South Carolina Law Review

Volume 21
Issue 4 *Survey of South Carolina Law*

Article 13

1969

Taxation

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TAXATION

I. Ad Valorem Tax — Use Of "Cost Or Market, Whichever Is Lower" Valuation Sanctioned By The Court

In *Wasson v. Mayes*[1] the taxpayer, which operated a chain of retail stores, used the "cost or market, whichever is lower" method to value its inventory for ad valorem tax purposes. All recent inventory purchases were valued at cost and all obsolete or damaged inventory items were valued by taxpayer's appraisers. The Tax Commission contended that article X, section 1 of the South Carolina Constitution, which requires "a uniform and equal rate of assessment and taxation" prohibited taxpayer from using this method, regardless of true value, since the value of the inventories of other merchants was determined by use of original cost.[2] The court rejected this contention, quoting decisions[3] in other jurisdictions which had rejected similar arguments, and held that the constitutional provision as to the equality and uniformity did not require the Tax Board of Review to overvalue the inventory of the taxpayer in order to conform taxpayer's valuation method with that of other merchants.

An interesting procedural issue was left unanswered by the court's opinion. The Tax Board of Review had reversed the valuation of inventory as determined by the Tax Commissioner at a hearing. Since no statutory authority grants an appeal from the Tax Board of Review, the Tax Commission petitioned for a writ of certiorari to the Court of Common Pleas and joined the members of the Tax Board of Review as defendants. The circuit court left the Tax Board of Review's decision intact, based on its opinion that the circuit court had no right to review the Tax Board of Review in the first instance. The supreme court in its opinion, however, affirmed solely on the merits leaving this issue unresolved.

II. Admission Tax — Nonprofit Organization Exemption

"Any eleemosynary or nonprofit corporation"[4] is not required

1. 167 S.E.2d 304 (S.C. 1969).
2. When adequate cost records were not available, as was the case with taxpayer, the Tax Commission used what was described as the "gross profit complement method" to value inventory.
3. Rogers v. Pike County Bd. of Supervisors, 288 Ky. 742, 157 S.W.2d 346 (1941); Werner v. Riebe, 70 N.D. 533, 296 N.W. 422 (1941); Tuckahoe Woman's Club v. City of Richmond, 199 Va. 734, 101 S.E.2d 571 (1958).
4. S.C. Code Ann. § 65-802(4) (1962).

to collect the South Carolina admission tax.[5] In *Columbia Country Club v. Livingston*,[6] the South Carolina Tax Commission contended that the Business Corporation Act of 1962[7] automatically converted a nonprofit corporation into a profit corporation by a definition in the act which stated: " 'Corporation' or 'domestic corporation' means a corporation for profit formed under the laws of this State."[8] This definition was said to preclude in a tax case any evidence to establish that a corporation was not for profit. Ergo an otherwise eleemosynary or nonprofit corporation was required to collect this admissions tax.

Fortunately for those corporations which are in fact eleemosynary or nonprofit organizations, but which have not incorporated under chapter 13[9] of the corporation title, the South Carolina Supreme Court held that evidence was admissible to prove the purposes for which a corporation was organized and operated. The court relied upon principles developed on the issue of exemptions under federal tax law, which held that a charter was not conclusive of a corporation's character.[10] Further, the court found adequate statutory authority for a stock corporation to organize for nonprofit purposes and to include such purposes in the bylaws and charter.[11]

III. SALES AND USE TAX — TRADING STAMP OF SELF-REDEEMER TAXABLE

In *Colonial Stores, Incorporated v. South Carolina Tax Commission*,[12] Colonial, which operated a chain of retail supermarkets, had instituted a "Save-A-Stamp" plan whereby it issued stamps to customers who purchased regular merchandise. Colonial, a self-redeemer, exchanged premium merchandise for these stamps. The South Carolina Tax Commission sought to impose a sales[13] or use[14] tax on the cost to Colonial of the premium merchandise when it was exchanged for trading stamps. Colonial contended that the premium merchandise had been

5. S.C. CODE ANN. § 65-802 (1962).
6. 167 S.E.2d 300 (S.C. 1969).
7. S.C. CODE ANN. §§ 12-11.1 to -24.9 (Supp. 1968).
8. S.C. CODE ANN. § 12-11.2(b) (Supp. 1968).
9. S.C. CODE ANN. §§ 12-751 to -759 (1962), dealing with the creation and powers of nonprofit corporations organized after Jan. 1, 1964.
10. *See* Annot., 69 A.L.R.2d 871 (1960).
11. S.C. CODE ANN. § 12-16.1(a) (1962).
12. 168 S.E.2d 774 (S.C. 1969).
13. S.C. CODE ANN. § 65-1401 (1962).
14. S.C. CODE ANN. § 65-1421 (1962).

sold to customers in connection with the purchase of regular merchandise, that a sales tax had already been paid on its entire gross proceeds of sale, and that the imposition of the use tax would result in double taxation.

The court held that there was not a "sale"[15] of the premium merchandise at the time the stamps were issued because before personal property can be "transferred,"[16] it must be identifiable, and the court felt the merchandise had not been so identified at the time the stamps were issued. Further, the court held imposition of the use tax on premium merchandise did not result in double taxation. The economic burden of the sales tax upon the gross proceeds of the sale of regular merchandise fell upon Colonial's customers. The only tax Colonial paid on the premium merchandise was the use tax which it sought to recover.

The court commented upon several cases from other jurisdictions that had dealt with the identical issue. An Arizona case,[17] which had held the redemption of trading stamps by a self-redeemer was not taxable under a sales tax, was distinguishable because it was stipulated in that case that the premium merchandise was for resale, and further because the South Carolina court had held the use rather than the sales tax applied to Colonial. The same stamp program by Colonial in Georgia was held not taxable, the Georgia Supreme Court[18] centering on the issue of whether consideration had been given for the stamps when they were issued with the sale of regular merchandise. The South Carolina court rejected the rationale of the Georgia opinion: it conceded that consideration may have been present at the time of issuance of the stamps, but it held that did not necessarily mean that the premium merchandise was transferred and therefore sold.[19]

IV. MISCELLANEOUS — STATUTORY INTERPRETATION

One operating a new business facility may deduct a loss carryover provided he elects to report on a separate accounting basis and makes such election in writing in the first income tax return

15. "Sale — The term 'sale' includes: (1) Any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration. . . ." S.C. CODE ANN. § 65-1360 (1962).
16. S.C. CODE ANN. § 65-1360 (1962).
17. State Tax Comm'n v. Consumer Mkt., 87 Ariz. 376, 351 P.2d 654 (1960).
18. Colonial Stores, Inc. v. Undercofler, 223 Ga. 105, 153 S.E.2d 549 (1967).
19. Colonial Stores, Inc. v. South Carolina Tax Comm'n, 168 S.E.2d 774 (S.C. 1969).

filed after the establishment of the new facility.[20] In *Southern Soya Corp. v. Wasson*,[21] taxpayer had failed to make this election for the first three years after commencing operations; however, in the fourth year it filed an amended return for the first three years, accounting on a separate basis, and claimed carryover losses for these years. The court held the statute[22] which allowed the carryover deduction was not ambiguous and deductions being a matter of legislative grace, taxpayer was required to meet the statutory conditions. Having failed to comply, it was not entitled to the deduction.

In *Carolina Coca-Cola Bottling Company v. South Carolina Tax Commission*,[23] the taxpayer argued that the statute[24] which allowed a partial exemption from the soft drink tax applied to each manufacturing plant of a taxpayer, and therefore, the taxpayer should be granted an exemption for another plant. The court held that the statute allows only one exemption for each taxpayer, and the sentence[25] upon which the taxpayer relied was a limitation on the one exemption already granted to any one person rather than the grant of a further exemption.

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20. S.C. CODE ANN. § 65-259(12) (1962).
21. 167 S.E.2d 311 (S.C. 1969).
22. S.C. CODE ANN. § 65-259(12) (1962).
23. 166 S.E.2d 225 (S.C. 1969).
24. S.C. CODE ANN. § 65-775 (Supp. 1968) provides in part:
"The Commission shall charge one dollar and twenty-two cents per gross for each one cent of face value for soft drink license tax crowns or lids; *provided, however*, that the first fifteen thousand gross of one-cent units of face value of crowns or lids, or both, purchased *by any one person* in any one fiscal year . . . shall be exempt from any tax, and the second fifteen thousand gross shall be sold by the Commission at one dollar and five cents per gross. The exemption of the first fifteen thousand gross of one-cent units and the reduction for the second fifteen thousand gross shall be applied only once during any one fiscal year *to any one manufacturing plant*. . . ." (Emphasis added.)
25. *Id.*, second sentence.

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