

NUTZ AND BOLTZ, INC.

* IN THE
* MARYLAND TAX COURT

V.

COMPTROLLER OF THE TREASURY

* NO. 98-SU-OO-0375
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MEMORANDUM OF GROUNDS FOR DECISION

Petitioner, Nutz and Boltz, Inc. appeals from an assessments of sales and use tax issued by the Respondent, Comptroller of the Treasury, for the period 1/1/94 through 12/31/97 in the amount of \$4,607.40 plus interest. The assessment was based on a determination by the Respondent that a membership fee charged by the Petitioner was actually a taxable sale of a newsletter subscription.

Petitioner is a for-profit Subchapter S corporation conducting a business which disseminates information pertaining to automobile repairs by way of a weekly radio show, an internet website and monthly newsletters. While there is no charge for anyone to listen to the radio show or to access the website, in order for a person to receive the newsletter, Petitioner charges what it terms either a “membership fee” or a “club membership fee” in the annual amount of \$22.00. The newsletter and its price are also advertised on the Petitioner’s website for the same price.

A “Premium Membership”, costing more than the “club” membership, allows a member to obtain additional services and products, such as personal consultations (more than one response per member) and database availability in addition to the newsletter (See Petitioner’s price list, Respondent’s Exhibit #1). During the audited period, few, if any, “Premium Memberships” were sold. The great majority of Petitioner’s “membership” sales are for one or two year regular memberships (ranging in price from \$20.00 to \$36.00). Testimony indicated that the purchasers of the regular memberships considered the information contained in the newsletter to be valuable in relation to automobiles and their repair.

The central issue in this appeal is to determine for what items or services the \$22.00 “membership fee” encompasses. Petitioner contends, citing *Quotron Systems v. Comptroller*, 287

Md. 178 (1980) that we must look to the dominant purpose of the transaction to make such a determination. According to the Petitioner, “the dominant purpose of the membership dues was not to get the monthly newsletter but was to get the services and as much information as necessary for its member to assist them when the problems occurred.” Petitioner’s Memorandum of Argument, page 2. If the transactions were for the purchase of these additional services, then they should be viewed as the sale of a non-taxable service.

Respondent agrees that the Court must look to the dominant purpose of the transaction, but disputes Petitioner’s analysis.

In analyzing the subject transactions, the Court is directed to look at the overall transaction to determine the “dominant purpose”. From the evidence presented, it is clear that the “club membership” sold by Petitioner offers little, if any, additional services beyond the subscription to the printed monthly newsletter. Evidence indicates that in Petitioner’s advertisements, the term “membership fee” is used interchangeably with the terms of a subscription. Petitioner’s own internal records uses identical accounting codes to refer to “Memberships” and “Income-Newsletters” (See Respondent’s Exhibit #2). Any additional services offered by Petitioner can be utilized for free by members and non-members (by listening and calling in to the radio show or by accessing the free internet website) or by paying for a “Premium Membership” (of which few were sold during the audit period). The dominant purpose for the \$22.00 payment was to obtain twelve issues of the Petitioner’s monthly newsletter.

Because the newsletter is printed material containing information in a tangible format, its sale, through subscription, is subject to tax, unless specifically exempt by statute. See *Disclosure Information Group, et al v. Comptroller*, 72 Md. App. 381 (1987). Petitioner asserts that §11-215 of the Tax-General Article of the Annotated Code of Maryland dealing with exemptions for newspapers applies. However, that exemption only applies to newspapers which are distributed at no charge. The newsletters in question are only available upon payment of the subscription fee.

Conclusion

For the above reasons, the Court shall pass an Order affirming the Respondent’s assessment of sales and use taxes.