

NO. CV 07 4013027 S : STATE OF CONNECTICUT
SCHOLASTIC BOOK CLUBS, INC. : SUPERIOR COURT
v. : JUDICIAL DISTRICT OF
NEW BRITAIN
COMMISSIONER OF REVENUE
SERVICES : MAY 27, 2009

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**MEMORANDUM OF DECISION ON MOTION
FOR REARGUMENT AND/OR RECONSIDERATION**

The defendant commissioner of revenue services (the commissioner) moves pursuant to Practice Book § 11-11 for re-argument or reconsideration of the decisions rendered by this court on April 9, 2009 in the above-captioned cases.

These decisions held that Scholastic Book Club, Inc (SBC) was entitled to have its appeals of the commissioner's sales and use tax deficiency assessments sustained on two grounds: (1) the activities of Connecticut's primary grade school teachers did not provide the requisite "nexus" to SBC, an out-of-state catalog company and (2) the statutory term

SUPERIOR COURT
2009 MAY 27 A 9:52

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“representative” as set forth in General Statutes § 12-407 (a) (15) (A) (iv) did not apply to the school teachers.¹

With regard to the court’s ruling on the first issue, the commissioner asks the court to consider that in *Tyler Pipe Industries, Inc. v. Washington State Dept. Of Revenue*, 483 U.S. 232, 250-51, 107 S. Ct. 2810, 97 L. Ed. 2d 199 (1987), the Supreme Court found nexus where the in-state actors “established and maintained” the out-of-state taxpayer’s market. The commissioner points to testimony by an official of SBC that the teachers are “essential to SBC’s business.”

On the other hand, as indicated in this court’s decisions at footnote 9, not every third party, in-state actor provides nexus. The facts in *Tyler Pipe* involved persons who acted “on behalf of the taxpayer” to establish name recognition, market share, good will and customer relations. *Id.* at 250. Nexus under the commerce clause should not extend to school teachers who do not take on these activities in a business relationship. Rather, as this court’s decisions found,² the teachers are a local contact for SBC, through which

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The court notes that its decision only concerned whether SBC was obliged to collect sales and use taxes on transactions occurring in Connecticut; the decisions did not consider the issue of under what circumstances the *parents* of school children are liable for a use tax on the purchase of items from SBC.

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On pages 12-14 of the decisions, the court pointed out the nature of the activities performed by the teachers on behalf of SBC and, contrary to the commissioner’s argument, did not rely on what motivated the teachers.

minors are assisted in making purchases. The teachers are at times purchasers, as well. The teachers are thus substituting for the minor children's parents, "in loco parentis," and are also consumers. Nexus should not turn on whether "for all intents and purposes" the teachers are a "money-maker" under SBC's marketing plans.

With regard to the court's ruling on the second issue, the commissioner argues that by using the phrase "representative, agent, salesman, canvasser or solicitor" in § 12-407 (a) (15) (A) (iv), the legislature was making a distinction between each type of person, and therefore the court should not have concluded that a "representative" was similar to a "salesman, canvasser or solicitor." The court answers that since the commissioner, in making the deficiency assessments against SBC, found specifically that the teachers were "representatives," the court was obliged to consider the statutory definition of "representative." On this basis, the court defined "representative"-- both at the common law (see Decisions, footnote 3) and under sales tax law of various states (Decisions, pages 8-10), and concluded that the teachers do not meet the statutory definition.

It also found that the term "representative" is not the same as "agent" (Decisions, footnote 3), but is similar to the other terms used in the statute, "salesman, canvasser or solicitor." (Decisions, page 10).³ The canon of construction, raised by the commissioner,

³ Indeed the definition of "solicitor" supplied by the commissioner in its reply brief of May

that the legislature intended each word in a series to have a different meaning, is only a presumption, and is not binding on the court. Cf. *Commissioner of Revenue Services v. Estate of Hubbard*, 44 Conn. Sup. 421, 427, 690 A.2d 455 (1996) (commissioner's position is weakened by "actual statutory text" and "controlling maxims of statutory construction") with 2A N.Singer, *Sutherland Statutory Construction* § 47.24 (2007): "[The maxim] is a product of logic and common sense. It acts merely as an aid to determine legislative intent and does not constitute a rule of law." (Quotation marks omitted).

For the foregoing reasons the court declines to modify its April 9, 2009 decisions.

BY THE COURT



Henry S. Cohn, Judge

20, 2009, enforces the point that a school teacher is not a "representative" as that term is used in the statute. A "representative" in the statute (as indicated by the case law discussed in the two decisions) is similar to the "solicitor" who "[s]ells merchandise or service, such as books . . . going from *door to door* . . . or *following leads from management* . . . Displays sample products, explains desirable qualities of products . . . distributes advertising literature . . . Writes and submits orders to company. Delivers merchandise, collects money, and makes change." (Emphasis added.) The court adheres to the conclusion in its decisions that a school teacher is neither a "representative" nor a "solicitor" under § 12-407 (a) (15) (A) (iv).