

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

INTERSTATE PRINTING COMPANY,)
A Nebraska Corporation,)
)
Plaintiff,)
)
vs.)
)
NEBRASKA DEPARTMENT OF REVENUE;)
and JOHN M. BOEHM, STATE TAX)
COMMISSIONER,)
)
Defendants.)

Docket 432 Page 286

Dept. of Justice

ORDER FEB 08 1989

State of Nebraska

Interstate has appealed from an Order dated August 9, 1988 of the State Tax Commissioner which found that certain printed products were subject to the litter fee imposed under the Nebraska Litter Reduction and Recycling Act.

Appeals from a final decision of the Tax Commissioner are reviewable under Section 84-917. Interstate alleges that the Order of the Tax Commissioner is erroneous in the following respects:

- (a) The Order is in violation of constitutional provisions;
- (b) The Order is in excess of the statutory authority or jurisdiction of the Department;
- (c) The Order is made upon unlawful procedure;
- (d) The Order is affected by other error of law;

(e) The Order is unsupported by competent, material and substantial evidence in view of the entire record as made on review; and

(f) The Order is arbitrary and capricious.

In addition, Interstate alleges that the entire litter fee is unconstitutional as applied to the printed matter.

The primary issue concerns the interpretation of Section 81-1560, which provides as follows:

The fee imposed by §81-1559 shall be calculated only on the value of products or the gross proceeds of sales of products which directly contribute to litter as defined in §81-1541 and which fall into the following categories: (1) food for human or pet consumption; (2) groceries; (3) cigarettes and other tobacco products; (4) soft drinks and carbonated waters; (5) liquor, wine and beer and other malt beverages; (6) household paper and paper products, excluding magazines, periodicals, newspapers, and literary works; (7) glass containers; (8) metal containers; (9) plastic or fiber containers made of synthetic material; and (10) cleaning agents and toiletries. (Emphasis added).

Is the term "paper products" in subsection (6) a separate category or is it modified by the term "household" so as to mean "household paper products." The Commissioner determined that paper products was a separate and distinct category and even if it was not, Interstate's products are included in the category of "household paper products."

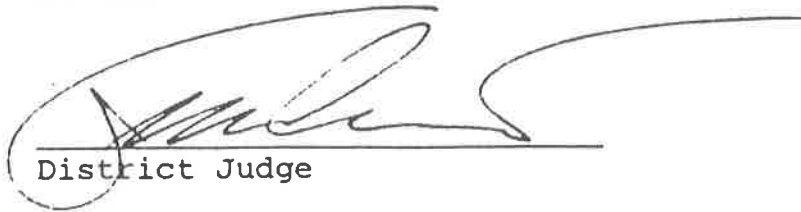
The court finds that the interpretation of the Commissioner is erroneous. If the words "paper products" in subsection (6) mean "all other paper products" then the use of the word "household" is meaningless. This court finds that "paper products" is limited to "household paper products."

The court also finds that the Commissioner's interpretation of "household" is too broad. Common sense and usage would restrict it to products primarily intended for domestic use around the home rather than commercial, educational or government use. None of the exhibits here, other than perhaps the Lund's Lites catalogue (Exhibit 10), would appear to be "household paper products."

IT IS ORDERED that the decision of the State Tax Commissioner dated August 9, 1988 be reversed and that this matter be remanded to the State Tax Commissioner for a determination as to whether any of the paper products included in the assessment of the litter tax fall within the category of "household paper products" consistent with this opinion. The court reaches no conclusion with respect to the constitutionality of the litter tax itself. All costs are taxed to the State Tax Commissioner.

Dated February 7, 1989.

BY THE COURT:



District Judge