

Legislative rules of construction as specifically defined by R.S. 1:1-2 dictate that the term "property" unless restricted or limited by context to either real or personal property, which is not the case here, includes both types of property.

We are not unmindful of the rule that statutes granting exemptions from taxation are to be strictly construed against the claimant and a claimant for tax exemption has the duty and burden of proving its entitlement to the exemption. *Julius Roehrs Co. v. Division of Tax Appeals*, 16 N.J. 493 (1954). However, we are of the opinion that the exemption of the Highway Authority from liability for the motor fuels tax is clear.

Moreover, for administrative purposes, we are of the opinion that N.J.S.A. 27:12B-16, which exempts the Highway Authority from the payment of the motor fuels tax, should be construed harmoniously with R.S. 54:39-66(a) which provides for refunds of such payments. Accordingly, for the purposes of carrying out the legislative intent enunciated in N.J.S.A. 27:12B-16, the Highway Authority may be considered to be a "political subdivision" of the State and entitled to refunds of the amount of taxes that are paid. See *Behnke v. N. J. Highway Authority*, 13 N.J. 14, 29 (1953).

Insofar as the views expressed herein are inconsistent with those expressed in Memorandum Opinion to Armand J. Salmon, Jr., State Supervisor, Motor Fuels Tax Bureau, dated January 18, 1954, that opinion is expressly overruled.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: DONALD M. ALTMAN
Deputy Attorney General

SEPTEMBER 25, 1958

HONORABLE JOHN A. KERVICK
State Treasurer
State House
Trenton, New Jersey

MEMORANDUM OPINION—P-24

DEAR MR. KERVICK:

We have been asked concerning the propriety of the extension of the 3% discount on cigarette tax stamps generally (see L. 1956, c. 10, sec. 2; N.J.S.A. 54:40A-11) to two cent meter tax sales in respect of cigarette packages held in inventory and already metered at the former 3 cents per pack rate (see L. 1948, c. 65, sec. 301) on the effective date of the present 5 cents a pack rate (see L. 1956, c. 10, sec. 1; N.J.S.A. 54:40A-8).

Some discussion of the mechanics of cigarette tax collection is necessary. By L. 1948, c. 65, sec. 301, a tax of 3 cents per package was imposed on the use of cigarettes. The tax was collected by either of two procedures: one depended upon the sale of tangible stamps to wholesale distributors who have the responsibility to affix them to the cigarette packages. N.J.S.A. 54:40A-15. The tangible stamps bore on their face the amount of the tax, just as postage stamps indicate on their face an

It is made applicable to meter tax collection by N.J.S.A. 54:40A-17:

“* * * Any licensed distributor authorized * * * to affix evidence of tax payment to packages of cigarettes by means of a metering machine shall * * * make a prepayment, allowing for the discount * * * subject to the same conditions as in the case of the sale of [tangible] stamps * * *.”

It is apparent from the generality of N.J.S.A. 54:40A-11, applicable alike to all distributors, big and small, without regard to the manner of their operation, that this is not an attempt to compensate the distributors for the exact amount of expense incurred by them in the collection of the cigarette tax but provides only an approximately equivalent recompense. Viewed in this light, the statute does not intend that to be entitled to the discount the distributor must both “affix and handle” the stamps. It is enough if the distributor performs some substantial service or incurs some expense in implementing the collection process. In the case of the metered cigarettes it is apparent that the distributors had to perform substantial services in determining the number of packages in their inventory which had been already metered and in bringing the meters to the Cigarette Tax Bureau at a time when they still contained credits and would not have had to have been brought to the Cigarette Tax Bureau were it not for the increase in the tax rate. It is our opinion that the statute intends that the discount be allowed for these services and that the action taken by the Cigarette Tax Bureau was lawful.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: FRANK A. VERGA
Deputy Attorney General

SEPTEMBER 25, 1958

HONORABLE JOHN A. KERVICK
State Treasurer
State House
Trenton, New Jersey

MEMORANDUM OPINION—P-25

DEAR MR. KERVICK:

We have been asked whether proposed regulation CT 23, providing for the remission of tax liability on unstamped cigarettes stolen from a distributor is unlawful, and if so, whether the proposed regulation would be applied retroactively to entitle distributors to refunds who have paid a tax on stolen unstamped cigarettes under protest. Proposed regulation CT 23 reads as follows:

“Excluding internal pilferage and subject to such restrictions of proof as may be demanded by the director, tax liability shall not accrue in situations where unstamped cigarettes are stolen from the place of business of a licensed distributor.”

amount of postage. An alternate method of collection through the use of meters similar to postage meters was provided. N.J.S.A. 54:40A-17. Under this method, pursuant to rules adopted by the Director of the Division of Taxation, the distributor prepays a certain dollar amount of tax. An agent of the Cigarette Tax Bureau thereupon sets the distributor's meter with a capacity to impress with the legend "TAX PAID" a number of packages of cigarettes sufficient to consume the tax credits established by the prepayment. (The meter is then sealed.)

The Legislature granted an allowance to distributors to compensate them for the expense which they incurred in the tax collection process. N.J.S.A. 54:40A-11, 17. This is consistent with the intendment of N.J.S.A. 54:40A-10.1 and the act as a whole, N.J.S.A. 54:40A-1 to 43, that the tax is to be imposed in ultimate effect upon the user of the cigarette. See also Rev. Rul. 13661, 1951-2 Cum. Bull. 24.

To the distributors who used tangible stamps this allowance took the form of a discount on the purchase price when they bought the stamps. N.J.S.A. 54:40A-11. In the case of distributors using meters the allowance took the form of a discount on the amount which they had to prepay to have equivalent credits set up on their meters. N.J.S.A. 54:40A-17.

Effective April 16, 1956 the tax rate was increased from 3 cents per pack to 5 cents per pack. L. 1956, c. 10, secs. 1, 4. The same law provided that the higher rate was to be imposed upon cigarettes already stamped, whether or not by meter, and remaining in inventory. L. 1956, c. 10, sec. 2. Since the tangible stamps bore on their face indication of payment only at the rate of 3 cents a pack, it was necessary to affix tangible stamps of 2 cent denomination to them to avoid any question of legality of the possession of these cigarettes by later persons in the distribution chain under N.J.S.A. 54:40A-16, 25, 28, 30, 32. However, in the case of metered cigarette packages bearing only the legend "TAX PAID," which is the same on metered cigarettes both under the 3 cent tax and the 5 cent tax, it was not necessary to make any additional markings on the packages.

The collection of the additional 2 cent tax on inventory cigarettes in the case of those tangibly stamped was accomplished by sale by the Cigarette Tax Bureau of special 2 cent tangible stamps which were then affixed to the packages. L. 1956, c. 10, sec. 2. In the case of metered cigarettes the additional 2 cents per pack tax was collected by an adjustment of meters by an agent of the Cigarette Tax Bureau to consume credits registered on them. In both cases the Cigarette Tax Bureau has allowed the discount to the distributors provided by N.J.S.A. 54:40A-11, 17.

You have informed us that the State auditors are presently conducting an examination of the books and records of the Cigarette Tax Bureau and that they question the propriety of the extension of the discount to meter users in the case of the collection of the additional 2 cents per pack in inventory. You inform us that the State auditors have been moved to this view by the fact that in connection with the additional 2 cent tax on these cigarettes there has been no additional affixation on the packages themselves.

The governing statute, N.J.S.A. 54:40A-11, provides :

"* * * the Director shall allow, as compensation for the services and expenses of the distributor in affixing and handling of * * * stamps, a discount of 3 percent * * *."

It is made applicable to meter tax collection by N.J.S.A. 54:40A-17:

"* * * Any licensed distributor authorized * * * to affix evidence of tax payment to packages of cigarettes by means of a metering machine shall * * * make a prepayment, allowing for the discount * * * subject to the same conditions as in the case of the sale of [tangible] stamps * * *."

It is apparent from the generality of N.J.S.A. 54:40A-11, applicable alike to all distributors, big and small, without regard to the manner of their operation, that this is not an attempt to compensate the distributors for the exact amount of expense incurred by them in the collection of the cigarette tax but provides only an approximately equivalent recompense. Viewed in this light, the statute does not intend that to be entitled to the discount the distributor must both "affix and handle" the stamps. It is enough if the distributor performs some substantial service or incurs some expense in implementing the collection process. In the case of the metered cigarettes it is apparent that the distributors had to perform substantial services in determining the number of packages in their inventory which had been already metered and in bringing the meters to the Cigarette Tax Bureau at a time when they still contained credits and would not have had to have been brought to the Cigarette Tax Bureau were it not for the increase in the tax rate. It is our opinion that the statute intends that the discount be allowed for these services and that the action taken by the Cigarette Tax Bureau was lawful.

Very truly yours,

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