

BEFORE THE TAX APPEAL BOARD

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STATE OF DELAWARE

**TAX APPEAL BOARD
STATE OF DELAWARE**

TREASURE CHEST ADVERTISING CO., INC.)

Petitioner,)

v.)

DIRECTOR OF REVENUE,)

Respondent.)

Nos. 1230, 1255, 1256

Before: Regina Dudzic, Cynthia Hughes, Todd C. Schiltz, Esq., and Joan Winters, members of the Tax Appeal Board. Opinion by Todd C. Schiltz, Esq.

OPINION AND ORDER

The issue before the Board is whether petitioner's sales into Delaware for the period July 1990 through June 1993 are exempt from taxation as gross receipts pursuant to 30 Del. C. § 2901(2)(b) because the entity to whom petitioner delivers product ultimately ships the product outside the State of Delaware. For the reasons set forth below, petitioner's request for exemption is denied.

FACTS

Treasure Chest Advertising Co., Inc. ("Treasure Chest") is a non-Delaware entity whose principal business is the manufacture of printed material, newspaper inserts and other advertising materials. Treasure Chest is licensed in Delaware as a wholesaler, however, its manufacturing facilities are located in states other than Delaware.

Treasure Chest's typical business practice is to receive and fill order from its customers and then to ship its product to the customer. Upon delivery of the product to the customer's location, Treasure Chest's obligation under the contract is fulfilled and it is entitled to payment.

While the foregoing is Treasure Chest's typical business practice, some clients request that Treasure Chest ship the product to Advo, Inc., an entity conducting business in New Castle, Delaware. These clients have a need for additional services from Advo.

Advo is licensed as a general service provider and provides services to the same customers with which Treasure Chest contracts. Advo's services include storing of printed material produced by Treasure Chest, folding and stuffing the material into envelopes and distributing the materials to the customers at locations both within and without the State of Delaware. Advo has no relationship with Treasure Chest and receives no money from it. Rather, Advo's contractual relationship is with its own customers.

Treasure Chest did not pay gross receipts taxes to the State of Delaware for the period June 1990 to July 1993 on the goods it delivered to Advo. The Division of Revenue issued assessments against Treasure Chest for taxes, interest and penalties due in the amount of \$80,856.24. The assessments advised Treasure chest that it had to a pay business license and gross receipt taxes as a wholesaler on all goods delivered to Advo. Treasure Chest opposed the assessment, arguing that its delivery of product to Advo is not subject to gross receipts tax because "gross receipts" does not include consideration received on property delivered "to the United State mail or common carrier for shipment to a place outside this state" and the product shipped to Advo meets this definition. The parties were unable to resolve their dispute and this petition followed.

ANALYSIS

In pertinent part, Section 2902(c)(1) of title 30 of the Delaware Code provides that "every wholesaler shall . . . pay a license fee at the rate of 0.384% of the aggregate gross receipts attributable to sales of tangible personal property physically delivered within this State" 30 Del. C. § 2902(c)(2). For purposes of a wholesaler, gross receipts is defined as the "total consideration received from sales of tangible personal property physically delivered within this State to the purchaser or his agent, but shall not include: (i) Delivery to the United States mail or to a common or contract carrier for shipment to a place outside this State" 30 Del. C. § 2901(2)(b).

Based on the facts to which the parties have stipulated, we conclude that the consideration Treasure Chest receives in exchange for the product it delivers to Advo is gross receipts as that term is defined by Section 2901(2)(b).

Treasure Chest does not deny that it receives consideration for the sale of tangible property delivered into Delaware to an agent, Advo, of the ultimate purchaser, Treasure Chest's customers. Rather, Treasure Chest contends that it is exempt from taxation under Section 2901(2)(b)(i) arguing its goods are delivered to the United States mail or common carrier.

The problem with Treasure Chest's analysis is that it fails to recognize that Treasure Chest does not deliver its goods to a common carrier or to the United States mail. It delivers product to Advo and is done with the transaction. Advo may deliver product it receives from Treasure Chest to a common carrier or the United States mail, but this fact does permit Treasure

Chest to fall within the exemption. Simply put, what the purchaser or its agent does with the goods a wholesaler delivers in the State is not discussed in the statute and, therefore, is irrelevant to the determination of the wholesaler's gross receipt tax from completed sales. To read the statute in the manner advanced by Treasure Chest effectively would amend the statute, a result which violates basic principles of statutory construction.

For the foregoing reason, we enter judgment in favor of the respondent on all matters.¹

SO ORDERED this 16th day of April, 2004.

Paul C. Self

Cynthia L. Hughes

Regina C. Anderson

John M. White

¹ In its petition, Treasure Chest asserted that if a tax is imposed it should only be imposed on the goods Advo does not ship out of the State of Delaware. Treasure Chest did not present this argument to the Board and the Board treats it as having been abandoned.

Treasure Chest did argue that any penalty should be abated because there is a reasonable dispute as to whether it was entitled to an exemption under Section 2901(2)(b)(i). The Board finds the facts do not provide reasonable cause to abate any interest or penalty and, thus, denies petitioner's request for abatement.