

DISTRICT OF COLUMBIA TAX COURT

FILED

JAN 18 1955

District of Columbia
Tax Court

FABER BENSON SALES CO., INC.,

Petitioner,

v.

DISTRICT OF COLUMBIA,

Respondent.

DOCKET NO. 1442

FINDINGS OF FACT AND OPINION

The Assessor assessed the petitioner a deficiency in sales taxes in relation to sales of tangible personal property to other vendors for purposes of resale, in instances where the petitioner failed to obtain from such vendors a certificate of resale. The petitioner here appeals from such assessment.

Findings of Fact

The parties have stipulated, and the Court finds the facts following:

1. Petitioner is a corporation organized under the laws of the State of New York, with its principal place of business in the District of Columbia at 1711 14th St., N.W.

2. The taxes in controversy are for District of Columbia sales taxes and interest thereon covering the period from August 1, 1949 to March 21, 1954, inclusive, assessed on August 3, 1954.

3. Petitioner was on August 1, 1949 and has continued to the present date to conduct a general retail outlet for minor and major appliances, jewelry, leathergoods, silverware, juvenile equipment and photographic supplies, and is and was the holder of a Certificate of Registration (No. 304-00479-01) entitling petitioner to make retail sales under the District of Columbia Sales and Use Tax Acts.

4. That portion of petitioner's appeal set forth in paragraph 3 in the amount of \$95.72 allegedly charged as a result of petitioner's delivery of merchandise to interstate carriers is hereby withdrawn, thereby reducing the total claim of petitioner against the respondent to \$335.04.

5. During the period from August 1, 1949 to March 31, 1954, inclusive, petitioner made sales to other vendors of tangible personal property for the purpose of resale without having obtained from such vendors a certificate of resale. Petitioners did not include as taxable sales income from such sales in returns made under the Sales Tax Act. During audit of petitioner's books on and after May 26, 1954 by representatives of the Assessor's office, petitioner obtained, and now has, certificates of resale covering the above-described transactions. The sales tax and interest on such sales amounted to \$335.04, which amount was paid by petitioner under protest in writing on August 12, 1954.

Opinion

This proceeding involves the propriety of deficiency in sales taxes assessed under the following circumstances: The petitioner sold certain tangible personal property to other vendors, for the purposes of resale by the latter, without first obtaining from the latter a certificate of resale. Sometime after such sales and during an audit of its' books by representatives of the Assessor's office the petitioner obtained certificates of resale. The petitioner contends that the assessment was erroneous and prays for refund. The respondent resists such claim.

Section 130 of the District of Columbia Sales Tax Act (Section 47-2'07, D. C. Code, 1951 Ed.), in the opinion of the Court, definitely settles the matter. It provides as follows:

"SEC. 130. It shall be presumed that all receipts from the sale of tangible personal property and services mentioned in this title are subject to tax until the contrary is established, and the burden of proving that a receipt is not taxable hereunder shall be upon the vendor or the purchaser as the case may be. Except as provided in section 128 (c) of this title, unless the vendor shall have taken from the purchaser a certificate signed by and bearing the name and address of the purchaser and the number of his registration certificate to the effect that the property or service was purchased for resale, the receipts from all sales shall be deemed taxable. The certificate herein required shall be in such form as the Assessor shall prescribe and, in case no certificate is furnished or obtained prior to the time the sale is consummated, the tax shall apply to the gross receipts therefrom as if the sale were made at retail." (Emphasis supplied.)

In two recent cases decided by the Supreme Court of Ohio on December 1, 1954, namely, Steubenville White Truck Sales and Service Co., Inc. v.

John W. Peck, Tax Commissioner of Ohio, Nos. 33951 and 33958, the same
question as here presented arose for solution. That court held:

"The refund was sought by the vendor under those provisions
of Section 5546-8, General Code, which read:

"The treasure of State shall redeem and pay for any unused
or spoiled tax receipts at the net value thereof, and he shall
refund to vendors the amount of taxes illegally or erroneously paid
or paid on any illegal or erroneous assessment where the vendor has
not reimbursed himself from the consumer." (Emphasis added.)

"Vendor claims that the tax with respect to the sale of these
eight trucks was, within the meaning of the above-quoted words of
that statute, 'erroneously paid' and the vendor is therefore entitled
under the words of the statute to a refund of its amount.

"It is conceded that the vendor did not obtain from the pur-
chaser any certificate indicating that the sale of any of these
trucks was not subject to sales tax.

"Section 5546-3, General Code, reads in part;

"In case the tax does not apply to a sale, the consumer must
furnish to the vendor and the vendor must obtain from the consumer
a certificate in proper form, indicating that the sale is not legally
subject to the tax herein imposed. The certificate herein required
shall be in such form as the commission shall by regulation prescribe,
and in case no certificate is furnished or obtained prior to the time
the sale is consummated, the tax shall apply.

"However, no certificates need be obtained or furnished where
the item of tangible personal property sold is never subject to the
tax imposed regardless of use." (Emphasis added.)

"The emphasized words in the foregoing statute indicate that
the tax is to apply 'in case no certificate is furnished or obtained
prior to the time the sale is consummated.' Although it is provided
that 'no certificates need be obtained or furnished where the item of
tangible personal property sold is never subject to the tax imposed
regardless of use,' a truck, such as those here involved, is not, as
are items like 'food and seeds' (see Section 5546-2, General Code),
such an item 'never subject to the tax regardless of use.' Thus,
under the words of the statute, 'the tax shall apply' because no
certificate was furnished or obtained prior to the time the sale was
consummated.

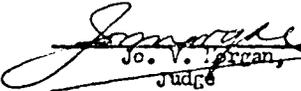
"If the tax does apply by reason of that statute and if the tax
has been paid, it cannot be said to have been 'erroneously paid' with-
in the meaning of Section 5546-8, General Code."

As indicated above, the Court believes that the ruling of the Supreme
Court of Ohio is correct. The statute is plain and requires no administra-
tive interpretation. It provides as clearly as language can make it that,
if a certificate of resale is not obtained from the vendee prior to the
sale, the tax shall apply. Nothing in the regulations did, or could affect
the mandatory character of Section 130 or in any way relieve the petitioner
of its liability to pay the tax. As was held in the Ohio Court, the taxes

here assailed were not illegally or erroneously paid, but were assessed in accordance with the Sales Tax Act.

The Court therefore, holds that no sales taxes for the period from August 1, 1949 to March 31, 1954, were erroneously assessed against the petitioner, and that the petitioner is not entitled to any refund thereof.

Decision will be entered for respondent.


Jo. V. Morgan,
Judge

DISTRICT OF COLUMBIA TAX COURT

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FABER BEYSON SALES CO., INC.,

Petitioner,

v.

DISTRICT OF COLUMBIA,

Respondent.

JAN 18 1955

District of Columbia
Tax Court

DOCKET NO. 1442

Decision

This proceeding came on to be heard upon the petition filed herein; and upon consideration thereof, and of the stipulation of facts, filed herein, and it is, by the Court this eighteenth day of January, 1955,

ADJUDGED AND DETERMINED, That, no sales taxes for the period from August 1, 1949 to March 31, 1954, were erroneously assessed against the petitioner, and that the petitioner is not entitled to any refund thereof.


J. V. Morgan,
Judge

Served as follows:

Rayton W. Harrington, Esq.,
Attorney for Petitioner,
1221 Washington Building,
Washington 5, D. C. (mailed 1/18/55)

Assessor, D. C. (personally 1/12/55)

Corporation Counsel, D. C. (personally 1/12/55)

PHYLLIS R. LIBERTI,
Clerk

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3. Petitioner was on August 1, 1949 and has continued to the present date to conduct a general retail outlet for minor and major appliances, jewelry, leathergoods, silverware, juvenile equipment and photographic supplies, and is and was the holder of a Certificate of Registration (No. 304-00479-01) entitling petitioner to make retail sales under the District of Columbia Sales and Use Tax Acts.

4. That portion of petitioner's appeal set forth in paragraph 2 in the amount of \$95.72 allegedly charged as a result of petitioner's delivery of merchandise to interstate carriers is hereby withdrawn, thereby reducing the total claim of petitioner against the respondent to \$335.04.

5. During the period from August 1, 1949 to March 31, 1954, inclusive, petitioner made sales to other vendors of tangible personal property for the purpose of resale without having obtained from such vendors a certificate of resale. Petitioners did not include as taxable sales income from such sales in returns made under the Sales Tax Act. During audit of petitioner's books on and after May 25, 1954 by representatives of the Assessor's office, petitioner obtained, and now has, certificates of resale covering the above-described transactions. The sales tax and interest on such sales amounted to \$335.04, which amount was paid by petitioner under protest in writing on August 12, 1954.

Opinion

This proceeding involves the propriety of deficiency in sales taxes assessed under the following circumstances: The petitioner sold certain tangible personal property to other vendors, for the purposes of resale by the latter, without first obtaining from the latter a certificate of resale. Sometime after such sales and during an audit of its books by representatives of the Assessor's office the petitioner obtained certificates of resale. The petitioner contends that the assessment was erroneous and prays for refund. The respondent resists such claim.

Section 130 of the District of Columbia Sales Tax Act (Section 47-2'07, D. C. Code, 1951 Ed.), in the opinion of the Court, definitely settles the matter. It provides as follows:

"SEC. 130. It shall be presumed that all receipts from the sale of tangible personal property and services mentioned in this title are subject to tax until the contrary is established, and the burden of proving that a receipt is not taxable hereunder shall be upon the vendor or the purchaser as the case may be. Except as provided in section 129 (c) of this title, unless the vendor shall have taken from the purchaser a certificate signed by and bearing the name and address of the purchaser and the number of his registration certificate to the effect that the property or service was purchased for resale, the receipts from all sales shall be deemed taxable. The certificate herein required shall be in such form as the Assessor shall prescribe and, in case no certificate is furnished or obtained prior to the time the sale is consummated, the tax shall apply to the gross receipts therefrom as if the sale were made at retail." (Emphasis supplied.)

In two recent cases decided by the Supreme Court of Ohio on December 1, 1954, namely, Steubenville White Truck Sales and Service Co., Inc. v.

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question as here presented arose for solution. That court held:

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"Vendor claims that the tax with respect to the sale of these eight trucks was, within the meaning of the above-quoted words of that statute, 'erroneously paid' and the vendor is therefore entitled under the words of the statute to a refund of its amount.

"It is conceded that the vendor did not obtain from the purchaser any certificate indicating that the sale of any of these trucks was not subject to sales tax.

"Section 5546-3, General Code, reads in part;

"In case the tax does not apply to a sale, the consumer must furnish to the vendor and the vendor must obtain from the consumer a certificate in proper form, indicating that the sale is not legally subject to the tax herein imposed. The certificate herein required shall be in such form as the commission shall by regulation prescribe, and in case no certificate is furnished or obtained prior to the time the sale is consummated, the tax shall apply.

"However, no certificates need be obtained or furnished where the item of tangible personal property sold is never subject to the tax imposed regardless of use." (Emphasis added.)

"The emphasized words in the foregoing statute indicate that the tax is to apply 'in case no certificate is furnished or obtained prior to the time the sale is consummated.' Although it is provided that 'no certificates need be obtained or furnished where the item of tangible personal property sold is never subject to the tax imposed regardless of use,' a truck, such as those here involved, is not, as are items like 'food and seeds' (see Section 5546-2, General Code), such an item 'never subject to the tax regardless of use.' Thus, under the words of the statute, 'the tax shall apply' because no certificate was furnished or obtained prior to the time the sale was consummated.

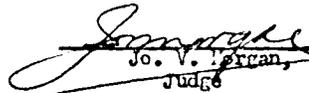
"If the tax does apply by reason of that statute and if the tax has been paid, it cannot be said to have been 'erroneously paid' within the meaning of Section 5546-8, General Code."

As indicated above, the Court believes that the ruling of the Supreme Court of Ohio is correct. The statute is plain and requires no administrative interpretation. It provides as clearly as language can make it that, if a certificate of resale is not obtained from the vendee prior to the sale, the tax shall apply. Nothing in the regulations did, or could affect the mandatory character of Section 130 or in any way relieve the petitioner of its liability to pay the tax. As was held in the Ohio Court, the taxes

here assailed were not illegally or erroneously paid, but were assessed in accordance with the Sales Tax Act.

The Court therefore, holds that no sales taxes for the period from August 1, 1949 to March 31, 1954, were erroneously assessed against the petitioner, and that the petitioner is not entitled to any refund thereof.

Decision will be entered for respondent.


Jo. V. Lercan,
Judge

DISTRICT OF COLUMBIA TAX COURT

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FABER BENSON SALES CO., INC.,

Petitioner,

v.

DISTRICT OF COLUMBIA,

Respondent.

JAN 18 1955

District of Columbia
Tax Court

DOCKET NO. 1442

Decision

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ADJUDGED AND DETERMINED, That no sales taxes for the period from August 1, 1949 to March 31, 1954, were erroneously assessed against the petitioner, and that the petitioner is not entitled to any refund thereof.


Jo. V. Morgan,
Judge

Served as follows:

Rayton W. Harrington, Esq.,
Attorney for Petitioner,
1424 Washington Building,
Washington 5, D. C. (Mailed 1/18/55)

Assessor, D. C. (Personally 1/18/55)

Corporation Counsel, D. C. (Personally 1/18/55)

PHILLIS R. LIBERTI,
Clerk

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3. Petitioner was on August 1, 1949 and has continued to the present date to conduct a general retail outlet for minor and major appliances, jewelry, leathergoods, silverware, juvenile equipment and photographic supplies, and is and was the holder of a Certificate of Registration (No. 304-00479-01) entitling petitioner to make retail sales under the District of Columbia Sales and Use Tax Acts.
4. That portion of petitioner's appeal set forth in paragraph 2 in the amount of \$95.72 allegedly charged as a result of petitioner's delivery of merchandise to interstate carriers is hereby withdrawn, thereby reducing the total claim of petitioner against the respondent to \$335.04.

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Section 130 of the District of Columbia Sales Tax Act (Section 47-2107, D. C. Code, 1951 Ed.), in the opinion of the Court, definitely settles the matter. It provides as follows:

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"The treasure of State shall redeem and pay for any unused or spoiled tax receipts at the net value thereof, and he shall refund to vendors the amount of taxes illegally or erroneously paid or paid on any illegal or erroneous assessment where the vendor has not reimbursed himself from the consumer." (Emphasis added.)

"Vendor claims that the tax with respect to the sale of these eight trucks was, within the meaning of the above-quoted words of that statute, 'erroneously paid' and the vendor is therefore entitled under the words of the statute to a refund of its amount.

"It is conceded that the vendor did not obtain from the purchaser any certificate indicating that the sale of any of these trucks was not subject to sales tax.

"Section 5546-3, General Code, reads in part;

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As indicated above, the Court believes that the ruling of the Supreme Court of Ohio is correct. The statute is plain and requires no administrative interpretation. It provides as clearly as language can make it that, if a certificate of resale is not obtained from the vendee prior to the sale, the tax shall apply. Nothing in the regulations did, or could affect the mandatory character of Section 130 or in any way relieve the petitioner of its liability to pay the tax. As was held in the Ohio Court, the taxes

here assailed were not illegally or erroneously paid, but were assessed in accordance with the Sales Tax Act.

The Court therefore, holds that no sales taxes for the period from August 1, 1949 to March 31, 1954, were erroneously assessed against the petitioner, and that the petitioner is not entitled to any refund thereof.

Decision will be entered for respondent.


Jo. V. Morgan,
Judge

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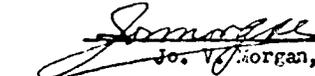
District of Columbia
Tax Court

DOCKET NO. 1442

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Jo. V. Morgan,
Judge

Served as follows:

Rayton W. Harrington, Esq.,
Attorney for Petitioner,
1201 Washington Building,
Washington 5, D. C. (Mailed 1/18/55)

Assessor, D. C. (Personally 1/18/55)

Corporation Counsel, D. C. (Personally 1/18/55)

PHYLLIS R. LIBERTI,
Clerk

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DISTRICT OF COLUMBIA TAX COURT

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1211 Washington Building,
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Assessor, D. C. (Personally 1/13/55)

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