

BEFORE THE TAX APPEAL BOARD OF THE STATE OF DELAWARE

PETER J. KOTOWSKI, JR., )  
 )  
Petitioner, )  
 )  
v. ) Docket No. 610  
 )  
DIRECTOR OF REVENUE, )  
 )  
Respondent. )

Before: Maurice A. Hartnett, III, Esquire, Joseph S. Yucht, Esquire, absent  
Cyric W. Cain, Jr., Rhett McGriff, Nettie C. Reilly, Board  
Members.

J. Franklin S. McMullan, CPA, for Petitioner.

John P. Fedele, Esquire, Assistant Attorney General for Respondent.

DECISION

Cyric W. Cain, Jr.: It is admitted that the tax in controversy stems from a proposed assessment by the Director of Revenue for \$630.39 (tax \$456.76 and interest \$173.63) for the 1972 license year pertaining to the Petitioner's Retailer License.

The Petitioner owned and operated two independent service stations, one in New Castle, Delaware, and one in Newport, Delaware.

Petitioner states that these stations were set up as complete separate businesses, except for the use of the same Federal Identification Number which Petitioner states is required by Federal law regarding sole proprietors.

It is the Petitioner's understanding that each place of business needed to acquire and display its own retailer license.

Petitioner feels that since he was required to obtain separate licenses for each business that he is fully entitled to the full \$20,000 exclusion for each license.

Petitioner further states that the Director of Revenue disallowed the quarterly exemption of \$20,000 permitted each retail business upon payment of its quarterly licenses, because the Petitioner operated two separate businesses.

It is admitted that the Director of Revenue disallowed the quarterly exemption of \$20,000.

Respondent denies that the Petitioner operated two separate businesses.

The sole question presented is whether each separate business, as defined by the Petitioner, is a separate retailer within the meaning of the statute and whether each separate business is therefore entitled to a \$20,000 quarterly reduction, or whether Petitioner in effect is but one retailer, as defined in the statute, and is therefore entitled to but one \$20,000 reduction per quarter for all its businesses.

In arriving at a conclusion we don't think it matters that separate books were set up or that separate locations existed.

What does matter, in our opinion, is that we think a common direction, control and purpose existed and vested with the Petitioner.

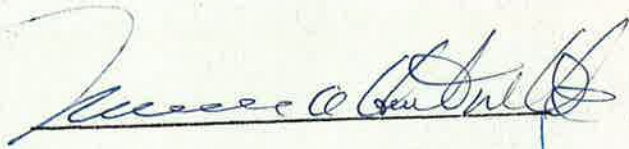
In reaching this result we rely on 30 Del. C. §2114(b) which states:

"(b) For purposes of determining the amount of license fees due as provided in this part, for the privilege of carrying on any separate business or occupation, all entities comprising an enterprise with common direction, control and purpose shall be considered as one."

(See decision re: The Great Atlantic and Pacific Company v. Director of Revenue).

The petition is therefore denied.

It is so ordered.

  
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Dated 4/7/76

SYNOPSIS

DOCKET NO. 610

TAX SEGMENT: LICENSE TAX (Retailer)

ISSUE: The question is whether an individual who owns and operates two independent service stations, one in New Castle and one in Newport which were set up as complete separate businesses, except for the use of the same Federal Identification Number and who is required to obtain separate licenses for each business is entitled to the full \$20,000 exclusion for each license.

Respondent held that in effect petitioner was but one retailer and therefore entitled to but one \$20,000 reduction per quarter for all its business.

TAB DECISION: Both businesses were under common direction and control of petitioner.

Section 2114 (b) 30 Del. C. states:

"(b) For purposes of determining the amount of license fees due as provided in this part, for the privilege of carrying on any separate business or occupation, all entities comprising an enterprise with common direction, control and purpose shall be considered as one."

NOTE: Chapter 24, Laws 1975 replaced \$20,000 quarterly exclusion with \$10,000 monthly exclusion.

DECISION: For Respondent

DECISION DATE: April 7, 1976