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TAX APPEAL BOARD

BEFORE THE TAX APPEAL BOARD  
OF THE STATE OF DELAWARE

J.W. SHOCKLEY, & SON, INC., : Docket Nos. 666  
: and 667  
Petitioner, :  
: v. :  
: DIRECTOR OF REVENUE, :  
: Respondent. :

BEFORE: Joseph S. Yucht, Esquire, Chairman; James C. Eberly, Sr., Esquire, Vice-Chairman; Cyric W. Cain, Jr., Harry B. Roberts, Jr. and Nettie C. Reilly, members.

David N. Williams, Esquire and William J. Martin, Esquire, of the law firm of David Nichol Williams, P.A., attorneys for Petitioner.

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

DECISION AND ORDER

James C. Eberly, Sr., Esquire, Vice-Chairman: Certain facts in this matter were stipulated by the parties by a "Stipulation of Agreed Facts" and a "Supplemental Stipulation of Agreed Facts" which "Stipulation of Agreed Facts" and "Supplemental Stipulation of Agreed Facts" contained, among others, the following facts which are pertinent to the issues herein decided:

1. Petitioner is a Maryland corporation with its principal place of business at Whiton R. F. D., Snow Hill, Maryland 21863.

2. The taxes, penalties, and interest which are in controversy in Docket No. 666 are wholesaler's license taxes for the calendar quarters ending September 30, 1969, through September 30, 1977, alleged by the Respondent to be due in the amount of \$7,701.59, plus penalties in the amount of \$5,970.16 and interest in the amount of \$2,518.49.

3. The taxes, penalties and interest which are in controversy in Docket No. 667 are basic annual wholesaler's license fees for the periods July 1, 1969 through December 31, 1976, alleged by the Respondent to be due in the amount of \$255.00, plus penalties in the amount of \$255.00 and interest in the amount of \$149.10.

4. Petitioner filed timely Notices of Appeal from the aforementioned Notices of Assessment issued by the Respondent.

5. The parties hereto have agreed to the following facts which are applicable to both Docket Nos. 666 and 667:

...

Petitioner washed, graded, candled and packed all of the shell eggs produced on its farm before shipping the eggs to its customers. The washing, candling, grading and packing of the eggs was performed on the Petitioner's farm at Whiton R. F. D., Snow Hill, Maryland. Washing, candling, grading and packing are the preparations which all eggs must undergo before human consumption.

...

During the period of July 1, 1969 through September 30, 1977, Petitioner purchased approximately 102,000 cases of shell eggs each year from other egg farms. Each case contained approximately 360 shell eggs. The number of eggs purchased by Petitioner each year totaled approximately 36,720,000. These eggs were shipped to the Petitioner, where some of the eggs were graded and packed. All of the eggs which Petitioner sold were shipped to its customers from the Petitioner in Whiton, R. F. D., Snow Hill, Maryland.

...

During the period July 1, 1969 through September 30, 1977, Petitioner produced on its farm approximately 40% of the total eggs it sold and purchased approximately 60% of the eggs it sold from other farms. Petitioner is unable to determine whether all eggs delivered to Delaware customers were produced on its farm in Whiton, R. F. D., Snow Hill, Maryland or were purchased from other producers.

...

During the period July 1, 1969 through September 30, 1977, approximately 20% of the Petitioner's total egg sales were delivered to Delaware customers.

...

After Petitioner completed an expansion program in 1979 which it had been planning for several years to increase its egg production, Petitioner was able to produce approximately 60% of its total egg sales on its farm in Whiton R. F. D., Snow Hill, Maryland. The Petitioner purchases the remaining 40% of the eggs which it sells from other egg farms in surrounding areas. All eggs purchased from other farms are shipped to the Petitioner's farm in Whiton R. F. D., Snow Hill, Maryland where the eggs are prepared for distribution.

...

Shell eggs constitute "unprocessed agricultural products" for purposes of 30 Del. C. §2908(b).

...

In addition to selling eggs, the Petitioner began selling cheese to its customers on January 1, 1976. During the period of January 1, 1976 through September 30, 1977 the Petitioner's aggregate gross receipts from the sale of cheese delivered to its customers within the State of Delaware totaled \$189,517.59. Cheese is a processed agricultural product.

...

The Petitioner does not own permanent facilities within the State of Delaware, nor does the Petitioner lease facilities within the State of Delaware.

...

The Petitioner has no permanent employees located within the State of Delaware. The Petitioner does not conduct sales advertising within the State of Delaware through radio, television, billboards, newspapers, magazines, telephone directories or catalogs.

...

The Petitioner does not have a permanent salesman assigned solely to the State of Delaware. Petitioner employs one traveling salesman to cover its entire marketing area, consisting of Maryland, Virginia and Delaware.

...

All purchase orders from Delaware customers are subject to approval by Petitioner's senior employees at Whiton R. F. D., Snow Hill, Maryland, and no orders are final until approved and accepted within the State of Maryland.

...

No additional quantities of eggs or cheese are loaded onto the trucks, therefore no additional sales are made by the drivers without firm orders which have been accepted by the Petitioner's personnel at Whiton R. F. D., Snow Hill, Maryland.

...

Petitioner's drivers deliver products only to customers whose orders have been approved by the Petitioner's personnel located in the State of Maryland.

6. During the period July 1, 1969 through September 30, 1977, Petitioner would supplement its egg production by purchasing eggs from approximately two or three farms at any one time.

7. Of the Petitioner's total cheese sales during the period January 1, 1976 through September 30, 1977, approximately 90% of the cheese was consumed by Petitioner's customers and approximately 10% of the cheese was resold by the Petitioner's customers.

The parties have both agreed that the pertinent statutory section applicable to the issues herein decided are 30 Del. C. §2908(b), and that the issue before this Board is whether or not the activities of the Petitioner fall within the exemption provided therein.

30 Del. C. §2908(b) provides as follows:

"This chapter shall not apply to the sale of unprocessed agricultural products by the owner or operator of a farm nor shall this chapter apply to the incidental sale by the owner or operator of a farm of processed agricultural products on the assumption that the purchaser of such products does acquire the same for consumption or use and not for resale."

The Respondent and Petitioner have adopted the following points of view in regard to the application of the Petitioner's activities and the above referenced statutory section:

A. Respondent has taken the position that the Petitioner, by purchasing part of the eggs that it sells to customers has taken itself outside of the spirit of the statutory exemption for unprocessed agricultural products by the owner or operator of a farm and has in essence become a distributor or wholesaler. The Respondent takes the further position that the cheese that is sold by the Petitioner, and of which approximately 10% that was purchased by the Petitioner's customers and being resold also would exempt the Petitioner from the exemption.

B. The Petitioner, on the other hand, has adopted the position that they are in fact within the exemption, and that the fact that eggs were purchased from other farms with which they could fill the orders that they had received, does not make them wholesalers nor does it take them outside of the provisions of the exemption above stated. The Petitioner has also adopted the position that the fact that some of their customers might have sold as much as 10% of the cheese that they purchased from them, their customers having consumed 90% of the cheese or more that they purchased through them does not take them without the coverage of the exemption.

The "Stipulation of Agreed Facts" and the "Supplemental Stipulation of Agreed Facts" above referred to establish that the Petitioner is in fact the owner and operator of a farm, and that the eggs that are sold by the Petitioner are in fact unprocessed agricultural commodities, and also establish the fact that the cheese that is also sold by the Petitioner is a processed agricultural product.

It has further been agreed as a fact that approximately 90% of the cheese sold by Petitioner to its customers was consumed by the customers of the Petitioner and only approximately 10% of the cheese was resold by the Petitioner's customers.

The argument presented by the Petitioner along with the explanation of the cheese sales indicated that these sales were made to institutions wherein the products were to be consumed on the premises and that any sales of the cheese would have been to employees, etc. of said institution.

It is a standard statutory construction regarding taxing statutes that the taxing statutes are to be construed strictly and that the implications of the taxing statutes are not to be extended beyond the clear impact of the language used therein.

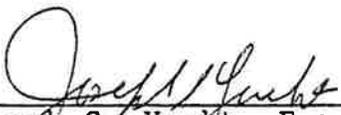
After deliberation and discussion of the issues presented before the Board, the Board holds as follows:

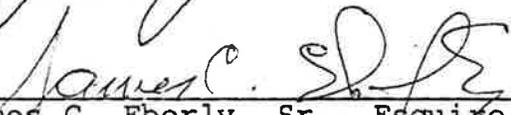
1. That the resale of approximately 10% of the processed agricultural product supplied by the Petitioner in this matter is de-minimus.

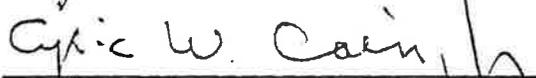
2. That the plain language of 30 Del. C. §2908(b) is in fact applicable to the Petitioner in these cases.

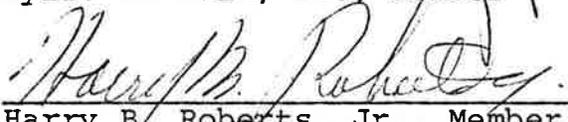
3. We further hold that the decision should be entered for the Petitioner on this instant appeal.

IT IS SO ORDERED.

  
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 Joseph S. Yucht, Esquire  
 Chairman

  
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 James C. Eberly, Sr., Esquire  
 Vice-Chairman

  
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 Cyric W. Cain, Jr., Member

  
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 Harry B. Roberts, Jr., Member

  
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 Nettie C. Reilly, Member

DATED: May 8, 1981

SYNOPSIS

DOCKET NOS. 666 and 667

TAX SEGMENT: LICENSE TAX (Retail-Wholesale)

ISSUE: Whether Petitioner is entitled to an exemption under the provisions of Section 2908 (b) as owner or operator of a farm on the sale of processed agricultural products.

TAB DECISION: (1) That the resale of approximately 10% of the processed agricultural product supplied by the Petitioner in this matter is de minimus.

(2) That the plain language of 30 Del. C. § 2908 (b) is in fact applicable to the Petitioner in these cases.

(3) That the Tax Appeal Board further holds that the decision should be entered for the Petitioner on this instant appeal.

DECISION: For Petitioner

DECISION DATE: May 8, 1981