

BOARD OF TAX APPEALS FOR THE DISTRICT OF COLUMBIA

POTOMAC ROSE SOCIETY,

Petitioner,

v.

DISTRICT OF COLUMBIA,

Respondent.

FEB 27 1951

BOARD OF TAX APPEALS
FOR THE
DISTRICT OF COLUMBIA
DOCKET NO. 1232

Appeal from action of the Assessor in denying claim for
refund of sales tax.

FINDINGS OF FACT and CONCLUSIONS OF LAW

Findings of Fact

1. Petitioner, Potomac Rose Society, is an unincorporated
organization, the objects of which are the promotion of a wider
general interest in growing roses, and to assist its members in
methods of rose culture. Its members are amateurs and are not
engaged in the sale of plants and flowers.

2. During the period here involved it had about 500 members.
In September, 1949, many members of the society asked its purchas-
ing chairman, A. C. Barrett, who resided at 4719 Brandywine Street,
Washington, D.C., whether it was to have a composite rose order
that fall. He accordingly wrote to Paramount Nurseries, in West
Grove, Pennsylvania, to inquire whether they would accept a
composite order from the society on behalf of its members. On
September 30, the Nurseries advised him that it was sending him a
copy of its new catalog and additional copies would be sent
petitioner's various members as quickly as possible. It further
advised that the 25% discount granted to the society in other years
still held good, when sent in quantity lots as it had been used to
doing; and that as soon as the Nurseries received the list of
replacements they would be placed on file to be shipped after
November 1.

3. After the receipt by petitioner of the catalog, it printed blanks of a "1949 Rose Order", the material parts of which are as follows:

"POTOMAC ROSE SOCIETY
1949 Fall Rose Order

Name

Address

Mail order to: A. C. Barrett, 4719 Brandywine St., N.W.,
Washington 16, D.C., before October 22.

Make checks payable to: POTOMAC ROSE SOCIETY

"The following roses are offered to club members at prices listed below. The roses on this list are No. 1 two-year field grown bushes. All roses are delivered direct to purchaser."

Then follows a list of roses and their prices, with blank spaces to be filled in by the members indicating the number of each variety desired, and the amount of the cost thereof.

At the end appeared the following:

"It is the intent of the shipper to make delivery by parcel post or express about the 21st of November.

Note: All prices quoted include D.C. Sales Tax."

4. One of these forms was sent to each member. Those who desired to do so filled the forms in and returned them to petitioner, accompanied by remittances. Petitioner thereupon made up an order for each purchaser, directed to Paramount Nurseries. Each order directed Paramount to make shipment of the listed roses to the individual purchaser.

5. Paramount Nurseries thereafter filled these orders and made shipment by parcel post and express directly to the ordering members. It thereafter sent one invoice to petitioner covering all these shipments. Petitioner paid the amount of this invoice.

6. The amounts paid by the members to the petitioner were the Nurseries' list prices, less 12-1/2%. The amount paid by the petitioner to the Nurseries was the list prices less 25%. When the members paid petitioner by check or money order, such checks or money orders were made payable to petitioner. If the Nurseries were unable to fill any orders, the members would look to petitioner for the return of the money.

7. Petitioner was not a representative of the Nurseries.

In addition to the activities hereinabove referred to, it was also engaged in the selling of insecticide, fungicide, and garden tools to its members.

8. Petitioner filed a sales-tax return for October, 1949.

Included in this return was an item of \$1664.93 covering rose bushes sold to petitioner's District of Columbia members, as herein described, upon which a tax of \$33.30 was computed and, on November 2, 1949 was paid.

9. On January 25, 1950 petitioner filed its application for refund of this portion of the tax. The application was made on a mimeographed form furnished by the Assessor. The material parts of the application are hereinafter set forth:

Those parts of the form that were filled in by petitioner are underscored.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Assessor
Sales and Use Tax Division

Claim Number CLAIM FOR REFUND Claimant's
OF SALES OR USE TAX PAID Registration No.

The District of Columbia, ss:

----- Potomac Rose Society -----
Claimant

----- 4719 Prandynius Street, N.W., Washington 16, D.C. -----
Street City Zone State

being first duly sworn states that SALES ☒ USE ☐ tax has been paid and claim for refund thereof is made as follows:

1. (Sec. 140, D.C. Rev. Act of 1949)
Refund of amount paid on Sales
and Use Tax Returns for the month
of October 1949; Amount paid \$33.30; Amount Claimed \$33.30

* * * * *

*STATE REASONS FOR CLAIM IN FOLLOWING SPACE:
(If claim involves tax for which reimbursement was collected by you, indicate whether or not you have refunded such amounts to your customers.)

That the Potomac Rose Society is not liable for such tax, since it is neither vendor nor purchaser in the transaction and never has title to nor possession of the tangible personal property sold, namely rose plants; and that the individual purchasers of the plants and the Potomac Rose Society as their collective and cooperative purchasing device are not liable for payment of the tax, since the transaction is one wholly in interstate commerce, such as a State could not without power to tax under the limitations of the Constitution of the United States; and, further, that the transaction is not a "retail sale" or a "sale at retail" within the meaning of paragraph (4) of subsection (b) of Sec. 1111 of the ACT.

(Use reverse of form if additional space is required.)

Claimant Potomac Rose Society

By J. Preston Swecker

Sworn to and subscribed before me this 24th day of January 1950
My Commission Expires Feb. 28 1954.

Harry O. Clem, Notary Public, D.C. Harry O. Clem
My Commission expires Feb. 28th, 1954 Notary Public

Original of this form to be filed with the Assessor, D.C. Claimant to retain duplicate copy for his file.

10. The application was denied by letter dated August 11, 1950 from the Assistant Administrator of the Sales and Use Tax Division.

11. The sales tax was not billed separately by petitioner to its members. It was included in the 12-1/2%. Petitioner has not reimbursed any of its members for the sales tax that was collected.

Conclusions of Law

1. The rose bushes were not sold by petitioner to its members, but were ordered by petitioner, as agent of its members, from Paramount Nurseries, and the sales were made by Paramount Nurseries to petitioner's members; therefore, no sales tax was payable by petitioner by reason of these sales.

2. The Board has jurisdiction of this appeal from the denial of petitioner's application for refund. The form of petitioner's application for refund, and the action taken by the Assessor, were sufficient to give this Board jurisdiction of the appeal from the denial thereof.

3. Petitioner is entitled to a refund of said amount of \$33.30, or such parts thereof as it shall establish to the satisfaction of the Assessor that it shall have repaid to the purchasers.



Lawrence Koenigsberger,
Member Sole,
Board of Tax Appeals for
the District of Columbia

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MEMORANDUM

At the hearing, the respondent, in addition to its defense on the merits of the appeal, contended that the Board had no jurisdiction of the appeal because, it said, the application which the Assessor denied on August 11, 1950, as set forth in finding of fact No. 10, was not a valid application for refund, because it was not executed under oath. It is true that the opening phrase of the application, namely, "Potomac Rose Society, " being first duly sworn," etc. is something of a solecism. It will be remembered, however, that, as set forth in finding of fact No. 9, this was the form prescribed by the Assessor.

Furthermore, the signature shows that it was signed and sworn to by an individual, J. Preston Swecker, who appeared as attorney for the petitioner on this appeal. The affidavit contained no averments showing the authority of the affiant to make the oath, but such authority will be presumed, Anthony v. Anthony, 221 Ala. 221, 128 So. 440; Deering & Co. v. Warren, 1 S.D. 35, 44 N.W. 1068.

Furthermore, the Assessor did not reject the application, nor object to its form, but received and acted upon it and disposed of it on its merits. See Northwestern National Bank & Trust Co. v. United States, 46 Fed. Supp. 390, 394.


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BOARD OF TAX APPEALS
FOR THE
DISTRICT OF COLUMBIA

DOCKET NO. 12,32

DECISION

This proceeding came on to be heard upon the petition filed herein; and upon consideration thereof, and of the evidence adduced at the hearing on said petition, it is, by the Board, this 27th day of February, 1951,

ADJUDGED and DETERMINED, That the action of the Assessor in disallowing the application of petitioner, Potomac Rose Society, for refund of sales tax for the month of October, 1949 in the amount of \$33.30, be, and it is hereby reversed, and that said petitioner is entitled to a refund of \$33.30, or such parts thereof as it shall establish to the satisfaction of the Assessor that it shall have repaid to the purchasers.

LAWRENCE KOENIGSBERGER

Lawrence Koenigsberger,
Member Solo,
Board of Tax Appeals for
the District of Columbia

Findings of Fact & Conclusions
of Law, Memorandum and Decision
Served as follows:

J. Preston Stocker, Esq.
641 Washington Building,
Washington, D.C. (mailed Feb. 27/51)

Assessor, D.C. (Personally Feb. 27/51)

Corporation Counsel, D.C. (Personally Feb. 27/51)

Clerk

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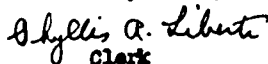

Lawrence Koenigsberger,
Member Sole,
Board of Tax Appeals for
the District of Columbia

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of Law, Memorandum and Decision
Served as follows:

J. Preston Swecker, Esq.
641 Washington Building,
Washington, D.C. (Mailed Feb. 27/51)

Assessor, D.C. (Personally Feb. 27/51)

Corporation Counsel, D.C. (Personally Feb. 27/51)


Shyllis A. Liberti
Clerk