

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

UNISERVICE, INC.,)
)
 Plaintiff,)
)
 vs.)
)
 NEBRASKA STATE TAX)
 COMMISSIONER AND NEBRASKA)
 DEPARTMENT OF REVENUE,)
)
 Defendants.)

Docket 402

Page 150

Dept. of Justice

ORDER

MAR 17 1987

State of Nebraska

This matter came on for hearing upon appeal by plaintiff upon the denial of the claim of plaintiff for a refund of sales tax paid on electricity used by plaintiff in its commercial laundry operations. Evidence was adduced and the Court, being fully advised in the premises, finds as follows:

1. Uniservice, Inc., plaintiff herein, is the owner of a commercial laundry operation. Plaintiff filed its Nebraska and City Refund Claim of sales and use tax based upon the exemption found in Section 77-2704(1)(2), Reissue 1986, which provides in substance that there are exempted from the computation of sales and use taxes, sales and purchases of electricity when more than 50 percent of the amount purchased is for use directly in processing tangible personal property. There is no dispute that plaintiff has met the 50 percent use requirement.

2. Although there was no evidence on the specific type of work performed by the plaintiff, various case law and texts (citations omitted) define a laundry operation as one that accepts delivery of soiled clothes for washing, drying, starching and ironing.

3. The Court must determine the legislative intent in the use of the word "processing" and is permitted to look elsewhere

in the act for any guidelines in arriving at a proper definition in the absence of one provided by the legislature. Section 77-2702(20), Reissue 1986, defines the word "use" as follows: Use shall mean the exercise of any right or power over tangible personal property incident to the ownership or possession of that tangible personal property, except that it does not include the sale of that tangible personal property in the regular course of business or the exercise of any right or power over tangible personal property which will enter into or become an ingredient or component part of tangible personal property manufactured, processed, or fabricated for ultimate sale at retail. Use specifically includes the incorporation of tangible personal property into real estate or into improvements upon real estate without regard to the fact that such real estate and improvements may subsequently be sold as such. (Emphasis supplied) It appears to the Court that the Legislature is indicating that processing is changing the conditions of personal property from one form to another form. Also, in American Stores Packing Co. v. Peters, 203 Neb. 76, 277 N.W.2d 544, although a different factual situation, the Supreme Court writes about processing of meat products and the cases cited therein read of changing the product to a different form. The cases cited by appellee Nebraska State Tax Commissioner and Nebraska Department of Revenue in its brief on pages 4 and 5, support its position that processing means a transformation or conversion of materials into a different state or form from that in which they originally existed.

The cleaning of soiled clothes leaves the clothes in their original state, albeit there is wear and tear, but the

clothes are not changed into a different form as you would if you had raw material such as cotton and changed the cotton into a shirt.

4. The Court determines that use of electricity by a commercial laundry is not use in processing and exempt by law from sale or use taxes.

IT IS THEREFORE ORDERED that the decision of the Nebraska State Tax Commissioner and Nebraska Department of Revenue finding that energy consumed in laundry and dry cleaning operations does not qualify for the sales tax exemption should be and the same is hereby affirmed. Plaintiff's petition is hereby dismissed and costs are taxed to plaintiff.

DATED this 16th day of March, 1987.

BY THE COURT:


Robert R. Camp
District Judge

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