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This Week in State Tax (TWIST)

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North Carolina: Asphalt transfers among related parties found not taxable

In a recently published decision, the North Carolina Business Court affirmed that transfers of tangible personal property from a subsidiary to its parent company did not constitute taxable sales under North Carolina law when no consideration was provided. The case arose from a Department of Revenue appeal of an Administrative Law Judge (ALJ) determination that such transfers were not subject to sales tax.

The taxpayer in this matter, a subsidiary corporation, regularly transferred emulsion products to its parent and affiliated companies without issuing purchase orders, bills of sale, or requiring payment. The taxpayer did not collect sales tax on the transfers. On audit, the department assessed tax, penalties and interest. The taxpayer appealed, and an ALJ found that no consideration was provided for the transfers, meaning that they did not constitute sales for purposes of the sales tax. The department appealed to the Business Court.

On appeal, the department argued that the taxpayer should be considered to have received consideration for the transfer of product to its parents and related parties. It argued that internal accounting entries labeled as “due to/due from,” which reflected hypothetical markups, should be treated as consideration for the transfers. Further, the department contended that various cash infusions, accounting services, and payroll payments provided by the parent to the subsidiary constituted consideration for the transfers. The court determined the accounting entries were solely for internal management purposes and did not represent any actual payment or expectation thereof. It considered the various cash infusions from the parent to the taxpayer to be reflective of the structure of the organization and determined there was no evidence that the cash infusions were specifically linked to the transfers of emulsion products, noting that there was no agreement or negotiation indicating that these infusions were provided in exchange for the transfers. The department also contended that because the subsidiary indicated the transfers were not “gifts,” they should be considered sales. The court declined to presume that the transfers were made for consideration in the absence of evidence and emphasized that North Carolina law does not support such a presumption.

In its analysis, the court reiterated that a “sale” under the North Carolina Tax Act requires a bargained-for exchange of consideration. The record demonstrated that the subsidiary did not negotiate or expect payment for the transferred products, and the parent company did not incur any obligation to pay. As such, the Business Court affirmed the ALJ decision. For any questions on *N.C. Dep’t of Revenue v. Asphalt Emulsion Indus., LLC*, 2026 NCBC 5, or other North Carolina sales and use tax matters, please contact Nicole Umpleby.