

Ottawa, Tuesday, September 19, 1989

Appeal No. 3019

IN THE MATTER OF an application heard May 11, 1989,
pursuant to section 51.19 of the *Excise Tax Act*, R.S.C.
1970, c. E-13 as amended;

AND IN THE MATTER OF a decision of the Minister of
National Revenue dated May 20, 1988, with respect to a
Notice of Objection filed pursuant to section 51.17 of the
Excise Tax Act.

BETWEEN

COLWOOD ENTERPRISES LTD.

Appellant

AND

THE MINISTER OF NATIONAL REVENUE

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed. The Tribunal declares that the publication Racing Gold, published by Colwood Enterprises Ltd., is a "newspaper" within the ordinary meaning of that word and is therefore eligible for an exemption from federal sales tax under paragraph 3(1)(b), Part III, Schedule III of the *Excise Tax Act*.

W. Roy Hines
W. Roy Hines
Presiding Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

Kathleen Macmillan
Kathleen Macmillan
Member

Robert J. Martin
Robert J. Martin
Secretary

UNOFFICIAL SUMMARY

Appeal No. 3019

COLWOOD ENTERPRISES LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

Excise Tax Act - Sales Tax - Whether the publication Racing Gold is a newspaper and therefore eligible for the exemption from federal sales tax under paragraph 3(1)(b), Part III, Schedule III of the Excise Tax Act.

DECISION: *The appeal is allowed. The publication Racing Gold is a "newspaper" within the ordinary meaning of that word and is therefore eligible for an exemption from federal sales tax under paragraph 3(1)(b), Part III, Schedule III of the Excise Tax Act.*

Place of Hearing: Vancouver, British Columbia

Date of Hearing: May 11, 1989

Date of Decision: September 19, 1989

*Panel Members: W. Roy Hines, Presiding Member
Sidney A. Fraleigh, Member
Kathleen Macmillan, Member*

Counsel for the Tribunal: Donna J. Mousley

Clerk of the Tribunal: Janet Rumball

*Appearances: Karen Gardiner, for the appellant
Jean Fitzgerald, for the respondent*

Case Cited: *The King v. Montreal Stock Exchange and Exchange Printing Company, [1935] C.L.R. 614*

Statute Cited: *Excise Tax Act, R.S.C. 1970 c. E-13 paragraph 3(1)(b) and subparagraph 3(1)(b)(i), Part III, Schedule III.*

Dictionary Cited: *The Shorter Oxford English Dictionary on Historical Principles, Clarendon Press, Oxford, page 1594.*

Appeal No. 3019

COLWOOD ENTERPRISES LTD.

Appellant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

TRIBUNAL:

W. ROY HINES, Presiding Member
SIDNEY A. FRALEIGH, Member
KATHLEEN MACMILLAN, Member

REASONS FOR DECISION

SUMMARY

The appellant, Colwood Enterprises Ltd., publishes Racing Gold each day of the racing season and distributes it both at the race track and at various other outlets in the Vancouver area. The issue in this appeal is whether the publication Racing Gold is accurately described as a newspaper and therefore eligible for the exemption from federal sales tax provided under paragraph 3(1)(b), Part III, Schedule III of the *Excise Tax Act*¹ (the Act).

The appeal is allowed. The Tribunal finds that the publication Racing Gold is a newspaper, as that word is ordinarily defined and according to the test set out in the *Montreal Stock Exchange* case. Racing Gold provides not only a listing of the horse races to be run, but also information, analyses and an editorial commentary on the races for those who want to place bets. It is published regularly in advance of each racing day at Exhibition Park and sold at numerous news outlets throughout the Vancouver area, as well as at the track. While Racing Gold is of particular interest to the betting and horse-racing public, it nonetheless conveys specific information of interest to that public beyond the mere listing of events provided in the official program. Thus, Racing Gold is not the type of publication contemplated by subparagraph 3(1)(b)(i), as a sports publication which serves as a program. While the publication may, on occasion, be used as an informal guide to observers of the horse races, its more notable purpose is to provide betters with information enabling them to place more informed bets, and as such, it qualifies as a "newspaper" for the purpose of claiming the exemption from federal sales tax under paragraph 3(1)(b) of the Act.

THE LEGISLATION

For the purpose of this appeal, the relevant statutory provisions of the Act are as follows:

1. R.S.C. 1970, c. E-13; now R.S.C. 1985, c. E-15.

SCHEDULE III

PART III

*EDUCATIONAL, TECHNICAL, CULTURAL,
RELIGIOUS AND LITERARY*

...

3. (1) *The following printed matter, articles and materials:*

...

(b) magazines and parts thereof; newspapers and parts thereof; articles and materials for use exclusively in the manufacture or production of the foregoing; all the foregoing other than,

(i) cultural, entertainment, sports or like publications that serve as programs,

...

THE FACTS

This is an appeal pursuant to section 51.19 of the Act from a decision of the Minister dated May 20, 1988, that the publication Racing Gold is not eligible for an exemption from federal sales tax under paragraph 3(1)(b), Part III, Schedule III of the Act. In order to qualify for the exemption, the publication must be a "newspaper." The respondent contends that the goods are more accurately described as "... sports or like publications that serve as programs ..." and are thereby excluded from exemption under subparagraph 3(1)(b)(i), Part III, Schedule III of the Act.

The material facts in this appeal are as follows. Racing Gold is published by Colwood Enterprises Ltd. in advance of each horse-racing day at Exhibition Park, Vancouver, British Columbia. The publication is of folded tabloid size, four pages long and contains a listing of the horses running that day, as well as early scratches or changes, jockey and trainer statistics, a short narrative on each horse and a brief editorial opinion entitled Old Ned's Notes.... Handicappers' comments, which appear opposite the name of each horse scheduled to race, are commentaries by the editors based on the past performance of each horse and, in some cases, its rider, which they believe will have an effect upon that horse's race result. The odds of winning are set out for each horse.

While 60 to 65 percent of the issues of Racing Gold are sold at 4 locations at Exhibition Park, it may be purchased at approximately 60 newsstands and grocery stores throughout the Vancouver area, four days a week in advance of any racing day.

Another publication, entitled The Track, calls itself the "Official Program" for Exhibition Park. This publication contains no editorial commentary accompanying the race schedules and is published by the British Columbia Jockey Club (Jockey Club), with whom Colwood Enterprises

Ltd. has entered into a licensing agreement. It was the evidence of Mr. Brent Peters, the owner of Colwood Enterprises Ltd., that the agreement allows the appellant to make use of the Overnight Entries published by the Jockey Club, as the framework for the handicapping guide. In exchange, the Jockey Club receives a percentage of the gross proceeds from the sale of Racing Gold. Mr. Peters stated that the agreement provides that the appellant not make use of the information to enter into competition with the Jockey Club by publishing another "program." As a result, the company prints a disclaimer on the front page of every issue of Racing Gold which states:

Horse numbers published in Racing Gold may not be correct. When wagering, be sure to use the horse numbers listed in the Exhibition Park Official Program. Scratches and changes are reported as of 7:00 a.m. and further changes may be made before post time. Every effort is made to ensure accuracy but all information contained herein is unofficial and the editor and publisher accept no responsibility for loss or inconvenience attributed to errors or omissions which may occur. Official information is found only in the Official Program available at Exhibition Park....

THE ISSUE

The issue in this case is whether Racing Gold is accurately described as a "newspaper" and therefore eligible for the exemption from federal sales tax provided in paragraph 3(1)(b), Part III, Schedule III of the Act.

The appellant's argument is two-fold; first, Racing Gold is a newspaper, and second, it is not a "program." Counsel for the appellant states that Racing Gold meets the definition of "newspaper" cited in *The King v. Montreal Stock Exchange and Exchange Printing Company*, [1935] C.L.R. 614, as follows:

*... a paper printed and distributed at stated intervals * * * to convey news * * * and other matters of public interest.*

This definition, argues counsel, is sufficiently broad to include Racing Gold on the following bases. First, it is printed and distributed at stated intervals. Second, Racing Gold "convey[s] news" as that term is defined in the *Montreal Stock Exchange* case to mean "tidings, new information, fresh events reported." Racing Gold not only presents factual details about prospective races, but also reports and editorializes upon recent events which are expected to have an effect on those races. Third, Racing Gold "convey[s] ... other matters of public interest," such as predictions as to the possible outcome of each race and information which is of particular interest to the betting public. Moreover, as stated in the *Montreal Stock Exchange* case, the mere fact that a publication is meant to interest only a particular segment of the public does not limit the meaning of the word "newspaper." The appellant, in summary, submits that Racing Gold is a publication produced for the purpose of disseminating news and articles of comment or analysis of the news to the public and is, therefore, a newspaper.

As the second ground of argument, counsel for the appellant maintains that Racing Gold is not a program and is not thereby excluded from the federal sales tax exemption pursuant to subparagraph 3(1)(b)(i) of the Act. A program, she submits, is "a guide mainly as to the order of events and participants to facilitate the observance of a performance," and this meaning is supported by the definition provided in The Shorter Oxford English Dictionary, third edition, as follows:

A descriptive notice, issued beforehand, of any formal series of proceedings, as a festive celebration, a course of study, etc.; a prospectus, syllabus; now esp. a list of the items or 'numbers' of a concert, etc., in the order of performance; ...

The appellant argues that, while one function of Racing Gold might be to serve as a guide for observers of the horse races, its more notable purpose is to provide bettors with information enabling them to place more informed bets, and this is done through the reporting and analysis of past race results.

In support of this submission, the appellant refers to the publication entitled The Track, which calls itself the "Official Program" for Exhibition Park. In contrast to Racing Gold, this publication contains no editorial commentary accompanying the race schedules and is the type of publication contemplated by subparagraph 3(1)(b)(i). Also, the exclusive licensing agreement with the Jockey Club, to use its information as a framework for Racing Gold and not to enter into direct competition with them to publish a second program, is indicative that the two publications fulfil different purposes. Last, the appellant submits that a key element of a newspaper is that it reports on past events, while a program's primary function is to list future events. In view of the editorial commentary provided in the publication, the appellant argues that Racing Gold is more appropriately classified as a "newspaper" for the purpose of section 3, Part III, Schedule III of the Act.

The respondent, on the other hand, contends that Racing Gold does not meet the ordinary definition of newspaper in that the publication contains nothing which could be classified as news, editorials, features or advertising. In sum, the publication does not contain any information other than that which relates exclusively to the horse races being run the day of issue and thus, is not a newspaper either in form or in content. Rather, as the publication provides information which serves as a guide to the horse races being run that day, it meets the ordinary definition of a program.

Counsel for the respondent further submits that primary consideration must be given to the wording of the exemption in question. Subparagraph 3(1)(b)(i) states specifically that "... cultural, entertainment, sports or like publications that serve as programs ..." are to be excluded from the exemption provided for newspapers. In interpreting whether a publication serves as a program, counsel for the respondent states that the Tribunal must first look at the function of the publication. As the function of Racing Gold is to serve as a program of events or a guide to that group of the public who will be placing bets, either by phone or at the race track, counsel for the respondent contends that it is among the group of publications which are excluded under subparagraph 3(1)(b)(i).

DECISION

Both parties acknowledged the leading case on this issue to be *The King v. Montreal Stock Exchange and Exchange Printing Company, supra*. This decision of the Supreme Court of Canada considered whether the daily stock exchange sheets, issued in respect of transactions on the Montreal Stock Exchange and the Montreal Curb Exchange, and the weekly comparative reviews of transactions on the two exchanges, fell within the meaning of the word "newspapers" as used in Schedule II of the *Special War Revenue Act* and were, therefore, exempt from taxation under the provisions of that Act. Justice Kerwin found that the publication met the requirements of the definition of "newspaper" in Webster's New International Dictionary as, "A paper printed and distributed at stated intervals ... to convey news ... and any other matters of public interest." With regard to the publication's circulation, he stated, at p. 616:

... the mere fact that any particular publication is meant to interest only a section of the public does not limit the meaning of the expression as a reference to religious or fraternal publications will at once make clear. The sheets in question contain not merely a record of transactions on the Exchange or curb market but also information to those desiring it as to such transactions; and the other items from time to time included give "tidings, new information, fresh events reported," (vide Concise Oxford Dictionary defining "news").

The Tribunal finds that the publication Racing Gold is a newspaper as that word is ordinarily defined and according to the test set out in the *Montreal Stock Exchange* case. The court, in that case, held that the publication at issue contained not merely a record of transactions on the Exchange, but also information concerning those transactions, and such information was regarded as news. In the same vein, Racing Gold provides not merely a listing of the horse races to be run, but also information, analyses and an editorial commentary on the races for those who want to place bets.

Racing Gold is published regularly in advance of each racing day at Exhibition Park and sold at numerous news outlets throughout the Vancouver area, as well as at the track. Racing Gold also conveys news, as that term is defined in the *Montreal Stock Exchange* case. The handicappers' comments, which accompany each horse listing, provide an analysis of past information to produce a commentary or prognosis of the possible outcome of the races. The editor compiles and reports the jockey and trainer statistics and writes Old Ned's Notes, an editorial commentary. As stated in the *Montreal Stock Exchange* case, the mere fact that a publication is meant to interest only a particular segment of the public does not limit the meaning of the word "newspaper." Racing Gold is of particular interest to the betting and horse-racing public, but it nonetheless conveys specific information of interest to that public beyond the mere listing of events provided in the official program.

The Tribunal, therefore, finds that Racing Gold is not the type of publication contemplated by subparagraph 3(1)(b)(i), as a "sports or like publications that serve as programs." While the publication may, on occasion, be used as an informal guide to observers of the horse races, its more notable purpose is to provide betters with information enabling them to place more informed

bets, and as such, it qualifies as a "newspaper" for the purpose of claiming the exemption from federal sales tax under paragraph 3(1)(b) of the Act.

CONCLUSION

The appeal is allowed. The Tribunal declares that the publication Racing Gold, published by Colwood Enterprises Ltd., is a "newspaper" within the ordinary meaning of that word and is therefore eligible for an exemption from federal sales tax under paragraph 3(1)(b), Part III, Schedule III of the *Excise Tax Act*.

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