STATE OF MINNESOTA | TAX COURT

COUNTY OF CASS | REGULAR DIVISION

Interstate Traffic Signs, Inc.,

Appellant,

v.

Commissioner of Revenue,

Appellee.

ORDER GRANTING COMMISSIONER'S MOTION FOR SUMMARY JUDGMENT

File No: 8362-R

Dated: July 16, 2013

This matter came before the Honorable Bradford S. Delapena, Chief Judge of the Minnesota Tax Court, on cross-motions for summary judgment concerning whether a retailer's labor charges for retrieving rented equipment at the close of a rental period are subject to Minnesota sales and use tax.

John E. Valen, Attorney at Law, represented appellant Interstate Traffic Signs, Inc.

Shannon M. Harmon, Assistant Minnesota Attorney General, represented respondent Commissioner of Revenue.

The court, upon all the files, records, and proceedings herein, now makes the following:

ORDER

1. The Commissioner's Motion for Summary Judgment is granted and the Commissioner's Notice of Change in Sales and Use Tax dated April 8, 2011, is upheld in its entirety.

2. Interstate's Motion for Summary Judgment is denied.

IT IS SO ORDERED. THIS IS A FINAL ORDER. LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT,

Bradford S. Delapena, Chief Judge
MINNESOTA TAX COURT

DATED: July 16, 2013

MEMORANDUM

This case involves the assessment of sales and use tax on amounts a traffic-control sign rental company charged customer for labor to retrieve rented signs. The parties have filed cross-motions for summary judgment. Interstate argues that pickup charges are not taxable because neither the controlling statute nor pertinent fact sheet published by the Department of Revenue expressly addresses pickup charges. The Commissioner argues that pickup charges fall within the broad statutory definition of "sales price" applicable to sign rentals and are thus subject to sales tax. We grant the Commissioner's motion for summary judgment because there are no material facts in dispute and we conclude as a matter of law that the Commissioner correctly assessed sales tax on pickup charges associated with Interstate's sign rentals.

I. FACTUAL AND PROCEDURAL BACKGROUND

The parties have stipulated to the facts necessary to resolve their cross-motions for summary judgment.

Interstate rents traffic-control equipment to construction contractors.[1] Pursuant to its rental contracts, Interstate both delivers and retrieves the equipment.[2] Interstate's price for

[1] Stipulation of Facts ¶¶ 4, 6.

[2] Stip. ¶ 7.

renting equipment includes labor charges for both delivery and pickup.[3] Pickup charges include the cost of labor for taking down signs and for any necessary repairs.[4] Interstate's customers are not allowed to decline Interstate's pickup services.[5]

Through April 2010, Interstate charged its customers sales tax only on amounts attributed to actual sign rental. It did not charge tax on its delivery and pickup labor.[6] After April 2010, Interstate charged tax on both actual sign rental and delivery labor, but continued to exclude pickup labor from the tax base.[7]

The Commissioner determined after a sales and use tax audit that both delivery and pickup charges were subject to Minnesota sales and use tax. Consequently, the Commissioner assessed Interstate $37,837.62 in additional sales and use tax and interest for the period July 1, 2007, through August 31, 2010.[8] Interstate filed a timely Notice of Appeal in this court challenging the Commissioner's Order.[9]

The parties have filed cross-motions for summary judgment asserting that there are no material facts in dispute.[10] Interstate argues that a retailer's labor charges for retrieving rented equipment at the close of a rental period are not subject to sales tax because neither the applicable statute nor pertinent fact sheet published by the Commissioner expressly addresses

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[3] Stip. ¶ 8.

[4] Stip. ¶ 9.

[5] Stip. ¶ 9.

[6] Stip. ¶ 11.

[7] Stip. ¶ 15.

[8] Stip. ¶ 19; Ex. 4.

[9] Stip. ¶ 22.

[10] *See* Comm'r's Not. Mot. & Mot. Summ. J.; *see also* Appellant's Not. Mot. & Mot. Summ. J.

pickup charges.[11] In the alternative, Interstate argues that the controlling statute is ambiguous and must be interpreted in its favor.[12] The Commissioner argues that pickup charges fall within the broad statutory definition of "sales price" and therefore maintains that he correctly assessed tax on such charges.[13]

II. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate where the pleadings, affidavits, and record show that there is no genuine issue as to any material fact and one party is entitled to a judgment as a matter of law. Minn. R. Civ. P. 56.03; *DLH v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997). When parties file cross-motions for summary judgment, they tacitly agree that there are no genuine issues of material fact and that a determination can be made by applying the statute to the stipulated facts. *Am. Family Mut. Ins. Co. v. Thiem*, 503 N.W.2d 789, 790 (Minn. 1993). Summary judgment is a suitable vehicle for addressing the application of law to undisputed facts. *See, e.g.*, *Anderson v. Christopherson*, 816 N.W.2d 626, 630 (Minn. 2012); *A. J. Chromy Const. Co. v. Commercial Mech. Services, Inc.*, 260 N.W.2d 579, 581 (Minn. 1977).

III. ANALYSIS

Assessments of the Commissioner are presumed correct and valid. Minn. Stat. § 271.06, subd. 6 (2012); *F-D Oil, Co. Inc. v. Comm'r of Revenue*, 560 N.W.2d 701, 707 (Minn. 1997). A taxpayer bears the burden of proving that an assessment is incorrect. *Byers v. Comm'r of Revenue*, 741 N.W.2d 101, 106 (Minn. 2007).

Minnesota imposes a 6.5% sales tax "on the gross receipts from retail sales." Minn. Stat. § 297A.62, subd. 1 (2012). A "retail sale" specifically includes "rental for any purpose." Minn.

[11] Appellant's Mem. Summ. J. at 2-3.

[12] Appellant's Mem. Summ. J. at 2-3.

[13] Comm'r's Mem. Summ. J. at 1.

Stat. § 297A.61, subd. 4(a) (2012). " 'Gross receipts' means the total amount received, in money … for all sales at retail as measured by the sales price." *Id.*, subd. 8. "Sales price," in turn, is defined in relevant part:

> Subd. 7. **Sales Price.** (a) "Sales price" means the measure subject to sales tax, and means the total amount of consideration, including cash, credit, personal property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:
>
> (1) the seller's cost of the property sold;
>
> (2) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expenses of the seller;
>
> (3) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
>
> (4) delivery charges, except the percentage of the delivery charge allocated to delivery of tax exempt property, when the delivery charge is allocated by using either (i) a percentage based on the total sales price of the taxable property compared to the total sales price of all property in the shipment, or (ii) a percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment; and
>
> (5) installation charges.
>
> (b) Sales price does not include:
>
> (1) discounts, including cash, terms, or coupons, that are not reimbursed by a third party and that are allowed by the seller and taken by a purchaser on a sale;
>
> (2) interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; and
>
> (3) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.

Id., subd. 7(a) & (b).

All gross receipts are presumed subject to sales tax. Minn. Stat. § 297A.665(a)(1) (2012). "The burden of proving that a sale is not a taxable retail sale is on the seller." Minn. Stat. § 297A.665(b) (2012).

Interstate does not dispute that the rental of traffic control equipment constitutes a retail sale and, accordingly, that the price of such rental transactions is subject to Minnesota sales and

use tax.[14] In addition, Interstate acknowledges that delivery charges are subject to tax.[15] The sole issue for resolution, therefore, is whether pickup charges also fall within the statutory definition of "sales price." For several reasons, we conclude they do.

The object of statutory interpretation "is to ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16 (2012). "When the language of a statute is plain and unambiguous, it is assumed to manifest legislative intent and must be given effect." *Burkstrand v. Burkstrand*, 632 N.W.2d 206, 210 (Minn. 2001). "An ambiguity exists only where a statute's language is subject to more than one reasonable interpretation." *State v. Mauer*, 741 N.W.2d 107, 111 (Minn. 2007).

Both the statutory language used to define sales price and the definition's overall structure manifest the Legislature's intention to make that term broadly applicable. *See A&H Vending Co. v. Comm'r of Revenue*, 608 N.W.2d 544, 548 (Minn. 2000) ("The general goal of sales and use taxes is to establish a complementary scheme whereby every sale is presumed taxable unless specifically exempted."). First, by its plain meaning, the initial definition is expansive: " 'Sales price' means … the total amount of consideration … for which personal property or services are sold, leased, or rented …." Minn. Stat. § 297A.61, subd. 7(a). The Legislature's use of an expansive definition indicates an intention to give the definition broad scope in application. *See, e.g., Abrahamson v. St. Louis Cnty. Sch. Dist.*, 819 N.W.2d 129, 134 (Minn. 2012).

Second, the Legislature separately provided that sales price is to be "without any deduction" for five broad categories of retailer charges. Minn. Stat. § 297A.61, subd. 7(a)(1)-

[14] Appellant's Mem. Summ. J. at 2.

[15] Appellant's Mem. Summ. J. at 1.

(a)(5). This separate prohibition on deductions confirms that the Legislature intended its initial definition to be broadly applied.

Finally, the Legislature expressly enumerated in a separate subdivision the particular items that "[s]ales price does not include." *Id.*, subd. 7(b). "The doctrine expressio unius est exclusio alterius means that the expression of one thing is the exclusion of another." *State v. Caldwell*, 803 N.W.2d 373, 383 (Minn. 2011); *see also* Minn. Stat. § 645.19 (2012) (codifying the doctrine of *expressio unius*). Under the doctrine, items not expressly excluded from the definition of sales price fall within its ambit. *See, e.g.*, *Anderson v. Twin City Rapid Transit Co.*, 250 Minn. 167, 175, 84 N.W.2d 593, 599 (1957) ("Under this maxim if a statute specifies one exception to a general rule … other exceptions … are excluded.").

We conclude that pickup charges fall within the broad statutory definition of sales price. First, it is undisputed that pickup charges are part of the "the total amount of consideration" Interstate receives under its rental contracts for the use of its signs. Minn. Stat. § 297A.61, subd. 7(a). Pickup charges therefore fall within the plain meaning of sales price.

Second, the statute specifically prohibits any deduction from sales price for "the cost of … labor or service cost, … all costs of transportation to the seller, … and any other expenses of the seller." *Id.*, subd. 7(a)(2). Interstate does not explain why labor charges for picking up signs at the close of a rental period do not qualify as "the cost of … labor" or "service cost[s]" or "costs of transportation to the seller" or "other expenses of the seller." We conclude that pickup charges are plainly comprehended by these terms. Accordingly, we conclude that subdivision 7(a)(2) prohibits any deduction of pickup charges from Interstate's contract price.

Third, the statute also prohibits any deduction for "charges by the seller for any services necessary to complete the sale …." *Id.*, subd. 7(a)(3). It is undisputed that Interstate's customers

are not allowed to decline Interstate's pickup services,[16] making such services "necessary to complete the sale." Consequently, we conclude that subdivision 7(a)(3) separately prohibits any deduction of pickup charges from sales price.

Finally, labor for pickup charges is not among the items that subdivision 7(b) expressly excludes from the definition of sales price. Consequently, under the doctrine *expressio unius est exclusio alterius*, pickup charges are included within that definition. *Anderson*, 250 Minn. at 175, 84 N.W.2d at 599; *see also Artistic Drapery Services, Inc. v. Comm'r of Revenue*, No. 7954, 2009 WL 1585854, at *6 (Minn. T.C. June 3, 2009) (rejecting taxpayer's argument that specified labor charges were not subject to sales tax where taxpayer was unable to state which category of Minn. Stat. § 297A.61, subd. 7(c) (2000) (now subdivision 7(b)) exempted the charges).

Interstate argues that because subdivision 7 expressly addresses delivery charges but not pickup charges, the definition of sales price is ambiguous. We disagree. For the reasons already stated, we conclude that pickup charges fall within the plain meaning of sales price. *See Mauer*, 741 N.W.2d at 111 (statute is ambiguous only where subject to more than one reasonable interpretation). Interstate cannot use the Legislature's decision to specifically address delivery charges (which are far more common in connection with retail sales) as a means to argue that the statute is ambiguous concerning pickup charges, which are not expressly addressed. *Beardsley v. Garcia*, 753 N.W.2d 735, 738-39 (Minn. 2008) (rejecting argument that statutory silence creates ambiguity where statutory language is otherwise clear).

Finally, Interstate argues that an earlier version of the Department of Revenue's Sales Tax Fact Sheet 155, which like section 297A.61 is silent about pickup charges, supports its

[16] Stip. ¶ 9.

position.[17] We disagree. Nothing in a fact sheet "supersedes, alters, or otherwise changes any provisions of the state revenue laws, administrative rules, court decisions, or revenue notices." Minn. Stat. § 270C.08 (2012). As we have already indicated, pickup charges fall within the plain meaning of sales price. Moreover, fact sheets are not meant to be comprehensive. *William Schwartz & Sons, Inc. v. Comm'r of Revenue*, No. 7702, 2006 WL 223176, at *6 (Minn. T.C. Jan. 27, 2006) (*citing Birkel v. Comm'r of Revenue*, No. 5514 (Minn. T.C. Oct. 15, 1990)). Accordingly, we reject the argument that the failure of a Department fact sheet to address pickup charges creates ambiguity in the statutory definition. *Cf. Beardsley*, 753 N.W.2d at 738-39. Finally, we note that the Commissioner modified Sales Tax Fact Sheet 155 in 2010 to expressly state that pickup charges are taxable.[18] The Commissioner's decision to address an issue on which he had previously been silent does not, contrary to Interstate's arguments, indicate either an ambiguity or an affirmative change in position. In any event, as we have already indicated, the fact sheets are of no assistance to Interstate.

We conclude as a matter of law that labor charges for retrieving rented equipment at the close of a rental period fall within the definition of "sales price" and that the Commissioner correctly assessed sales and use tax on pickup charges associated with Interstate's sign rentals. Consequently, we grant the Commissioner's motion for summary judgment.

B.S.D.

[17] Appellant's Mem. Summ. J. at 2.

[18] Comm'r's Mem in Opp'n Summ. J. at 5-6.