore, that the supplements in question were never a part of a regularly issued publication. We need not concern ourselves, then, with the question whether the Record was a regularly issued publication.

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Standing alone, the supplements in issue were not regularly issued publications. On their faces these items indicate that they were not intended to be "publications"; they were introduced as supplements only. Repeating, not having been used as supplements to the Record, they were not a part of the Record and must be viewed merely as printed advertising material when they entered this State. In no way can these supplements be said to be regularly issued publications for the further reason that Bates caused them to be printed for the purpose of supplemental material to the Record; Bates in directing the printing of supplements was not causing the Record, itself, to be printed; the Record is not a Bates publication. The language, "Supplement to Daily News Record Advertisement--June 6, 1962," should be given little weight because such use never materialized. At the present time, these words serve only to indicate what use had been proposed, for the material, by Bates, at an earlier date. In fact, the reason for entry of the materials into Maine was the fulfillment of a purpose different from that stated upon the materials.

Because the supplements in issue never were utilized as part of a regularly issued publication, evidence on the issue whether the Record was such a publication would be inadmissible, in my opinion. Such evidence would be irrelevant, affording nothing to the purpose. Your office should not consider the items in question to be purchases of a regularly issued publication by Bates.

Question: Did Bates, at the time of its ^{portion of a} acquisition of the supplements in issue from the printer, purchase a regularly issued publication by reason of the fact that at a later time such supplements became inserts of the News? Answer: Yes.

The News is a Bates "house organ." The August, 1962 publications (four pages) contained, between pages #2 and #3, the supplements in issue. No staple or other fastener bound the supplement to the News. On page one of the News there appeared a feature article pointing up Bates' coming advertising campaign directed towards increasing their sales in the bedspread business. The article contains the following language, inter alia,

* * * * *

"The center-page insert in this issue of the Sales News provides you with graphic evidence of the selling power of these advertisements as they relate to the back-to-school set.

* * * * *

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Further, Bates purchased the News from a Maine printer and caused said printer to insert the supplements into the News at the print shop.

On the surface, there appears to be little question but what the News is a "publication," within the meaning of that word as found in XIV, sec. 10 of the Sales Tax Law. Our Law uses the word publication; making no mention of newspapers. Though the News resembles a newspaper, there is ample authority holding that it is not entitled to that status (see Commerce Clearing House, All State Sales Tax Reporter, Vol. 1, page 7411 et. seq. regarding newspapers and periodicals; also Prentice-Hall, State and Local Taxes).

If the supplements be viewed as portions of the news (the news qualifying as a "publication" and therefore exempt), then it follows that the supplements also are exempt. The front pages of the news incorporate the supplements by reference. When the news went to press in July, 1962 Bates intention was to make the supplements part of the news. I do not say that the supplements are exempt because they were "publications" but rather that they are exempt because they were published as portions of exempt publications.

JWB/epd

STATE OF MAINE

Inter-Departmental Memorandum Date October 3, 1962

To John W. Bennett, Assistant Attorney General

Dept. Bureau of Taxation

From Ernest H. Johnson, State Tax Assessor

Dept. Bureau of Taxation

Subject Dates Manufacturing Company Reg. #40002

One of the items in dispute in the recent assessment against Dates Manufacturing Company, which is now pending reconsideration, is a purchase of advertising material which was brought into Maine and used as an insert in the "Dates Sales News", a house organ published by Dates Manufacturing Company.

The insert in question apparently first appeared as a supplement to the "Daily News Record" of June 6, 1962. Mr. Lombard of our field staff tells us that these supplements were reproduced by Dates Manufacturing Company's advertising agency, and sold by it to Dates Manufacturing Company.

The purchase of this item has been picked up by the field examiners as a taxable transaction, on the ground that it is the purchase of promotional material and that it was used by the taxpayer, within the meaning of that word under the Maine sales and use tax law, when it was distributed with Dates Sales News.

However, if the insert itself can be considered a regularly issued publication, presumably its sale to Dates would be nontaxable under the law; and if the insert becomes a part of Dates Sales News when it was enclosed with and distributed with the latter publication, it would be nontaxable upon purchase as constituting the sale to Dates Manufacturing Company of (a part of) a regularly issued publication. As we understand it, the sale of the publication by the printer to the distributor, or the sale of the publication by the distributor to the ultimate reader, are both rendered nontaxable by the statutory provision.

Will you please advise whether this office should consider the item in question as a purchase of a regularly issued publication by Dates Manufacturing Company, regardless of the use to which it may be put; or whether we should consider it as the purchase of a portion of a regularly issued publication - namely, Dates Sales News; or whether we should consider this as merely the purchase of promotional material, so that the exemption applicable to sales of regularly issued publications does not apply. I attach hereto a copy of Dates Sales News, as well as a copy of the Supplement to Daily News Record which is referred to above.

ERH:j