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RECENT DEVELOPMENTS

Advertised Value of Trading Stamps Is Basis for State Sales Tax—*Red Head Premium Co. v. Schneider**

Taxpayer, a trading stamp company, indicated in its catalog the number of stamps necessary to acquire various items of merchandise, and advertised in the catalog and on the face of each stamp that when exchanged for these items each stamp had a value of one cent. Consumers could, however, exchange the stamps for cash rather than merchandise at the rate of one mill per stamp. In addition, consumers not holding sufficient stamps to acquire a particular item of merchandise could make up the difference in cash by paying approximately two thirds of the advertised stamp value. Customers dealing strictly on a cash basis could obtain merchandise for two thirds of the advertised value.¹ Pursuant to section 5739.01(H) of the Ohio Revised Code, which bases the sales tax on "the aggregate value in money of anything . . . delivered . . . in the complete performance of a retail sale,"² the Tax Commissioner determined that, for the purpose of taxing merchandise-for-stamp transactions, the "aggregate value in money" of the stamps was their advertised value. This determination was approved by the Ohio Board of Tax Appeals.³ On appeal to the Supreme Court of Ohio, *held*, affirmed, two justices dissenting. The sales tax to which a trading stamp company is subject is based on the advertised value of stamps exchanged for merchandise.

Although it is well established that the transfer of an article of merchandise to a consumer in exchange for trading stamps is a retail sale subject to a sales tax,⁴ the base upon which such a tax should

* 1 Ohio St. 2d 45, 203 N.E.2d 315 (1964) (hereinafter cited as principal case).

1. For example, a consumer could acquire an item having an advertised catalog price of 900 stamps (that is, a claimed merchandise value of \$9.00) in three ways: (1) by presenting 900 stamps; (2) by presenting fewer than 900 stamps plus a sum of money — e.g., 300 stamps and \$4.00 ($\$6.00 \times \frac{2}{3}$); or (3) by presenting \$6.00 ($\$9.00 \times \frac{2}{3}$).

2. OHIO REV. CODE ANN. § 5739.01(H) (Page 1964): "(H) 'Price' means the aggregate value in money of anything paid or delivered, or promised to be paid or delivered in the complete performance of a retail sale, without any deduction on account of the cost of the property sold, cost of materials used, labor or service cost, interest or discount paid or allowed after the sale is consummated, or any other expense. . . ."

3. OHIO B.T.A. Case No. 52064 (Nov. 26, 1963).

4. E.g., *Grand Duchess Steaks v. Bowers*, OHIO B.T.A. Case No. 36791 (July 10, 1958). In the principal case both parties agreed that the transactions under consideration constituted sales within the purview of OHIO REV. CODE ANN. § 5739.01 (Page 1964). Principal case at 48, 203 N.E.2d at 318.

For sales tax purposes, courts have in the past labeled the redemption transaction either as a "transfer of claim," *State Tax Comm'n v. Ryan-Evans Drug Stores*, 89 Ariz. 18, 357 P.2d 607 (1960); a "system of advanced spending and deferred enjoyment," *State Tax Comm'n v. Consumer's Mkt., Inc.*, 87 Ariz. 376, 351 P.2d 654 (1960); or a "sale at retail," *Southern Premium Stamp Co. v. United States*, 191 F. Supp. 158 (M.D. Ga. 1960), *aff'd per curiam*, 289 F.2d 319 (1961).

be assessed⁵ is not uniformly settled.⁶ In the principal case the unique statutory formula defining the tax base as the "aggregate value in money of anything . . . delivered . . . in the complete performance of a retail sale," coupled with the unusual fact that taxpayer advertised that each stamp had a merchandise value of one cent, led the Ohio Supreme Court to choose the advertised value of the stamps as the appropriate tax base. However, instead of basing the tax upon the advertised value of the stamps, the court might have based the sales tax on one of three alternative amounts.

First, the court could have adopted taxpayer's argument that the "aggregate value in money" of the stamps was the amount of money for which the stamps could be exchanged—one mill per stamp.⁷ The court, however, correctly dismissed this contention because taxpayer, in computing past sales for sales tax purposes, had consistently valued each stamp in excess of one mill.⁸ Furthermore, the one-mill valuation had been established only because the legislature required that some minimum amount be available for those who preferred cash to merchandise in exchange for their stamps.⁹ The

5. Eighteen of the twenty states with relevant rulings or regulations have suggested a basis for assessing the tax. A complete listing of the statutes and regulations may be found in 1 CCH ALL-STATE SALES TAX REP. ¶¶ 4-025, 7-025 (1965). In almost every statute the tax is said to be based on the "sales price." Although some variation exists, "sales price" is generally defined as the "total amount for which tangible personal property is sold, leased or rented, valued in money, whether paid in money or otherwise." *E.g.*, 1 CCH ALL-STATE SALES TAX REP. ¶ 4-025.09 (1965) (California); 1 CCH ALL-STATE SALES TAX REP. ¶ 4-025.48 (1965) (Tennessee). The definition does not solve the problem, because the same language has been given a variety of constructions. See note 6 *infra* for an outline of some of the principal interpretations that have been given to the statutory language.

6. State tax commission rulings and regulations have used broad, general language to describe the proper price base upon which to assess the tax. Illustrative language describing the price base includes: (1) "retail market value of the merchandise received" (*Ala.*: 2 CCH ALL-STATE SALES TAX REP. ¶ 20-912C (1964) (The "fixed value" of the trading stamp is the least value which may serve as a measure of the sales tax. If such value is less than the fair market value the latter serves as a basis.); *Ill.*: 2 CCH ALL-STATE SALES TAX REP. ¶ 34-596 (1965); *Pa.*: 4 CCH ALL-STATE SALES TAX REP. ¶ 63-773 (1965)); (2) "actual retail selling price of the redemptive value of stamps surrendered" (*Idaho*: 2 CCH ALL-STATE SALES TAX REP. ¶ 33-515 (1965); *Mich.*: 3 CCH ALL-STATE SALES TAX REP. ¶ 44-662 (1965); *Ops. ATT'Y GEN.* (April 4, 1960); *N.C.*: 4 CCH ALL-STATE SALES TAX REP. ¶ 58-537(C) (1966); *R.I.*: 4 CCH ALL-STATE SALES TAX REP. ¶ 66-585(a) (1963)); (3) the "actual retail selling price of the redemptive value of stamps surrendered or the reasonable retail price of the merchandise, whichever is greater" (*Miss.*: 3 CCH ALL-STATE SALES TAX REP. ¶ 46-524 (1964); *Tex.*: 4 CCH ALL-STATE SALES TAX REP. ¶ 70-517 (1964)); (4) "cash value" (*Ky.*: 3 CCH ALL-STATE SALES TAX REP. ¶ 38-565 (1960)); and (5) a "per cent rate of the value of the stamp book and any cash paid" (*Fla.*: 2 CCH ALL-STATE SALES TAX REP. ¶ 30-558 (1964)).

7. Brief for Appellant, pp. 10-13, principal case.

8. Principal case, at 46-47, 203 N.E.2d at 317.

9. OHIO REV. CODE ANN. §§ 1333.01-.02 (PAGE 1964): "No person shall sell or issue a . . . trading stamp . . . unless [it] . . . has legibly printed or written upon the face thereof the redeemable value thereof in lawful money of the United States. Whoever sells or issues . . . [a] trading stamp . . . which entitles the holder thereof, on presentation thereof . . . to receive from the vendor . . . merchandise, shall redem

one-mill valuation established by taxpayer was disproportionately low compared to the stamps' advertised value, since taxpayer understandably did not wish to encourage exchanges for cash.¹⁰

Second, the court might have determined the "aggregate value in money" by ascertaining the value of the merchandise given in exchange for the stamps. This value could have been established by an item's value on the open market¹¹ or the value ascribed to the item by taxpayer when it accepted cash in place of stamps.¹² In both instances the value approximated two thirds of the advertised value.¹³

Third, since the "aggregate value in money" is to be determined "in the complete performance of a retail sale," the court might have based the tax on the amount of money actually collected by taxpayer for the merchandise. This can be accurately computed only by taking into account both the amount of money received by taxpayer from

them upon presentation, either in goods, wares, merchandise, or money, at the option of such holder, at the value in money printed on the face thereof" In the instant case the cash value of a stamp was one mill. An examination of the section quoted above and § 5739.01(H) defining "price" (see note 2 *supra*) indicates that both speak of "value in money," which appears to be clearly stated on the coupon. It would appear that this cash value is the "aggregate value in money" of the stamp in the customer's hands. See Brief for Appellant, pp. 11-12, principal case. *But see* Brief for Appellee, p. 8, principal case.

Sixteen states require that stamps be redeemable in cash or merchandise at the consumer's option. 37 N.Y.U.L. REV. 1090, 1123 (1962). The cash value is almost always much lower than the merchandise redemption value. *Id.* at 1095. Indiana is the only state which requires the cash value to equal the merchandise redemption value. IND. ANN. STAT. § 58-704 (1961).

10. "Usually, when a statute is enacted requiring redemption in cash at the option of the holder, the stamp companies are free to lower the cash value of their stamps Stamp companies would rather redeem in merchandise, for it is the merchandise that not only provides the basis for attractive advertising, but also provides the means for increased profits. The more merchandise bought, the lower the cost of redemption." 37 N.Y.U.L. REV. 1090, 1096 & n.38 (1962).

11. See, e.g., *United Cigar Stores Co. v. United States*, 50 F.2d 466 (Ct. Cl.), *cert. denied*, 284 U.S. 666 (1931); *United Profit Sharing Corp. v. United States*, 43 F.2d 266 (Ct. Cl.), *cert. denied*, 282 U.S. 881 (1930) (Federal Retail Excise Tax); *Southern Premium Stamp Co. v. United States*, 191 F. Supp. 158 (M.D. Ga. 1960), *aff'd per curiam*, 289 F.2d 319 (5th Cir. 1961) (Federal Retail Excise Tax); *Colgate & Co. v. United States*, 66 Ct. Cl. 510, *cert. denied*, 280 U.S. 553 (1928) (Federal Retail Excise Tax); *Grand Duchess Steaks v. Bowers*, OHIO B.T.A. Case No. 36791 (July 10, 1958); *cf.* 1 CCH ALL-STATE SALES TAX REP. 4-025.41 (1965), where a letter from the Ohio Division of Sales and Excise Taxes (May 9, 1951) indicated that "premiums received by a customer in exchange for labels are taxable as sales on the fair value of the commodity exchanged." See also note 6 *supra*.

12. The cash amount charged was determined by the number of stamps stated in the catalog as being required for an item, less $33\frac{1}{3}\%$. Thus in every instance the cash price was $66\frac{2}{3}\%$ of the advertised stamp price. When merchandise was purchased for cash, the sales tax was computed on the cash price and charged to the consumer. See principal case at 47, 203 N.E.2d at 317. Nevertheless, these cash sales comprised a substantial portion of taxpayer's business—\$39,939. Principal case at 49, 203 N.E.2d at 318. Merchandise is no longer sold by taxpayer solely for cash. Telephone conversation with agent of Red Head Premium Company, Nov. 4, 1965.

13. Principal case at 47, 203 N.E.2d at 317.

the retailer for the stamps and the number of stamps ultimately redeemed by consumers for merchandise.¹⁴ If all stamps were redeemed, the court could have justified the difference between the second suggested alternative—two thirds of one cent per stamp—and the one cent per stamp valuation which it chose, on the ground that the one-third cent margin was necessary to provide for a reasonable profit and the additional operating expenses¹⁵ involved in the “complete performance of a retail sale.” However, since not all stamps distributed during the period in question in the principal case were redeemed,¹⁶ the margin considered reasonable by the court was in fact excessive, for the unredeemed stamps introduced an additional profit factor. Moreover, the fact that taxpayer made a substantial number of strictly cash sales,¹⁷ and thus incurred fewer expenses in those transactions than the costs normally associated with stamp

14. For example, if taxpayer sold 100,000 stamps to a given retailer at its standard rate of 65 cents per hundred, taxpayer would receive an “aggregate value in money” of \$650 ($\$.0065 \times 100,000$). Based on past experience it was established that only 75% of taxpayer’s stamps would ultimately be redeemed for merchandise. Therefore, dividing the aggregate value received for all stamps sold by the total number of stamps to be redeemed, the value of each stamp as part of the “aggregate value in money” received for an item by taxpayer would be \$.008667 ($\$650/75000$).

The company sold its stamps to retailers for a “price” of 65 cents per hundred to the oil companies and 75 cents per hundred to the laundries. Only the former price is used here to compute “aggregate value in money,” but the underlying rationale would also apply to the latter price. The unusual character of taxpayer’s operations is illustrated by the fact that it used two different prices in selling to retailers. Taxpayer knew precisely which stamps were returned since it computed the gross amount of its exchanges and redemptions in money by multiplying the number of stamps redeemed by either the factor \$.0065 or \$.0075, and then cancelled sales tax stamps in the amounts so determined. Principal case at 46-47, 203 N.E.2d at 317.

It is suggested that the \$.008667 valuation might have satisfied both parties. This valuation is basic to an argument advanced by taxpayer that the consumer is a third-party beneficiary of the contract for the sale of stamps by the stamp company to the retailer since the retailer simply passes the stamps on to the consumer. Thus, taxpayer concluded that in the “complete performance of a retail sale” the real consideration for the merchandise given by the consumer to the stamp company is the \$.0065 per stamp given by the retailer to the stamp company. Brief for Appellant, pp. 14-15, principal case. Taxpayer’s contention merely fails to consider the margin created by the unredeemed stamps. Had taxpayer been willing to concede that the “aggregate value in money” of the stamps included not only the cost of the stamps to the retailer, but also the margin introduced by the unredeemed stamps, the court might have accepted the \$.008667 valuation since it accounts for the additional expenses deemed important to the Tax Commissioner in his assessment. Principal case at 49, 203 N.E.2d at 318.

15. *E.g.*, handling and packaging of merchandise to be mailed, plus printing and publishing of catalogs. Principal case at 49, 203 N.E.2d at 318. Such expenses would be nondeductible for sales tax purposes.

16. It was proved that 25% of the stamps distributed were never offered for redemption. *Ibid.* This low rate of redemption is quite unusual for the “typical” trading stamp company. See, *e.g.*, U.S. DEP’T OF AGRICULTURE, TRADING STAMPS AND THEIR IMPACT ON FOOD PRICES 6 (MARKETING RESEARCH REP’T No. 295, 1958). See also 37 N.Y.U.L. REV. 1090, 1097 (1962).

17. Principal case at 49, 203 N.E.2d at 318.

transactions, demonstrates that the "aggregate value in money" of the stamps was in reality some value greater than that determined in a merchandise-for-cash transaction but less than the advertised stamp value.

The court's adoption of the highest of the alternative valuation bases suggests that its choice of a sales tax price base might have been influenced by economic considerations relating to trading stamp practice. While the concept is not explicit within the opinion, the court may have reasoned that it could best serve the public interest by heavily taxing an entity which tends to increase retail prices.¹⁸ However, the truism that a consumer pays the costs of doing business should not be viewed as convincing proof that stamps are paid for by higher retail prices.¹⁹ In fact, a substantial body of statistical data indicates that stores which give trading stamps do not necessarily raise prices to accommodate the extra cost of the stamp plan,²⁰ and

18. This argument must necessarily be based on the assumption that the trading stamp company will absorb the full amount of the tax; if it does not, the tax will eventually be passed on to the consumer in the form of higher prices. It is quite possible that low profit margins may not allow such "absorption." In such a case, the company could deflate the merchandise value of the stamps, or increase the advertised value of goods while keeping the stamp value the same. Both alternatives would seem to harm the consumer. Devaluing the stamp would reduce the amount the consumer gets for each stamp; increasing an item's advertised value would cause the consumer to be further misled by the company's representations. If, as in most states, the company is required to collect the tax from the consumer, and then pay it over to the tax commissioner, a still heavier burden would be placed on the consumer by the imposition of the tax on the advertised value.

19. Vredenburg, *Trading Stamps*, 21 IND. BUS. REP. 1, 111-12 (1956).

20. See, e.g., U.S. BUREAU OF LABOR STATISTICS, CONSUMER PRICE INDEX—RETAIL PRICES BY CITIES 30 (Bull. No. 1217, 1956), cited in Beem, *Who Profits From Trading Stamps?*, 35 Harv. Bus. Rev., Nov.-Dec. 1957, pp. 123, 130; Beem, *supra*, at 131; Charvat, *The Economics of Trading Stamps*, 7 J. PUB. L. 450, 459-60 (1958); Haring & Yoder, *Trading Stamp Practice and Pricing Policy*, 27 IND. BUS. REP. 1, 225-38 (1958); Vredenburg, *supra* note 19, at 93-112. Such data are by no means determinative. A raging controversy continues to exist as to whether trading stamps do increase prices to the consumer. E.g., compare Strotz, *On Being Fooled by Figures: The Case of Trading Stamps*, 31 J. Bus. 304 (1958), with Beem, *On Being Fooled by Statisticians: The Case of Professor Strotz*, 32 J. Bus. 279 (1959). For an excellent study indicating the percentage changes in retail prices between 1947 and 1962, according to various methods of valuing stamps received and redeemed, see Hoover & Drake, *Trading Stamps and the Consumer Price Index*, MONTHLY LABOR REV. 429 (1965). See also TRADING STAMPS AND THEIR IMPACT ON FOOD PRICES, *supra* note 16, at 16-25, and U.S. DEP'T OF AGRICULTURE, TRADING STAMPS AND THE CONSUMER'S FOOD BILL 5, 7 (MARKETING RESEARCH REP'T NO. 169, 1957) (suggesting that stores may have to increase their prices only if sales do not increase and stamps do not reduce some of their other expenses); U.S. DEP'T OF AGRICULTURE, DO TRADING STAMPS AFFECT FOOD COSTS? 1, 3 (MARKETING RESEARCH REP'T NO. 147, 1957); 111 CONG. REC. 20200-01 (1965) (remarks of Congressman Wolff). Because stores giving stamps offer fewer "special" sales it has been intimated that this, in effect, is a price increase to the consumer shopping in such stores. Charvat, *supra*, at 459. Many of the studies which indicate a price differential between goods sold in stores which give stamps and those sold in stores which do not give stamps reflect price reductions in the stores which do not give stamps. See Haring & Yoder, *supra*, at 305.

that their prices are not necessarily higher than those for comparable items in stores which do not give stamps.²¹ Although it seems logical that the consumer would ultimately pay the expenses of doing business, the economics of overhead cost theory negate the validity of such a proposition.²² If the retailer can sufficiently increase his sales volume, the resulting reduction in the operating expense ratio²³ may not only cover the cost of the stamps,²⁴ but may conceivably motivate the retailer to share his increased profits with the consumer in the form of lower prices.²⁵

A more logical underlying rationale, then, is that the court was attempting to penalize the company for its representations to the consumer. Taxpayer maintained that its stamps could be exchanged for merchandise having a value equal to a four per cent cash discount on the dollar amount of purchases required to obtain the

21. *Id.*, at 225-38; Vredenburg, *supra* note 19, at 111. Because of the vast number of factors to be accounted for, such comparisons between prices are especially difficult.

22. *Ibid.*

23. The operating expense ratio is the ratio of sales volume to overhead expenses. For the effect of a stamp plan on retail grocers' profits, expense ratios, and net profits, see VOLUNTARY AND COOPERATIVE GROUPS MAGAZINE, March 1954, p. 46, cited in Vredenburg, *supra* note 19, at 102-03; *What Operators Say About Trading Stamps*, Supermarket Merchandising, June 1956, p. 107, cited in Beem, *Who Profits From Trading Stamps?*, 35 Harv. Bus. Rev., Nov.-Dec. 1957, p. 129.

24. The retailer usually incurs a cost of 2-3% of his sales in order to try to increase his sales volume by initiating a stamp-distribution plan. This means that in order for him to gain additional profits, his volume must increase between 10% and 15%. The stamps are intended to cause the necessary increase by inducing present customers to patronize his store more often and by attracting new customers. Haring & Yoder, *supra* note 20, at 301. A wealth of data indicates that under favorable conditions the average percentage of volume increase in food stores is between 25% and 30%. *E.g.*, *Industry Reviews Premium Plans*, Supermarket Merchandising, August 1953, p. 37, cited in Beem, *supra* note 23, at 125. See also Charvat, *supra* note 20, at 29; Trout, *How Trading Stamps Affect Volume and Earnings*, Progressive Grocer, August 1956, pp. 48, 50; Vredenburg, *supra* note 19, at 93. For a general discussion of other factors that may offset the cost of stamps to a retailer, see Charvat, *supra* note 20, at 456-59.

25. It has been suggested that prices are effectively lowered by the installation of stamps which increase volume enough to cover costs and at the same time offer a valuable rebate in cash or merchandise. See Davis, *The Economics of Trading Stamps*, 32 J. Bus. 141-50 (1959). Without stamps the retailer might be able to lower his prices somewhat or offer more "specials" without risking a loss from the expense of a stamp program. However, current information reveals that the typical consumer chooses a store primarily for its convenient location and not for its prices, quality of goods, or stamps. *How Strong Is the Trading Stamp Tug on the Shopper?*, 283 Printers Ink, May 10, 1963, pp. 9-10; *Supermarket Shoppers, Their Buying Habits and Attitudes*, 4TH ANNUAL CONTINUING REP. (Cincinnati: Burgoyne Grocery and Drug Index, Inc., 1957) (covering Cincinnati, Columbus, Milwaukee and St. Louis), cited in Haring & Yoder, *supra* note 20, at 280. This supplies at least one reason why a small independent store which does not give stamps may survive with prices equal to or higher than those charged by a store giving stamps. If, on the other hand, it is equally convenient for the consumer to patronize either store, he will choose the small store only if its prices are lowered by a greater amount than the corresponding value in stamps received in the higher priced stores. See, *e.g.*, DO TRADING STAMPS AFFECT FOOD COSTS, *op. cit.* *supra* note 20, at 5; Haring & Yoder, *supra* note 20, at 305.

stamps.²⁶ For example, a customer who bought one hundred dollars worth of gasoline theoretically should have received trading stamps which could be redeemed for merchandise having a fair market value of four dollars. However, the four dollar "value" of an item of merchandise represented by the cash discount, which in the principal case equaled the advertised value of that merchandise, was substantially greater than its fair market value.²⁷ Furthermore, this advertised value was held out to the public and relied on by the consumer in the selection of merchandise.²⁸ Unlike most stamp companies, taxpayer went beyond general representations of value, and specifically claimed that its stamps could be exchanged for merchandise of a definite value. Thus, it could effectively be argued that, by comparing department store retail prices to those of merchandise in taxpayer's catalog,²⁹ the court in the instant case could hardly ignore the taxpayer's flagrant "price puffing" that led consumers to believe that the stamps they received were worth more than their actual value.³⁰

26. Companies generally claim that their stamps may be exchanged for merchandise equal to a 2-3% cash discount. See 37 N.Y.U.L. REV. 1090, 1096 (1962). In the principal case four stamps were given for every dollar spent. Since even the 2-3% discount claimed by most established companies is greater than the fair market value of received merchandise, it is more evident that taxpayer's claims went unsubstantiated. See TRADING STAMPS AND THE CONSUMER'S FOOD BILL, *op. cit. supra* note 20, at 6. In the principal case taxpayer explicitly stated in its catalog that each book of 200 stamps had a retail value of \$2.00 in merchandise and that articles were "priced in terms of coupons." No other stamp company has been found that indicates the merchandise value of a filled book. In addition, taxpayer printed on the face of each stamp a "premium value" of one cent, which suggested that for every stamp exchanged the consumer received merchandise having a retail value of one cent. Principal case at 47, 203 N.E.2d at 317.

27. *Cf.* note 20 *supra*; 37 N.Y.U.L. REV. 1090, 1095-1100 (1962).

28. Also, it seems quite likely that a consumer would think a stamp deficiency could be satisfied only by offering the company one cent for each stamp needed. In fact, the consumer could make up any such deficiency by offering two-thirds of a cent. Principal case at 50, 203 N.E.2d at 318.

29. See principal case at 48, 203 N.E.2d at 317.

30. *Cf.* DO TRADING STAMPS AFFECT FOOD COSTS?, *op. cit. supra* note 20, at 4-5; TRADING STAMPS AND THE CONSUMER'S FOOD BILL, *op. cit. supra* note 20, at 5-6; Charvat, *supra* note 20, at 453; Davis, *supra* note 25, at 141-45; 37 N.Y.U.L. REV. 1090, 1095-1100 (1962). It appears that no major trading stamp companies represent their stamps to be worth any specific value in merchandise. Saying that the consumer is misled, however, perhaps attributes too little sophistication to the consumer, who may buy the merchandise from taxpayer with cash if he pleases or may choose to purchase in a store which gives no stamps, and does not take into consideration the fact that, like any retailer, the trading stamp company is free to set its own "price" on merchandise.

The advertised "premium value" stated on the stamp and in the catalog served as the price base for the assessment in the principal case. The effort here has been not to justify the result reached by the court but only to offer a plausible explanation for it. It is suggested that if each company knew that it would be required to pay a sales tax determined by the stated premium value of each stamp, there would seem to be little to prevent the company from declaring the premium value to be something substantially less than one cent.

Viewed in this light, it seems clear that the principal case should be limited to instances in which trading stamp companies expressly represent their stamps to be worth a specific value in merchandise. It seems equally clear, however, that the court has not interpreted the statute correctly, influenced perhaps by a failure to recognize that trading stamp companies may enhance economic growth. Therefore, it is hoped that the principal case will not be extended in application beyond the Ohio statute and the unique practice employed by taxpayer.
