

INTERSTATE PRINTING COMPANY,
a Nebraska Corporation,

)
) DOC. 254

PAGE 228

)
) Plaintiff,)

-vs-

)
) DECREE

)
) NEBRASKA STATE TAX COMMISSION,
) MURRELL B. MCNEIL, Commissioner,

)
) Defendant.)

This matter came on for trial on the 10th day of April, 1969, and upon the evidence introduced herein by the Plaintiff and the Defendant and briefs filed herein, the Court finds as follows:

I

The Court finds generally in favor of the Plaintiff and against the Defendant.

II

The Court specifically finds the following facts:

(a) The purchases of plates, negatives and cuts as referred to in Plaintiff's Petition were purchases for resale and the same were resold at retail by the Plaintiff prior to any use by the Plaintiff.

(b) Title passed to Plaintiff's customers in each case prior to Plaintiff's use of the plates, negatives or cuts in the preparation of work for the respective customer and the sales referred to above to the Plaintiff are exempt from Sales Tax as purchases for resale.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED as follows:

1. The Order entered by the Tax Commissioner on October 7, 1968, ^{to 9p.} be and the same is hereby reversed.

2. The State Tax Commissioner is hereby ordered to recompute the tax in accordance with the findings herein.

BY THE COURT

TAX COMMISSIONER
STATE OF NEBRASKA

IN THE MATTER OF)

INTERSTATE PRINTING CO.)

FINAL ORDER

This matter came before the Nebraska Tax Commissioner on August 19, 1968, concerning a Finding and Order against the above named company issued on June 21, 1968.

Interstate Printing Company, represented by Mr. John E. North of Omaha, submitted a petition for redetermination of an adverse order from the Nebraska Tax Commissioner. A hearing was held, arguments were made, testimony was given by Mr. Don Sirles of Omaha, and a brief was filed by Mr. North in behalf of Interstate Printing Company. The Legal Division of the State Tax Commissioner then filed a reply brief.

Petitioner presents a twofold argument. First, the purchases, which are under question, are purchases for resale and are therefore not subject to sales tax. Second, that that portion of TC-1-57, added on March 1, 1968, is invalid to the extent that it constitutes a conclusive finding of fact regardless of the actual facts in each specific situation.

Petitioner's argument that the purchases are purchases for resale and are therefore not subject to a sales tax must first be considered. Evidence was introduced, by petitioner, to show the means by which such sale for resale occurred. The test is essentially a consideration of just what is to be done with the property purchased and held by the immediate purchaser. If a purchaser who gives a resale certificate makes any use of the tangible personal property other than retention, demonstration or display while holding it for sale in the regular course of business, such a use takes it out of the "sale for resale" exemption category and accordingly, the use is taxable to the purchaser as of the time when the property is first so used unless the law specifically provides an exemption.

Petitioner's second argument must next be considered. The second portion of TC-1-57, added on March 1, 1968, was not a new ruling, but instead was an amplification of the Tax Commissioner's stand since the inception of the Revenue Act of 1967. The evidence produced at the hearing on August 19, 1968, was not sufficient to take the original fact situation out from under TC-1-57.

The taxability of these transactions has always been maintained by this office since the inception of the Act. The purchases are not purchases for resale, but are actually consumed by Interstate Printing Company in the regular course of their business. I herewith find that the Order and Findings entered on June 21, 1968, stand, and that the taxes be declared still due and payable.

Dated this 7 day of October.



Murrell B. McNeil
State Tax Commissioner