

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date November 6, 1963

Ernest H. Johnson, State Tax Assessor Dept. Bureau of Taxation

Jon R. Doyle, Asst. Attorney General Dept. Bureau of Taxation

x Diamond National Corporation--re dies.

FACTS

Diamond National Corporation, manufactures in South Portland, Maine, dies for the production of molded pulp products by various other plants of the same corporation located in other parts of the country.

Diamond National purchases materials and parts and uses them in the manufacture of the dies. The dies, upon manufacture are shipped by the South Portland plant out of state to the other plants.

Upon audit of Diamond National Corporation, the field examiner has taken the position that the purchase of these materials and parts is subject to tax under the Maine Sales and Use Tax Law, since the manufactured dies are not sold by the corporation and since, even though the finished dies are subsequently shipped outside the state, the materials and parts are used within the state by being manufactured into dies.

The company, relying upon the definitions of "storage" and "'storage' or 'use'" in section 2 of the law, as well as the provisions of section 12-A of the law, maintains that these purchases are not taxable because the dies into which they are incorporated are shipped out of the state, and therefore the materials and parts should be considered as being kept within the state for subsequent use outside of the state, or being kept within the state for the purpose of subsequently transporting them outside the state.

QUESTION

Whether, in the circumstances indicated, the taxpayer is entitled to claim exemption on the purchase of materials and parts which are to be fabricated into dies in this state, when the completed dies are shipped outside this state to be used in the production of molded pulp products elsewhere.

ANSWER

No.

Ernest H. Johnson, State Tax Assessor November 6, 1963

OPINION

The following law is applicable:

"A tax is imposed on the storage, use or other consumption in this State of tangible personal property, purchased at retail sale on and after July 1, 1963, at the rate of 4% of the sale price" R.S. 1954, Ch. 17, sec. 4.

"'Storage' includes any keeping or retention in this State for any purpose, except subsequent use outside of this State, of tangible personal property purchased at retail sale." R.S. 1954, Ch. 17, sec. 2.

"'Storage' or 'use' does not include keeping or retention or the exercise of power over tangible personal property brought into this State for the purpose of subsequently transporting it outside the State." R.S. 1954, Ch. 17, sec. 2.

"When a business which operates from fixed locations within and without this State purchases supplies and equipment in this State, places them in inventory in this State, and subsequently withdraws them from inventory for use at a location of the business in another state without having made use other than storage within this State, it may request a refund of Maine sales tax paid at the time of purchase, provided it maintains inventory records by which the acquisition and disposition of such supplies and equipment purchased can be traced. No refund shall be made where the state to which the supplies and equipment are removed levies a sales or use tax. Such refunds must be requested in accordance with section 18." R.S. 1954, Ch. 17, sec. 12-A.

Reported cases in this area are of little help.

Ernest H. Johnson, State Tax Assessor November 6, 1963

"Because of the variance in the provisions in use tax laws respecting the exemption of enumerated transactions, there is very little in common among cases decided under such exemption classes." 153 ALR 628.

It is important to note that in the normal situation of this kind goods are brought into the state placed in inventory, and with no physical change being made therein, transported without the state for use elsewhere. Clearly this situation comes within the statute providing either for nontaxability or a refund.

However, in the factual situation here a physical change is made in the materials and parts in that they are processed to form a die, which die is transported without the state.

I do not think there is merit in the taxpayer's contention that the purchases in question are not taxable since the dies into which they are incorporated are shipped out of the state.

No citation of authority is needed to indicate that tax exemptions are strictly construed. A tax is imposed on the "storage, use or other consumption in this State of tangible personal property."

"Storage" does not include "property purchased at retail sale" for "subsequent use outside of this State."

The statute is clear; it is the original property unchanged in form, which, if kept for subsequent use outside the State is nontaxable. Had the legislature intended to exempt property purchased at retail sale, which had been processed and made use of to form other property, which was shipped outside the State, it would have so provided.

"The fundamental rule of statutory construction is to ascertain and carry out the legislative intent. The language of the statute is 'the vehicle best calculated to express the intention'" Acheson et al. v. Johnson, 147 Me. 280.

"In construing a state use tax law, the court is restricted to the statutory definition stated in the statute." 153 ALR 622.

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Many states so specifically provide that "storage" and "use" do not include property purchased for "the purpose of being processed, fabricated or manufactured into, attached to or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state.

See Commerce Clearing House, All State Sales Tax Reporter, Conn., Para. 27-028; Kan., Para. 37-206; Nev., Para. 51-046; Wash., Para. 74-301 (2) and also Prentice-Hall, State and Local Taxes, Sales Tax, Cal., Para. 22.517.

Since the Maine legislature has not expressed such intent it cannot be read into the statute.

The taxpayer's argument that section 12-A is controlling has no merit since obviously "use other than storage" was made of the property. That section provides that when a business operates from fixed locations within and without this State, purchases supplies and equipment in this State, and subsequently withdraws them from inventory for use at a location of the business in another state without having made use other than storage within this State, it may request a refund of the Maine sales tax paid at the time of purchase"

The taxpayer here utilized the property in producing completely new property; storage only did not occur, nor are any facts presented to show prior payment of sales tax.

This section with its particular emphasis on "use other than storage" gives weight to the earlier conclusion that to take advantage of the exemption the property must remain in its original state.

The question here really is whether the processing and utilization of the property purchased to produce new property will subject the transaction to use tax.

"For taxability there must be a 'use.'
The courts insist on something substantial to meet this requirement."
Prentice-Hall, State and Local Taxes,
Sales Tax, Para. 92,640.

Use defined.

"'Use' is defined as 'to employ for any purpose.'" 43 Words and Phrases, p. 463.

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Use tax defined.

"A 'use tax' presupposing ownership, is an excise tax imposed on the enjoyment of property in a contemplated manner."
43 Words and Phrases, p. 193 supp.

"In a use tax there is no change of possession, no change of ownership, but the owner pays this tax which is an excise or exaction charged because of the owner's privilege to exercise or assert some of the elements of ownership over the property."
Mann v. McCarroll, 130 S.W. 2d 721.

Use and consumption defined.

"The words 'use' and 'consumption' in statute imposing tax on sales for use or consumption and not for resale in any form are not technical words having a peculiar meaning in law, but are words in common use, and hence they must be given their plain, ordinary meaning. (Citing cases). The noun 'use' means the act of employing anything, or state of being employed, application The word consumption means the act or process of consuming . . . also the using up of anything" 9 Words and Phrases, p. 25.

The taxpayer here has utilized the property and materials to form a new article; certainly in the light of the above definitions it can be said to have incurred a use tax because of such "use." To predicate taxability the statute requires that the property be used, stored or consumed, two of those elements, use and consumption, are satisfied here.

The court in Trimount Co. v. Johnson, 152 Me. 109, in speaking of machines leased by the petitioner said:

"If petitioner exercises in this State any right or power incident to its ownership of the machine, the tax is imposed. The tax does not rest upon the sum total of rights and powers incident to ownership, but upon any right or power."

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It is therefore clear that the utilization of property to produce new property in the circumstances stated, is such an exercise of rights over the property as to subject the materials and parts to use tax.

A comment here relative to the possible interstate character of the transaction is appropriate.

"And the use tax is valid, if imposed upon local storage or use, such as withdrawal from storage, despite intended subsequent use (not immediate or direct use) in interstate commerce."
Prentice-Hall, State and Local Taxes, Sales Tax, Para. 92,600.

There appears to be no problem here with relation to interstate commerce. See *Hunnewell Trucking v. Johnson*, 157 Me. 338, see also *Ashton Power Co. v. Dept. of Revenue*, 52 N.W. 2d 174 (Mich., 1952).

I conclude therefore that a use tax should be levied on the cost of the materials and parts.

JRD:epd

STATE OF MAINE

Inter-Departmental Memorandum Date September 25, 1963

To Sam R. Doyle, Assistant Attorney General

De Director of Taxation

From Ernest H. Johnson, State Tax Assessor

De Director of Taxation

Subject Application of sales tax to purchase of materials for incorporation into dies to be removed from state

In connection with a recent audit of the Diamond National Corporation (Reg. #24705) a question has arisen with respect to materials and parts purchased by the corporation and used by it in the manufacture of dies. These dies are for the production of molded pulp products. The dies, upon manufacture by the South Portland plant of Diamond National Corporation, are then shipped by the South Portland plant to various other plants of the same corporation located in other parts of the country.

Upon audit, the field examiner has taken the position that the purchase of these materials and parts is subject to tax under the Maine sales and use tax law, since the manufactured dies are not sold by the corporation and since, even though the finished dies are subsequently shipped outside the state, the materials and parts are used within the state by being manufactured into dies.

The company, relying upon the definitions of "storage" and "storage" or "use" in section 7 of the law, as well as the revisions of section 12-A of the law, maintains that these purchases are not taxable because the dies into which they are incorporated are shipped out of the state, and therefore the materials and parts should be considered as being kept within the state for subsequent use outside of the state, or being kept within the state for the purpose of subsequently transporting them outside the state.

Will you please advise whether, in the circumstances indicated, the taxpayer is entitled to claim exemption on the purchase of materials and parts which are to be fabricated into dies in this State, when the completed dies are shipped outside this State to be used in the production of molded pulp products elsewhere.

EMJ:j

