

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

OMAHA LIVESTOCK MARKET, INC.,)
A Corporation,)
Plaintiff-appellant,)
vs.)
ROBERT KERRY, Governor of the)
State of Nebraska, et al,)
Defendants-appellees.)

Docket 360 Page 287

FINAL ORDER

Dept. of Justice

APR 11 1984

State of Nebraska

Now, this matter came on for trial on the 13th day of January, 1984, which trial was continued and completed by telephonic conference call on April 9, 1984. At all times relevant the plaintiff-appellant was represented by John Trecek, its attorney, and all of the defendants by Ralph Gillan, Assistant Attorney General. Evidence was adduced, the matter previously argued and briefs having been submitted and the matter submitted for determination on the 9th day of April, 1984.

1. This is an appeal of an order of the Tax Commissioner of the State of Nebraska dated May 14, 1982, denying the plaintiff-appellant herein, Omaha Livestock Market, Inc., a corporation, hereinafter called 'Omaha Livestock', the right to intervene in a notice of deficiency issued against the Metropolitan Utilities District, (MUD), on account of water sold by MUD to Omaha Livestock on its account number 1032.

2. That the Court has jurisdiction of the parties and subject matter hereto.

3. That the State Tax Commissioner did issue a notice of deficiency against MUD on account of water sold by MUD to Omaha Livestock.

4. After the notice of deficiency determination to MUD the State Tax Department assessed MUD \$5,465.97 for state and city sales tax applicable to water sales and private fire line and hydrant charges on account of water purchased by Omaha Livestock for the period of October, 1978, through September, 1981. The deficiency tax was a result of a tax audit by the Nebraska Department of Revenue.

After the Tax Commissioner made such a determination Omaha Livestock then, pursuant to statute, asked to intervene and for a redetermination of the tax, interest and penalty assessed against MUD.

5. Omaha Livestock claims that the water purchased on the above account qualifies for exemption under Section 77-2702(11)(B)(ii) R.R.S. 1943 as a feed for any form of animal life...which ordinarily constitute food for human consumption, and that the water is used for watering and basic care of livestock, cattle, hogs and sheep.

6. After receiving Omaha Livestock's application for intervention and redetermination of tax, the Tax Commissioner found that Omaha Livestock did not have standing to petition for redetermination of tax, interest or penalty assessed against MUD. The ruling is set forth in Exhibit 1, Page 5, dated May 14, 1982.

That under the clear wording of 77-2709(7) R.R.S. 1981 Supp. Omaha Livestock is a person ^{or entity} directly interested in the notice of deficiency and under the plain language of the statute has standing to petition for a redetermination within 30 days after service upon the person of notice thereof.

7. That Omaha Livestock met all of the jurisdictional requirements in its application before the Tax Commissioner of the State of Nebraska.

8. That the order of May 14, 1982, denying Omaha Livestock the right to intervene and have a redetermination of the notice of deficiency issued by the Tax Commissioner of the State of Nebraska against MUD should be reversed and this case should be remanded for further proceedings on Omaha Livestock's application to intervene and for a redetermination hearing.

9. That the costs of this action should be taxed to the Tax Commissioner of the State of Nebraska.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the ruling of the Tax Commissioner of the State of Nebraska dated May 14, 1982, be and it hereby is reversed; that Omaha Livestock is an interested party under Section 77-2709(7) R.R.S. 1981 Supp. and has standing to request a redetermination of the sales tax imposed against MUD.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this case be and it hereby is remanded to the Tax Commissioner of the State of Nebraska for proceedings not inconsistent with this order.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the costs of this action be and they hereby are taxed against the Tax Commissioner of the State of Nebraska.

Dated this 9th day of April, 1984.

BY THE COURT:



District Judge