



**Statement of Acquiescence
No. 06- 001
November 13, 2006
Excise Taxes**

Dixie Tobacco & Candy Co. v. Cynthia Bridges, Secretary et al.

Suit No. 503,614, Sec. 23

Purpose: The purpose of this Statement of Acquiescence is to announce the Department of Revenue (department) will acquiesce in the decision of the 19th Judicial District Court, (district court), Parish of East Baton Rouge, State of Louisiana, in the case styled *Dixie Tobacco & Candy Co. v. Cynthia Bridges, Secretary et al.*, Suit No. 503,614, Sec. 23. The case was before the district court on cross motions for summary judgment filed by plaintiff, Dixie Tobacco & Candy Co. (Dixie) and the Department. Dixie sought to have La. R.S. 47:851(B)(2)(b) declared unconstitutional and further sought an injunction to enjoin the department from enforcing the provision against it. The district court determined La. R.S. 47:851(B)(2)(b) had the practical effect of discriminating against out-of-state wholesale tobacco dealers in states that have not entered into a reciprocal agreement with the secretary of revenue. The district court also determined that state law and the Tax Injunction Act prohibited an injunction restraining the collection of a tax. In short, the district court declared La. R.S. 47:851(B)(2)(b) was unconstitutional as it violated the Commerce Clause of the United States Constitution, U.S. Const., art. I., § 8, cl. 3, and granted Dixie's motion for summary judgment and court costs but denied the injunction.

Authority: U.S. Const., art. I., § 8, cl. 3; 28 U.S.C. §1341 (Tax Injunction Act); La. R.S. 47:851(B)(2)(b); La. R.S.:47:1575; La. R.S. 13:5112.

Analysis/Discussion: Dixie, a wholesale tobacco dealer, is a Mississippi corporation with its principal place of business in the County of Bolivar, State of Mississippi. Dixie has a direct purchasing contract with a manufacturer and has held a Louisiana tobacco tax wholesale dealer's permit since June 1977. Dixie paid taxes on tobacco other than cigarettes in Louisiana. However, Dixie did not receive the benefit of the discount because Mississippi had no reciprocal agreement with Louisiana for tobacco other than cigarettes. So, Dixie has paid these taxes without the benefit of the six percent discount allowed to Louisiana wholesale tobacco dealers and out-of-state dealers who have reciprocal agreements with Louisiana.

A Statement of Acquiescence or Nonacquiescence (SA/SNA) is issued under the authority of LAC 61:III.101(C). It is a written statement to provide guidance to the public and to Department of Revenue employees. An SA/SNA is a written statement issued to announce the Department's acceptance or rejection of specific unfavorable court or administrative decisions. If a decision covers several disputed issues, an SA/SNA may apply to just one issue, or more, as specified. An SA/SNA is not binding on the public, but is binding on the Department unless superceded by a later SA/SNA, declaratory ruling, rule, statute, or court case.

At issue in this case is La. R.S. 47:851(B)(2)(b) which allows a six percent discount on purchases made by registered tobacco dealers in Louisiana who have a direct purchasing contract with a manufacturer and timely and accurately file their reports. The statute authorizes the secretary of revenue to enter into reciprocal agreements with tax authorities of other states. Wholesale tobacco dealers serving a trade area of retail dealers in this state can sell in this state with benefit of a discount. However, the discount cannot be in excess of the discount which is extended to Louisiana wholesale tobacco dealers by the contracting state or in excess of six percent.

Dixie first filed this action against the department in the United States District Court for the Middle District of Louisiana (federal district court) for a judgment declaring that La. R.S. 47:851(B)(2)(b) violates the Commerce Clause and an injunction against the future enforcement of the statute. The department responded with a motion to dismiss, arguing the Tax Injunction Act, 28 U.S.C. § 1341, prohibited the district courts from enjoining, suspending, or restraining the assessment, levy, or collection of any state tax where a plain, speedy, and efficient remedy may be had in state court. Additionally, the department argued the Tax Injunction Act divested the court of subject matter jurisdiction. The court agreed by concluding the Tax Injunction Act did divest it of jurisdiction to enjoin and also prohibited it from issuing a declaratory judgment holding state tax laws unconstitutional. So, the federal district court granted the department's motion and dismissed Dixie's suit.

Dixie thereafter filed two additional suits, a petition in state district court and a petition for refund at the Louisiana Board of Tax Appeals.¹ In district court, Dixie again alleged La. R.S. 47:851(B)(2)(b) violates the Commerce Clause and sought declaratory judgment, injunctive relief and supplemental relief. Conversely, the department argued that the purpose of the statute was not to discriminate, but rather the provision was simply a tool to ensure the timely filing of reports. The department further argued the injunction against enforcing La. R.S. 47:851(B)(2)(b) was prohibited by law.

After considering the statute and reviewing the relevant jurisdiction, the district court concluded "the statute, even if not facially discriminating, had the practical effect of discriminating against interstate commerce, since other subsections required that all dealers submit a timely report, but only gave a discount for doing so to Louisiana dealers and those in reciprocal states." Additionally, the district court concluded La. R.S. 47:851 is within the same subtitle as La. R.S. 47:1575, which prohibits state courts from restraining the collection of any tax imposed within that subtitle.² Based upon this conclusion, the district court granted Dixie's motion for summary judgment. However, the court did not issue an injunction.

¹ The procedural history also includes a series of exceptions that the department filed raising the objections of *lis pendens*, lack of subject matter jurisdiction, prematurity and no right of action. The district court granted the exception of *lis pendens* but denied the other exceptions. The department thereafter timely answered the petition. Dixie then responded with a Motion for Summary Judgment to which the department filed an Opposition to the Motion for Summary Judgment and Cross Motion for Summary Judgment. After hearing and taking the matter under advisement, the district court subsequently issued its Written Reasons for Judgment on January 7, 2005, and on March 22, 2006 signed the judgment under discussion.

² Subtitle II of Title 47 of the Louisiana Revised Statutes.

Conclusion: The district court determined La. R.S. 47:851(B)(2)(b) discriminated against interstate commerce because it gave a discount only to Louisiana dealers and those with reciprocal agreements for timely and accurately filing their reports. The department will acquiesce in the decision of the district court.

Cynthia Bridges
Secretary

By: _____
Annie L. Gunn
Attorney
Policy Services Division