

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

CITY OF LINCOLN, NEBRASKA,
a municipal corporation,

Plaintiff,

vs.

MURRELL B. McNEIL, Tax
Commissioner of the State of
Nebraska,

Defendant.

Docket 259 Page 228

JOURNAL ENTRY

OF JUDGMENT

Now on this 5th day of December, 1969, the same being one of the regular judicial days of the September 1969 term of court this matter came on for hearing on the separate motions for summary judgment filed by the Plaintiff and Defendant respectfully herein; and Plaintiff was represented in court by it's City Attorney, Norman Krivosha and the Defendant Tax Commissioner was represented in court by it's attorney, Ralph Gillan, Assistant Attorney General of the State of Nebraska; and hearing was had and evidence adduced and argument made and the matter thereafter submitted to the court;

And now on this 31st day of December, 1969, the same being one of the regular judicial days of the September 1969 term of court, in consideration of the files and records herein, including the pleadings filed herein and the stipulation of facts offered in evidence by the parties, the court finds generally for the Plaintiff and against the Defendant; finds that no genuine issue of fact exists and that the Plaintiff herein is entitled to judgment as a matter of law; finds that the Plaintiff's motion for summary judgment should be sustained; finds that Section 9 of LB 504, adopted by the Eightieth Session of the Legislature of Nebraska is void and unenforceable and contrary to the Constitution of the State of Nebraska and the laws of the State of Nebraska; finds that Section 9 of LB 504, adopted by the Eightieth Session of the Legislature of Nebraska is void and ^{un}enforceable for the reason that said section unlawfully delegates to the Tax Commissioner of the State of Nebraska authority to determine situs of sale for the purposes of the Local Option Revenue Act where a retailer

has no permanent place of business which said delegation is without sufficient standards or guidelines and is thereby an unlawful and improper delegation of legislative authority to an administrative agency; and for the further reason that said Section 9 of LB 504 constitutes an unreasonable and improper classification in providing that for the purposes of the Local Option Revenue Act where a retailer maintains only one place of business, the sale is consummated for the purposes of the Local Option Revenue Act at the principal place of business of the retailer while further providing that in the event a retailer has more than one place of business in the state which participates in the sale, the sale is deemed to be consummated at the place of business of the retailer where the initial order for the tangible personal property is taken, even though the order must be forwarded elsewhere for acceptance, approval of credit, shipment or billing; finds that for the purposes of the Local Option Revenue Act the provisions of the Nebraska Revenue Act of 1967 as amended are sufficient to permit the implementation and administration of LB 578, adopted by the Eightieth Session of the Legislature of the State of Nebraska, and commonly referred to as the Local Option Revenue Act; finds that for the purposes of the Local Option Revenue Act, the tax required to be paid on motor vehicles is that tax designated in Section 77-2703(2) R.R.S. 1943, as amended, and should be paid to the County Treasurer of the county where the vehicle is registered if the vehicle is registered and used within an incorporated municipality having adopted an ordinance imposing a sales/use tax pursuant to the provisions of the Local Option Revenue Act; finds that Rule TC-2-7 promulgated by the Tax Commissioner of the State of Nebraska pursuant to Section 9 of LB 504 and TC-2-8 promulgated by the Tax Commissioner of the State of Nebraska are void and unenforceable and contrary to the Constitution of the State of Nebraska and contrary to the laws of the State of Nebraska and the provisions of the Local Option Revenue Act, LB 578, adopted by the Eightieth Session of the Legislature of the State of Nebraska, and should be declared

void and unenforceable and their administration and enforcement enjoined and restrained; finds that retailers maintaining a single place of business within the City of Lincoln should not be required to collect a sales tax from consumers, ~~residing outside a municipality having adopted the provisions of the Local Option Revenue Act~~ on transactions consummated outside of the incorporated municipality as heretofore required by the rules promulgated by the Tax Commissioner of the State of Nebraska; further finds that County Treasurers should not be required to collect the tax required by the Local Option Revenue Act unless the owner of said vehicle seeking to register said vehicle in said county intends to use said vehicle within an incorporated municipality in said county having adopted the Local Option Revenue Act.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the court that Section 9 of LB 504 adopted by the Eightieth Session of the Legislature of the State of Nebraska, be and the same hereby is declared to be contrary to the Constitution of the State of Nebraska and void and unenforceable.

It is further ordered by the court that Rule TC-2-7 and Rule TC-2-8 promulgated by the Tax Commissioner of the State of Nebraska, are contrary to the Constitution of the State of Nebraska and declared void and unenforceable.

It is further ordered by the court that the Defendant Tax Commissioner, his agents and subordinates be and the same hereby are permanently enjoined from enforcing or attempting to enforce Section 9 of LB 504 adopted by the Eightieth Session of the Legislature of the State of Nebraska and Rule TC-2-7 and Rule TC-2-8 presently promulgated by the Tax Commissioner.

It is further ordered by the court that the Tax Commissioner, his agents and subordinates are permanently enjoined from requiring a retailer maintaining a principal place of business within an incorporated municipality having adopted by ordinance the provisions of LB 578 adopted by the Eightieth Session of the Legislature of the State of Nebraska, ^{sales collection} a tax pursuant to the Local Option Revenue Act adopted by such incorporated

~~municipality and which the retailer maintains his principal place of business~~ on transactions made to consumers residing outside of the incorporated municipality adopting such Local Option Revenue Act where such sale as determined by the provisions of the Nebraska Revenue Act of 1967 as amended has taken place outside of the incorporated municipality.

It is further ordered by the court that the Defendant Tax Commissioner, be and he hereby is permanently enjoined from directing various county treasurers of the various counties to collect a tax pursuant to Local Option Revenue Act on vehicles registered within that county, except and unless, said vehicle is to be used within an incorporated municipality having adopted by ordinance the provisions of the Local Option Revenue Act.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the court that the Defendant's motion for summary judgment be and the same hereby is dismissed and that the cost of this action be and the same hereby are taxed against the Defendant.

Dated this 31st day of December, 1969.

BY THE COURT