

LEXSEE 181 MD. 637

**STATE TAX COMMISSION OF MARYLAND, et al. v. STANDARD OIL COMPANY OF
NEW JERSEY; MAYOR AND CITY COUNCIL OF BALTIMORE v. SAME**

Nos. 44, 45, January Term, 1943

Court of Appeals of Maryland

181 Md. 637; 31 A.2d 621; 1943 Md. LEXIS 161

April 28, 1943, Decided

PRIOR HISTORY: [***1]

Appeal from the Baltimore City Court; Ulman, J.

DISPOSITION:

Order appealed from affirmed, the costs to be paid by the Mayor and City Council of Baltimore. Costs cannot be assessed against the State Tax Commission as it is a State agency.

LexisNexis(R) Headnotes**HEADNOTES:**

Municipal Corporation — Taxation — Exemptions — "Manufacturing Industry" — Job Printing Business.

Municipal ordinance excepting certain businesses from benefits of manufacturers' tax exemption of machinery used in printing or issuing daily journals or other periodicals or publications, but which did not expressly include job printing establishments, held not to include such establishments in such exception.

What constitutes a "manufacturing industry" within statute and municipal charter, authorizing the Mayor and City Council of Baltimore to exempt tools and machinery used in such industry from city taxes depends upon the particular facts of each case. Code, 1939, Art. 81, Sec. 7 (33); Code of Pub. Loc. Laws, 1930, Art. 4, Sec. 6 (28) (c).

An oil company operating a job printing plant in Baltimore City, the products of which were used chiefly by it and its independently operated affiliates, held to be engaged in "manufacturing articles [***2] of commerce" in Baltimore City within ordinance adopted pursuant to statute authorizing exemption from taxation of personal property used in such business.

A municipal ordinance which exempted from taxation personal property used in a manufacturing business, excepting therefrom, however, machinery used in printing or

issuing daily journals or other periodical publications, did not intend to include job printing establishments in such exemption, held that the machinery and equipment used in job printing establishments was exempt from taxation under the ordinance.

SYLLABUS:

Application of the Standard Oil Company of New Jersey, a corporation, for a manufacturer's exemption from taxation of a job printing plant which it operated in Baltimore City. From an order of court reversing an order of the State Tax Commission of Maryland, the Tax Commission and the Mayor and City Council of Baltimore appeal.

COUNSEL:

William C. Walsh, Attorney General, and Hall Hammond, Deputy Attorney General, for the appellant, the State Tax Commission of Maryland.

*Michael J. Hankin, Assistant City Solicitor, with whom were F. Murray Benson, City Solicitor, and Norman E. Cooper, Assistant City Solicitor [***3], on the brief, for the appellant, the Mayor and City Council of Baltimore.*

O. Bowie Duckett, Jr., with whom was Edward G. Hargest on the brief, for the appellee.

JUDGES:

Sloan, C. J., Delaplaine, Collins, Marbury, Grason, Melvin, and Adams, JJ. Sloan, C. J., delivered the opinion of the Court.

OPINIONBY:

SLOAN

OPINION:

[*638] [**622] This appeal is from an order of

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the Baltimore City Court reversing an order of the State Tax Commission which had refused an application of the Standard Oil Company for a manufacturer's exemption of a job printing plant which it was operating in Baltimore City.

By Section 7, Subsection 23, of Article 81 of the Code, 1939, the county commissioners of any county and the Mayor and City Council of Baltimore City are authorized to exempt from city and county taxes the "Tools (in-including mechanical tools), implements, whether worked [*639] by hand, steam or other motive power, machinery, manufacturing apparatus or engines used in manufacturing, whether temporarily idle or not" provided the exemption be so declared by resolution or ordinance. And by Subsection 24, may be extended to "Raw materials on hand and manufactured products in the hands [***4] of the manufacturer."

An Act of like import, applicable to Baltimore City is contained in Article 4, Section 6, Subsection 28 (c) of the Code of Public Local Laws, 1930, subtitle "Abatements to Encourage Manufacturers," Baltimore City Charter (1938), p. 58.

In pursuance of the authority of these Code provisions, the Mayor and City Council passed an ordinance No. 140, Baltimore City Code (1927), Art. 46, Sec. 80, directing the Appeal Tax Court to abate any and all personal taxes "of any individual, firm or corporation, actually engaged in the business of manufacturing articles of commerce in the City of Baltimore," but excepted certain businesses from the benefit of the exemption, among them any machinery, etc., "used in the preparation, printing or issuing, by the printers or publishers thereof, of any daily journal or other periodical publication." The exceptions did not include job printing establishments, and the only logical conclusion is that to omit them does not mean to include them in the exceptions. The State Tax Commission and this court have so interpreted it, and have said that the machinery, etc., of job printers are exempt from taxation. *Rowe Co. v. Tax Commission* [***5], 149 Md. 251, 261, 131 A. 509; *American Newspapers v. Tax Commission*, 174 Md. 56, 197 A. 574.

Some years later, in 1918, the Mayor and City Council passed Ordinance No. 462, which did not repeal any of the provisions of Ordinance No. 140, but prescribed the procedure, which had not been provided for by Ordinance No. 140, whereby manufacturers might avail themselves of the benefits of the charter power and the earlier ordinance. The only material change, worthy of note in [*640] this case, was, "In case any person, firm or corporation engaged in manufacturing in Baltimore City shall also be engaged in the business of a jobber, or wholesaler or retail merchant, in Baltimore City, nothing in this section shall

be construed to exempt the personal property other than goods of his own manufacture, used in connection with said business of jobber or wholesale or retail merchant."

It is generally declared that these tax exemption statutes are to be strictly construed. *Broadbent Mantel Co. v. Baltimore*, 134 Md. 90, 106 A. 250, and cases there cited. But to this it might be added, that they are to be fairly construed, that is, so as to give expression to the legislative [**623] [***6] intent and purpose. *Mayor and City Council of Baltimore v. Hanover Shirt Co.*, 168 Md. 174, 178, 177 A. 160; *Cooley on Taxation*, 4th Ed. Sec. 674.

The City's interpretation of the purpose and intent of its charter power, and it might properly be said of any such statutes, as expressed in Ordinance No. 462, is "In order to encourage the growth and development of manufacturing industries in Baltimore City and thereby in the judgment of the Mayor and City Council, to promote the general welfare of the city * * * exempt from taxation for all ordinary municipal purposes," the tools, machinery, and raw materials of manufacturers. The object and purpose of such legislation is defined in *Carroll County Com'rs v. B. F. Shriver Co.*, 146 Md. 412, 418, 126 A. 71; *Rowe Co. v. Tax Commission*, 149 Md. 251, 257, 131 A. 509; *City of Baltimore v. State Tax Commission*, 161 Md. 234, 238, 155 A. 739.

As said in *Carroll County Com'rs v. B. F. Shriver Co.*, 146 Md. 412, 417, 126 A. 71, 72, "It is difficult to say in the abstract what is and what is not a manufacturing industry." Every case depends largely on its own facts and circumstances. *Mayor and City Council of Baltimore* [***7] v. *Hanover Shirt Co.*, 168 Md. 174, 179, 177 A. 160; *State Tax Commission v. Baltimore Asphalt Block & Tile Co.*, 180 Md. 620, 26 A. 2d 371.

[*641] The contention of the appellants is that the appellee, in its printing plant, does not produce "Articles of commerce," though it is not contended that the plant is not a well, expensively equipped establishment, and there is no denial of the appellee's evidence that it employs seventy-five persons, with an annual payroll of \$125,000, has raw materials and manufactured product amounting to \$87,000, and does a business of \$300,000 a year. The appellant argues that because the product of the printing plant is used by the appellee and its affiliates, it does not produce "articles of commerce." In 1941 it had seven customers in which it owned 48 per cent. of their capital stock; in one of them it owned nothing; in one 20 per cent.; in two 50 per cent. and in three 70 per cent., 71.5 per cent. and 74 per cent. They were all independently operated, and were treated on the books of the appellee as customers, who were charged with and paid for the stationery and printing shipped to them, and the appellant's

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argument is that the appellee [***8] is doing this work for itself, even though it is shipped and billed to the affiliates, and that its product is not sold to the trade generally, and they rely chiefly on statements made in the cases of *Carroll County Com'rs v. B. F. Shriver Co.*, 146 Md. 412, 126 A. 71, and *City of Baltimore v. State Tax Commission*, 161 Md. 234, 155 A. 739.

In the last named case, in which the Tax Commission had granted the exemption to the Union Shipbuilding Company, the City appealed, and its contention there was that the product of the shipbuilding company was not a manufacture, and what was decided in that case by the Tax Commission, the City Court and this court was that its product was a manufacture, which had as a potential customer every steel mill in the country. It pressed scrap steel into ingots of certain sizes, the price of which was regularly published by the leading trade paper, and had a ready market.

That case has no application to the instant case. The product of a job printing plant does not have such a [*642] market; its product is not sold in the open market. It does

what its name implies, printing by the job for its respective customers. As we have said, the policy [***9] of the State Tax Commission has been to exempt job printing plants as manufacturers, and it has been decided by this court that they are manufacturers, even if the product is sold to customers in which they are interested. *American Newspapers v. Tax Commission*, 174 Md. 56, 197 A. 574.

It would have to be conceded that if the appellee and its affiliates bought the product from an independent job printing plant located in Baltimore, that such a plant would be entitled to the exemption. So what is the difference, whether the appellee sets up a plant of its own, or hires its work to be done by some other concern? We see none, and are of the opinion that the order of the City Court reversing the State Tax Commission should be affirmed.

Order appealed from affirmed, the costs to be paid by the Mayor and City Council of Baltimore. Costs cannot be assessed against the State Tax Commission as it is a State agency.