

BEFORE THE TAX APPEAL BOARD OF THE STATE OF DELAWARE

ATLANTIC RICHFIELD COMPANY,)
)
 Petitioner,)
)
 v.) Docket No. 551
)
 DIRECTOR OF REVENUE,)
)
 Respondent.)

Before: Cyric W. Cain, Jr., Joseph J. Longobardi, Jr., Esquire,
Rhett McGriff, Nettie C. Reilly, Board Members.

John J. Hill, Esquire, for Petitioner.

Stephen R. Spiller, Esquire, Special Counsel for Respondent.

DECISION

Cyric W. Cain, Jr.: The taxes in controversy are Delaware Retail and Wholesale Merchants' License tax for the periods 1969-70, 1970-71, 1971-72.

Petitioner deleted the cost of the Federal manufacturer's excise tax and the State of Delaware gasoline tax for the respective periods in determining taxpayer's computation of taxable gross receipts, as reported on taxpayer's retail and wholesale merchants' license tax reports.

Upon audit by the Division of Revenue the value of said taxes were added back.

The issue to be determined is should the Federal manufacturer's excise tax and the State of Delaware gasoline tax be included in tax-

payer's gross receipts for purpose of computing the Delaware retail and wholesale merchants' license tax.

In support of his position, Petitioner contends that the Federal and State taxes disallowed are not items of expense, as Section 2120 indicates of Chapter 21, Title 30, in finding the computation of gross receipts for the purpose of the license tax in Delaware.

Petitioner contends that they are taxes collected on behalf of the Federal Government of the United States and the State of Delaware, and that such taxes are billed to their customers separately from the value of the products sold or delivered, and therefore the Petitioner is only acting as a collection agent for both Federal and State.

Petitioner states that the taxes aren't booked as income, but separately accrue them in specific liability accounts for payment to the respective Federal and State taxing authorities.

In brief, we cannot agree with Petitioner's position.

We first turn to the question of interpretation.

30 Del. C. § 2901(2) provides,

" ' gross receipts' includes total consideration received by a wholesaler or a retailer for all goods sold within this State."

We don't think it matters that the taxes aren't booked as income, but separately accrued in specific liability accounts. The fact is that the taxes are taken along as part of gross receipts in payment of the product sold.

In light of this, 30 Del. C. § 2120 provides that in computing gross receipts no deduction shall be made "on account of the cost of property sold, the cost of materials used, labor costs,

SYNOPSIS

DOCKET NO. 551

TAX SEGMENT: LICENSE TAX (Retail-Wholesale)

ISSUE: The question is whether the Petitioner should include in purchases and/or sales price the cost of the Federal manufacturer's excise tax and the State of Delaware gasoline tax to determine gross receipts or purchase price.

TAB DECISION: The Tax Appeal Board held that federal excise taxes and State gasoline taxes collected from the customer at the time of the sale must be included in computing taxable gross receipts pursuant to the provisions of 30 Del. C. § 2901 (2). Pursuant to the language contained in Sec. 2120- "Computation of Gross Receipts", the words "Federal or State Taxes" are not defined by statute which, therefore, lead the Board to conclude the legislative intent was that there is no provision for such exclusion in determining taxable base of gross receipts for retail-wholesale license tax.

NOTE: Chapters 273 and 274, Laws of 1975 amended Sec. 2901 (b) Title 30 to exclude Delaware motor fuel taxes (and cigarette taxes) from gross receipts effective August 4, 1975.

DECISION: For Respondent

DECISION DATE: February 20, 1975