

BLUE BUFFALO COMPANY, LTD.

Petitioner

v.

COMPTROLLER OF THE TREASURY

Respondent

* IN THE
* MARYLAND TAX COURT
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* M.T.C. No. 16-IN-00-0364
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MEMORANDUM AND ORDER

In the present case, the Petitioner, Blue Buffalo Company, Ltd. (“Blue Buffalo” or “Petitioner”), has appealed a denial of its claim for refund of corporate income tax for the tax years 2011-2012 (the “Tax Period”). The amount in controversy is \$160,263.00 for tax year 2011 and \$546,703.00 for tax year 2012, for a total of \$706,966.00. The Petitioner, a Delaware corporation headquartered and domiciled in Connecticut, contends that it is immune from income taxation in the State of Maryland for the years at issue. The Petitioner also contends that its activities in Maryland were limited to the solicitation of orders for intangible personal property within the meaning of P.L. 86-272 and therefore not subject to Maryland corporate income tax. The Respondent, Comptroller of the Treasury, contends that the Petitioner’s business activities in Maryland exceeded the solicitation protected by P.L. 86-272, and the activities were not *de minimis*. The Respondent asks that the Court affirm the denial of the Petitioner’s request for a refund of corporate income taxes.

Blue Buffalo is a foreign corporation that sells premium pet products within the State of Maryland. The basis for Blue Buffalo's request for a full refund of all income taxes paid was the assertion that its activities in Maryland during the tax period were limited to the solicitation of orders for sales of tangible personal property within the scope of P.L. 86-272. During the tax period, Blue Buffalo employed in Maryland, one Distributor Sales Manager, one Account Manager, two Regional Demo Managers and several dozen in-store sales representatives referred to as Pet Detectives. The Distributor Sales Manager met with local retailers, provided education and training to retailer personnel on Blue Buffalo products and attended pet-related events in Maryland. The Account Manager's main job function was to maintain relationships between Blue Buffalo and the regional and local store managers of Blue Buffalo's principal national accounts. Blue Buffalo's national account customers located in Maryland are PetSmart, Petco and Tractor Supply. The Account Manager also trained personnel of Blue Buffalo's direct customers, *e.g.* managers and sales associates at Petco and/or PetSmart, regarding Blue Buffalo products. Account Managers frequently visited customer retail stores and helped maintain retail displays of Blue Buffalo products and occasionally gathered customer and competitive information while at the retail locations.

The Regional Demo Managers managed, recruited and trained the Petitioner Detectives in the particular geographic region to which they were assigned. These activities served no function apart from facilitating the solicitation of orders.

Pet Detectives were primarily responsible for interacting with the actual consumer of Blue Buffalo's pet products. They were assigned to a number of stores, and while they did not typically engage in inventory activities for the retailer, at least one Pet Detective restocked

retailer shelves on at least one occasion. Pet Detectives also regularly collected and report information regarding competitors who were present at retailers during the same times they were. This included reporting to management if there was an incident involving a competitor interfering with the Pet Detective as they pitched Blue Buffalo products to consumers. Pet Detectives also reported to management when a consumer purchased a product he or she believed was defective and returned it to the retailer. When this happened during a Pet Detective's shift, the Pet Detective would gather key information to pass on to Blue Buffalo but would not actually resolve the issue.

P.L. 86-272 is codified in 15 U.S.C. 38(a) which states:

“(a) No State, or political subdivision thereof, shall have power to impose, for any taxable year...a net income tax on the income derived within such State by any person from interstate commerce if the only business activities within such State by or on behalf of such person during such taxable year are either, or both, of the following:

(1) the solicitation of orders by such person, or his representative, in such State for sales of tangible personal property, which orders are sent outside the State for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside the State; and

(2) the solicitation of orders by such person, or his representative, in such State in the name of or for the benefit of a prospective customer of such person, if orders by such customer to such person to enable such customer to fill orders resulting from such solicitation are orders described in paragraph (1).”

The intent of P.L. 86-272 is to protect out-of-state companies that have no other business activities with the state other than the “solicitation of orders within a state.” *Matthew Bender & Co., Inc., v. Comptroller of the Treasury*, 67 Md. App. 693, 708 (1986). A company's mere solicitation of business in a state is insufficient to support the imposition of a state income tax on that company. Corporate taxation by Maryland, therefore, is restricted by P.L. 86-272, which prohibits it from imposing taxes on income derived in the state from interstate commerce, unless

in-state business activities meet certain minimum standards. *Comptroller of the Treasury v. World Book Childcraft Intern. Inc.* 67 Md. App. 424, 432 (1986).

The salient issue for the Court to decide is whether the activities of Blue Buffalo's employees in Maryland exceeded the solicitation protected by P.L. 86-272. Were these activities de minimus or ancillary to requests for purchases? If the answer is in the affirmative, Blue Buffalo was exempt from Maryland income tax under P.L. 86-272.

The evidence suggests that the activities of Blue Buffalo's employees served a business purpose other than requesting orders. The Distributor Sales Manager met with customers and potential customers in Maryland and provided them with education, training and demonstrations on the advantages and selling points of Blue Buffalo products. In addition, the attendance at pet-related community events like pet adoptions and community pet walks served a business purpose of building good will in the community and taking advantage of marketing opportunities. These activities are not "missionary activities", i.e., requesting orders or ancillary to facilitating sales, and are not protected under P.L. 86-272.

The Account Manager activities also went beyond the solicitation of orders by (1) providing product training to personnel of its key customers; (2) gathering competitive information ostensibly when conducting these trainings; and (3) engaging in quality control and reworking displays in certain retail establishments.

The Pet Detectives employed in Maryland during the Tax Period engaged in activities on behalf of Blue Buffalo that went beyond solicitation as well. From their own reports, it appears that the actual duties of the Pet Detectives included: (1) getting consumers to make in-store purchases of Blue Buffalo's products; (2) obtaining competitive intelligence from retail

locations; (3) gathering market data; and (4) assisting with quality control and inventory issues as they arose. None of these activities is protected under P.L. 86-272. Blue Buffalo's use of Pet Detectives to gather competitive information while they were at the retail locations clearly goes beyond the solicitation protected by P.L. 86-272. Pet Detectives regularly reported on which competitors were also doing demonstrations when they were at the customer locations as well as how competitors were marketing their products. Gathering competitive data was in no way related to requesting orders or sales and strongly suggests Blue Buffalo had an independent business reason for wanting to know which competitors were doing similar demonstrations, and where and when they were doing them. Finally, the evidence indicates that Pet Detectives assisted with quality control and inventory issues by pulling molding product from shelves, providing restocking services, and gathering important information for Blue Buffalo when consumers returned defective products to retailers.

The Court finds that the activities of the Pet Detectives, the Distributor Sales Manager and the Account Manager considered together is similar to an in-state Maryland sales force as opposed to employees merely soliciting out-of-state sales.

Accordingly, this 30th day of August, 2017, for the foregoing reasons, the Maryland Tax Court finds that Blue Buffalo's business activities in Maryland during the Tax Years 2011-2012 exceeded the solicitation protected by P.L. 86-272 and denies Blue Buffalo's request for a refund of all income taxes paid for Tax Years 2011-2012.