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City Sales Tax—Liability Of Vendor

The New York City Sales Tax Law imposes a retail sales tax on the purchaser, but makes the vendor liable therefor both as a collecting trustee and as a taxpayer.²¹ While the tax is imposed at a flat percentage rate,²² provision is made for a bracket schedule²³ to avoid instances where the percentage would yield fractions of one cent; hence, the actual tax due may exceed the flat percentage tax where a majority of sales are in the lower portions of the bracket.²⁴

*W. T. Grant Company v. Joseph*²⁵ presented the question of the extent of the vendor's tax liability, and, concomitantly, the extent of the record-keeping requirements under the law. The vendor kept no record of individual sales, but paid over to the city either the tax actually collected or the percentage rate on its total sales, whichever was greater. The city comptroller asserted that the returns must show the amount of tax that the purchaser was required to pay, and proceeded to assess a sizable deficiency upon the basis of a test check.

The Court of Appeals, one judge dissenting, held that since the vendor was under a duty as a taxpayer to pay the tax to the city whether or not collected from the purchaser,²⁶ he must therefore pay the amount of tax required to be paid by the purchaser, irrespective of the vendor's diligence in collection.²⁷ The record-keeping requirements of the law were interpreted, in view of this liability, as demanding records of individual sales in order to establish the tax due thereon.²⁸

As noted by the dissent, the majority view imposes a harsh, expensive record-keeping burden upon vendors who have millions of small sales each year. Nonetheless, this effect had already been legislatively incorporated into the law by a 1946 amendment,²⁹ not applicable to the instant case which arose earlier, by which it was clearly specified that the vendor would be liable for the tax collected or *required* to be collected. Thus, the vendor who fails to keep extensive records does so at his peril.

21. ADMINISTRATIVE CODE OF CITY OF NEW YORK §N41-2.0; Fifth Ave. Building Co. v. Joseph, 297 N.Y. 278, 79 N.E.2d 22 (1948); Matter of Atlas Television Co., 273 N.Y. 51, 6 N.E.2d 94 (1936).

22. ADMINISTRATIVE CODE OF CITY OF NEW YORK §N41-2.0.

23. *Id.* §N41-3.0.

24. For example, where the flat percentage was 2% but the bracket schedule called for one-cent tax on all sales from 17 to 66 cents, the actual tax on a 17 cent sale would exceed 5%.

25. 2 N.Y.2d 196, 159 N.Y.S.2d 150 (1957).

26. Fifth Ave. Building Co. v. Joseph, *supra* note 21; Merchants Refrigerating Co. v. Taylor, 275 N.Y. 113, 9 N.E.2d 799 (1937).

27. Matter of Atlas Television Co., *supra* note 21.

28. ADMINISTRATIVE CODE OF CITY OF NEW YORK §N41-4.0, merely requires that:

Every person . . . keep records of receipts and of the tax payable thereon.

29. *Id.* §N41-2.0.