215 Va. 732
CLERK
SUPREME COURT OF VIRGINIA
RECEIVED
NOV 26 1974
RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 740601

COMMONWEALTH OF VIRGINIA DEPARTMENT OF TAXATION,

Appellant,

v.

THE PROGRESSIVE COMMUNITY CLUB OF WASHINGTON COUNTY, VIRGINIA, INCORPORATED,

Appellee.

APPENDIX TO BRIEF

ANDREW P. MILLER
Attorney General of Virginia

CHARLES K. TRIBLE
Assistant Attorney General

P. O. Box 6-L
Richmond, Virginia 23282
Counsel for Appellant

TABLE OF CONTENTS

		Page
Application for Correction of Erroneous Assessment		1
Answer		5
Memorandum Opinion		7
Addendum to Memorandum Opinion		22
Final Decree		25
Notice of Appeal and Assignment of Error		27
Transcript of December 3, 1973:		
Petitioner's witness:		
Amelia B. McConnell:	Direct	29
	Cross	43
	Re-Direct	54 & 71
	Re-Cross	72
Respondent's witness:		
Frank W. Lewis, III:	Direct	58
	Cross	65
Respondent's Exhibits:		
No. 1		76

APPLICATION FOR CORRECTION OF ERRONEOUS ASSESSMENT

Now comes the petitioner, by counsel, and says as follows:

1. The petitioner is a Virginia non-stock corporation with its principal office in Washington County, Virginia.

2. The respondent Department of Taxation, whose chief executive officer is the State Tax Commissioner, has, through its Sales and Use Tax Division, assessed the petitioner with certain State taxes under the Virginia Retail Sales and Use Tax Act, Chapter 8.1 of Title 58 of the Code of Virginia. Said assessment is in the total amount of $4,165.48, including interest, and covers a period from December of 1966 through May of 1973. Copies of the Notices of Assessment issued by the respondent in regard to this tax are attached hereto as an exhibit.

3. The date of said assessment was October 10, 1973, which assessment has been paid in full under protest by the petitioner.

4. The assessment described hereinabove is erroneous for the reasons hereinafter set forth.

5. Said assessment is erroneous in that the petitioner is exempt from all or part of said tax by reason of Section 58-441.6(l) of the Code of Virginia and Section 58.-441.6(t) of the Code of Virginia.

6. The assessment is erroneous in that it was assessed in part beyond the period of limitations prescribed by Section 58-441.38 of the Code of Virginia.

7. The erroneous assessment herein described was not caused by the willful failure or refusal of the applicant upon request to furnish a list of his property or other relevant information.

Wherefore, pursuant to the provisions of Chapter 22 of Title 58 of the Code of Virginia, the petitioner respectfully requests the Court to order that there be refunded to the petitioner the amount paid under the above described assessment and that the Court order the petitioner exonerated from the payment of future assessments in this regard, together with interest on such overpayment pursuant to the provisions of Section 58-1140.1 of the Code of Virginia.

THE PROGRESSIVE COMMUNITY CLUB
OF WASHINGTON COUNTY, VIRGINIA,
INCORPORATED

By Counsel

PENN, STUART & ESKRIDGE
208 East Main Street
Abingdon, Virginia 24210

By _____
JAMES P. JONES
Counsel for the Petitioner

Filed in the Clerk's Office the 25th day of October, 1973

Writ Tax $ 5.00
Fee 25.00
Deposit by 1.00
Total Paid $ 31.00

Teste:

_____, Clerk

Shirley Rhymer D. C.

2

2 KEEP THIS COPY FOR YOUR RECORDS

ACCOUNT NUMBER CONSUMER G
BILL NUMBER 42864 35
DATE OF ASSESSMENT 10-10-73
DO NOT USE THIS SPACE

FOR DEPT. OF TAXATION USE	PERIOD OF AUDIT	REASON (SEE BACK)	TAX	AMOUNT
3000 U P	JULY 1963	G	STATE USE TAX	$ 2,548.25
3000 T P	THRU	G	STATE USE TAX INTEREST	152.90
******	MAY 1973	G	LOCAL USE TAX	922.43
******		G	LOCAL USE TAX INTEREST	55.36

NAME AND ADDRESS OF TAXPAYER
THE PROGRESSIVE COMMUNITY CLUB
OF WASHINGTON CO INC
200 E MAIN ST
ABINGDON VA 24210

TOTAL AMOUNT DUE & PAYABLE → $ 3,678.94

IF THIS ASSESSMENT IS INCORRECT OR YOU WISH TO PROTEST THE ABOVE ASSESSMENT, YOU MUST DO SO IN WRITING WITHIN 90 DAYS FROM DATE OF ASSESSMENT.
THIS STATEMENT DOES NOT INCLUDE ANY ASSESSMENT OF TAX, PENALTY OR INTEREST FOR ANY REPORTING PERIOD OTHER THAN SHOWN ABOVE.

STAMPS CANNOT BE ACCEPTED IN PAYMENT OF TAXES.
FORM NO. ASD 80 EFF. 1-1-73

NOTICE OF ASSESSMENT
COMMONWEALTH OF VIRGINIA DEPARTMENT OF TAXATION
P. O. BOX 760, RICHMOND, VA. 23206

IF NOT PAID WITHIN 30 DAYS FROM DATE OF THIS ASSESSMENT, INTEREST WILL ACCRUE AT THE RATE OF 6% PER ANNUM.

10/09/73

2 KEEP THIS COPY FOR YOUR RECORDS

ACCOUNT NUMBER CONSUMER G
BILL NUMBER 42860 86
DATE OF ASSESSMENT 10-10-73
DO NOT USE THIS SPACE

FOR DEPT. OF TAXATION USE	PERIOD OF AUDIT	REASON (SEE BACK)	TAX	AMOUNT
3000 U P	DECEMBER 1966	G	STATE USE TAX	$ 459.00
3000 T P	THRU JUNE 1968	G	STATE USE TAX INTEREST	27.54

NAME AND ADDRESS OF TAXPAYER
THE PROGRESSIVE COMMUNITY CLUB
OF WASHINGTON CO., INC
200 E MAIN ST
ABINGDON VA 24210

TOTAL AMOUNT DUE & PAYABLE → $ 486.54

IF THIS ASSESSMENT IS INCORRECT OR YOU WISH TO PROTEST THE ABOVE ASSESSMENT, YOU MUST DO SO IN WRITING WITHIN 90 DAYS FROM DATE OF ASSESSMENT.
THIS STATEMENT DOES NOT INCLUDE ANY ASSESSMENT OF TAX, PENALTY OR INTEREST FOR ANY REPORTING PERIOD OTHER THAN SHOWN ABOVE.

STAMPS CANNOT BE ACCEPTED IN PAYMENT OF TAXES.
FORM NO. ASD 80 EFF. 1-1-73

NOTICE OF ASSESSMENT
COMMONWEALTH OF VIRGINIA DEPARTMENT OF TAXATION
P. O. BOX 760, RICHMOND, VA. 23206

IF NOT PAID WITHIN 30 DAYS FROM DATE OF THIS ASSESSMENT, INTEREST WILL ACCRUE AT THE RATE OF 6% PER ANNUM.

10/09/73

EXHIBIT

3

ANSWER

Now comes the respondent, Commonwealth of Virginia, Department of Taxation, Stuart W. Connock, Acting State Tax Commissioner, by the Attorney General, and answers the Application served upon him in this cause and says:

(1) The respondent admits the facts and allegations of paragraphs 1, 2, 3 and 7 of the Application except that with respect to paragraph 7 the respondent denies that the assessment is erroneous.

(2) The respondent denies the facts and allegations of paragraphs 4, 5 and 6 of the Application.

And now, having fully answered, the respondent requests that the Court deny the relief requested in the Application and declare the assessment to be correct.

COMMONWEALTH OF VIRGINIA

DEPARTMENT OF TAXATION

STUART W. CONNOCK
Acting State Tax Commissioner

By Charles K. Trible
Charles K. Trible
Assistant Attorney General

FILED
Nov. 13, 1973
E. H. Smith
CLERK
CIRCUIT COURT
WASHINGTON COUNTY, VA.

Andrew P. Miller
Attorney General of Virginia

Charles K. Trible
Assistant Attorney General
P. O. Box 6-L
Richmond, Virginia 23282

CERTIFICATION

I hereby certify that the original of the foregoing Answer has been mailed to the Clerk of this Court for filing and a true copy thereof has been likewise mailed to James P. Jones, Esquire, Penn, Stuart & Eskridge, 208 East Main Street, Abingdon, Virginia 24210, counsel for petitioner, on this 9th day of November, 1973.

Charles K Trible
Assistant Attorney General

MEMORANDUM OPINION

PRELIMINARY

This proceeding involves the question of whether the Progressive Community Club of Washington County, Virginia, Inc., a Virginia non-stock, non-profit corporation, is exempt under the provisions of Code Section 58-441.6 (t), from sales and use taxes assessed by and paid under protest to the Department of Taxation on certain tangible property purchased and used by it in connection with its Child Development Head Start Program. Before trial, it abandoned other claims originally asserted.

The pertinent Code Section exempts:

> "(t) Tangible personal property for use or consumption by a college or other institution of learning or hospital, provided such college, institution of learning or hospital is not conducted for profit."

Question is also raised as to the period of limitation governing the assessment made.

Petitioner's position is that Head Start is an "other institution of learning" and therefore qualifies for the exemption.

Respondent's position is that a tax exemption provision must be strictly construed against the taxpayer and any doubt resolved in favor of the Commonwealth; that the construction of a tax statute by the Virginia Department of Taxation is entitled to great weight; that an "other institution of learning" within Section 58-441.6 (t) "must be something like a college and have a faculty, student body and prescribed courses of study"; and, Head Start does not meet the requirements.

Respondent states in its brief:

> "The primary issue addressed in this Brief is whether the taxpayer's activities with respect to its day care centers for underprivileged children qualify it for a sales tax exemption as a "college or other institution of learning" as required by Section 58-441.6 (t)".

As a preliminary matter, the Court cannot agree that that accurately states the question. It apparently assumes in respondent's favor, a critical issue. The question should delete "day care centers" and insert in that place "Child Development Head Start Program".

STATEMENT OF FACTS

The petitioner is a non-stock, non-profit Virginia corporation. As is shown by the records in this Court and as further stated by the brief of respondent, its articles of incorporation state that it "is organized and shall be operated exclusively to promote the social welfare of the citizens of the County of Washington and the City of Bristol, Virginia and for charitable and educational purposes * *".

As a part of its activities it operates permanent centers at three different geographical locations, two located in the educational facilities of churches and one in a former elementary school. These are designated as Child Development Head Start Programs, and will be referred to hereinafter as Head Start. The program has for a substantial, but unstated, number of years been in operation. It presently has 81 children enrolled, with a total of 24 personnel. Approximately 2000 children have attended these centers. Each center has its own bus for transportation, a library, two classrooms and two staff persons working in each room. The centers advertise through the news media and "have referrals from the Health Department, Welfare Department, school system, many agencies * *". Prior to establishment of public school kindergarten for five year olds, its program was primarily for that age, and part of the time it operated "jointly with the school system" to provide children a kindergarten experience, and in addition accepted children three and four. Now it accepts three and four year olds only. Head Start is supervised by the office of Child Development in the Department of Health, Education and Welfare, which prescribes national standards and performance levels. The purpose of the program (p.14) is described by its Administrator as follows:

> "As I understand it, it was principally designed by educators on a national level who wanted to enhance the learning experience of children in early childhood. * * I understand that they felt that the learning began before the age of 6 * *."

The centers are run on a course of study or curriculum explained by the Administrator as follows (p.16):

> " * * we have daily schedules for the children. We have units of work * * The units include match concepts, science, reading readiness, nature, the community around them, art, music and various things of this nature. The units of work are planned, designed so that it will meet the needs of the children at this particular age level and their level of understanding."

90% of the children attending must fall within a certain low income level. The centers are Federally funded. The twelve classroom personnel have monthly in-service training (p.19) "which is designed to teach the teachers our methods in dealing with the curriculum as it has been established, in math, science, how to deal with discipline and behavior of young children, meeting their individual needs, as well as the corps work for the curriculum." The teachers are not required to have collegiate degrees but are required to meet "certain levels of training, in-job and in-program training levels." Classroom personnel must have high school diplomas, three have college degrees, and others are working toward them. The Head Start programs are licensed by the Virginia Department of Welfare and Institutions as Day Care Centers. But the Administrator of the entire program was asked the following questions and gave the answers indicated (p.22):

> "Q. Is it a Day Care Center or is it primarily an educational program for the children?
>
> A. It is primarily an educational program for the children that attend the center.
>
> Q. In, what comparison would you make between the Head Start program and the typical day care, custodial care situation of which you are familiar?
>
> A. As I understand it, a typical day care center program provides primarily custodial care, someone watching to see that the children are not hurt. The Child Development Center in a sense is a planned program. They have a planned curriculum. They have a sequence of events that take place leading the children toward an educational approach."

The Administrator of this program, who was petitioner's sole witness, is a member of the National Association for the Education of Young children of Washington, D.C. For ten years she has been a member of the Board of Directors, at the State level, of Virginia Congress of Parents and Teachers, has had an education at the college level; and, specifically in connection with the Head Start program, has attended numerous conferences, workshops at the University of North Carolina and V.P.I., and regional and national meetings. She has served on a National Advisory Council, advising about this program.

On cross-examination of this lady, it was developed, without objection, that those administering the program had been told (p.28) "by the public schools that they (the children) were much better prepared than those who did not attend the program".

Frank W. Lewis, Director of the Sales Tax Division of the Department of Taxation stated that the criterion to be applied by his department to the Code Section under consideration and before an exemption would be allowed, is that the organization has to be non-profit; and (p.44) "has to be something like a college with a faculty, student body, and the prescribed courses of study and has to be above pre-grade school * *". It was his opinion that petitioner did not meet these standards. However, if a kindergarten is a pre-grade activity of a public high school or elementary school it is exempt (p.51), but if a private school has a kindergarten, that (p.52) question has never "been faced, to decide * *". When asked if the construction of the Act is that the kindergarten may meet all the other criteria in the institution of learning, but

if it doesn't have first grades and above then it can't get the exemption, the answer was in the affirmative. This was followed by a question as to whether or not this would be true "regardless of any evidence presented to the Department concerning the educational equipment or the educational nature of the particular institution"? The answer was "No sir, all the facts would have to be sent in". Thereupon these questions were asked and the answers given (p.53):

> "Q. So then, you admit that it does depend on the facts of the individual case?
>
> A. Yes.
>
> Q. As to whether it is an educational institution?
>
> A. Yes sir.
>
> Q. And it doesn't necessarily depend then on whether it is pre-school, pre-grade school or not?
>
> A. That's just been the general rule.
>
> Q. That's just the rule of thumb?
>
> A. Yes sir.
>
> Q. But it does, in fact, depend on the facts of the individual case concerning the evidence presented to you, to the Department concerning the educational benefits and nature of the particular school?
>
> A. Yes."

(p.54)

> "Q. What about three to five year olds not taking courses that were called high school courses but were taking courses that were, in the opinion of those who know, were educational?
>
> A. We would just have to take a look at this and see if a different interpretation . . .
>
> Q. You would just have to do it on a case by case basis?
>
> A. Yes."

Among the respondent's exhibits was filed a booklet entitled "Virginia Retail Sales and Use Tax Rules and Regulations". The

following rule quoted in respondent's brief is said to govern the interpretation of the Code Section under consideration and reads as follows:

> "Section 1-96 Schools, Colleges and Other Institutions of Learning at all levels.
>
> A. When not conducted for profit -
>
> The Act exempts "tangible personal property for use or consumption by a college or other institution of learning - - - provided such college, institution of learning - - - is not conducted for profit. (Section 58-441.6 (t). The term "college or other institution of learning" contemplates the existence of a faculty, a student body and prescribed courses of study. The "other institution of learning" must be something like a college under a rule of statutory construction generally applicable where general words follow a particular designation."

CONCLUSIONS OF LAW

Among Webster's Seventh New Collegiate Dictionary definitions of "institution" is "something that serves to instruct". Blacks Law Dictionary (Third Edition) refers to "institution" as "an establishment, specifically one of public character or one affecting a community". In 68 Am. Jur. 2d Schools, 359 it is said "In determining whether a particular institution is a "school" it is the actual character of the institution which controls, not the name by which it is called. A "school" in the ordinary acceptance of the word, is a place for instruction in any branch or branches of knowledge, or a place where instruction is imparted to the young".

Petitioner relies on Richmond v. Southside Day Nursery Assoc., 207 Va. 561, hereinafter referred to as Southside, and Washington County v. Sullins College, Inc., 211 Va. 591.

Respondent says these cases may be distinguished because they involved property tax exemption, and the latter one is not in point as there was no question about Sullins College being an incorporated college. Respondent cites various cases setting forth the general rule of statutory construction applicable to tax exempt statutes.

In Commonwealth v. Lynchburg YMCA, 115 Va. 745, 747, in discussing then Section 183 of the Virginia Constitution, the Supreme Court stated:

> "The general rule is that provisions exempting property of individuals or private corporations from taxation must be strictly construed, taxation of such property being the rule and exemption from taxation the exception. * * But as the policy of the State has always been to exempt property of the character mentioned and described in Section 183 of the Constitution, it should not be construed with the same degree of strictness that applies to provision making exemptions contrary to the policy of the State, since as to such property exemption is the rule and taxation the exception." (italics mine)

In Supervisors v. Medical Foundation, 204 Va. 807, 811, it is stated:

> "It has always been the policy of this State to exempt property of the kind described in the the various subsections of Section 183 * *" (italics mine)

In Richmond v. Day Nursery, supra, the Court was interpreting that portion of then Section 183 (d) of the Constitution relating to exemption of "property owned by * * incorporated colleges or other incorporated institutions of learning, not conducted for profit * *. But this provision shall apply only to property primarily used for * * educational purpose or purposes

incidental thereto."; and, that portion of Code Section 58-12 (4) relating to the exemption of "property owned by * * incorporated colleges or other incorporated institutions of learning * * not conducted for profit * * ".

Insofar as the basic subject matter, which is the beneficiary of the exemption or exclusion concerned, both the Constitution and each of these Code Sections refer, for all practical purposes, to exactly the same thing.

A comparison of facts in these two cases show the following: One witness in Southside described it as a "model nursery" not a "baby sitting organization" with "a very fine educational program". Herein petitioner's evidence went somewhat beyond that by describing Head Start as "principally an educational program for the children" "principally designed by educators on a national level" with a "course of study, a curriculum" "apparently about the same" as in public school kindergarten, except not as structured. It is not just a custodial care or day care program. Comparing the teaching and other activities ofSouthside, as described in the opinion (p.564), with those of Head Start, shows the latter to also go beyond Southside's, as its children are given daily "units of work" including "math concepts, science, reading readiness", etc. As to classroom personnel, none of Southside's was described as college graduates, but "college trained" in the field of childhood education; Head Start has some college graduates, with others working on degrees, but all required to meet "certain levels of training" "by regular monthly in-service training", "which is directed to

teaching the teachers our methods of dealing with the curriculum". Whereas one witness in Southside observed the "educational influence" of their training when children entered public school, Head Start's evidence was that the public schools had told them their children were better prepared than those who did not attend.

In Southside, the City offered no evidence. Neither did the respondent herein, in respect to any matters referred to in the preceding paragraph. As to such evidence there was no conflict. The respondent did, through Mr. Lewis, deny that Head Start was "an institution of learning". It is the Court's opinion that Mrs. McConnell, from her background and training, qualifies as an expert. Considering the uncontroverted status of her evidence, for the Court not to give to it full faith and credit would require that it be either arbitrarily denied probative value or conclude it to be incredible. In that connection, it would thenalso be necessary for the Court to conclude, without grounds for doing so, that three and four year olds are not educable.

It is the Court's conclusion that it could correctly say of Head Start what the Supreme Court said of Southside in its opinion at page 565:

> "In light of the expert testimony and the activities carried on by Southside, as shown by the record, it cannot be seriously questioned that the program contributes to the intellectual and educational development of the child."

The opinion further states (p.566):

> "Applying a liberal interpretation of the exemption provisions of Section 183 (d), supra, and Code, Section 58-12 (4) to the evidence presented in the case at bar, we hold that Southside Day Nursery is an incorporated institution of learning "not conducted for profit, and that its property in question is primarily used for "educational purpose or purposes incidental thereto". Hence, the real estate involved is exempt from taxation."

As to tax exempt provisions being strictly construed against the taxpayer and doubt resolved in favor of the Commonwealth:

Such is the general rule, but as to property of the character mentioned and described in Constitution Section 183 (Art. X Sect. 6) a liberal interpretation is to be applied. None of the three cases cited in respondent's brief involve such property. The evidence in Southside was sufficient to justify the Supreme Court to reach the opinion above quoted. Herein the expert testimony and detailing of educational activities of Head Start make out an even stronger case of contributing to and furthering the intellectual and educational development of children, and the fact that most of them are underprivileged would be immaterial. Herein the property in question was not only primarily but exclusively used for "an educational purpose or purposes incidental thereto".

As to the present case involving sales and use taxes, whereas Southside and Washington County v. Sullins College, supra, involved real property taxes:

It is asserted because thereof the two decisions mentioned are not in point. It is the Court's view that the Supreme Court arrived at its liberal interpretation not because the Court was

dealing with real property tax, but because it was dealing with "property of the character mentioned and described". As it has "always" been the policy of the State to exempt such property, no reason can be perceived why Southside would have been differently decided had it involved sales and use taxes. The public benefits to be derived and the purposes to be accomplished, are equally present in either situation. The word "property" is comprehensive.

As was pointed out in Southside, the Constitution (183 (d) referred to "property owned by * * " and " * * property primarily used for * * educational purpose or purposes incidental thereto * *" and Code Section 58-12 (4) referred to "property owned by * * institutions of learning * * ", whereas herein Code Section 58-441.6 (t refers to "Tangible personal property for use or consumption by * * other institution of learning * *".

It is stated in 18 M. J. Va. & W. Va. 156:

> "The term "property" standing unqualified in a Constitution with statutes designating subject of taxation includes both real and personal property, or estate, intangible as well as tangible rights of value."

Also in 21 M. J. Va. & W. Va. 431:

> "The word "property" is comprehensive enough to cover real estate as well as personal property."

In 63 Am. Jur. 2d, 309 is stated:

> "Blackstone classifies personal property as consisting of money, goods and movable chattels."

The Uniform Property Act, Section 1(a) defines "property" to mean:

> "One or more interests either legal or equitable, possessory or non-possessory, present or future, in land, or in things other than land, including choses in action * *".

As to respondent's position that there is nothing to indicate that the General Assembly intended Section 58-441.6 (t) to include programs and activities such as those of Head Start: On the other hand, there is nothing to indicate they did not. Each of these compared Code sections in unrestricted words, refer to colleges or "other" institutions of learning. Absent some different intention reasonably apparent, then both should be given the same meaning.

As to the construction of a tax statute by the Virginia Department of Taxation being entitled to great weight:

In the first place, the Department's interpretation based on the oral evidence of it's Director of the Sales Tax Division is far from firm as to just what it's interpretation is or might be, particularly if this situation had been fully investigated in advance.

The Department's oral evidence of interpretation in its beginning said the organization must be non-profit and "something like a college" with a faculty, student body, prescribed courses of study and above pre-grade. Head Start meets all of these requirements except the last one, nor did Southside for that matter. But subsequently oral evidence disclosed the criteria to be applied to this subject matter, even if it was a pre-grade institution, would depend on "all the facts * *"; that it depends on the facts "of the individual case" and the above pre-grade criteria is just a rule of thumb.

In the second place, only the first paragraph under Section 1-96 of the booklet "Virginia Retail Sales and Use Taxes Rules and Regulations" was quoted in respondent's brief. It says nothing about a pre-grade requirement. A reading of the next following paragraph would apparently lessen considerably the stringency of the Department's criteria for an institution of learning, as it adds the word "schools" and says nothing about the institution being a part of a public system or pre-grade. It reads as follows:

> "The tax does not apply to sales of tangible personal property to non-profit schools, colleges and other institutions of learning at any level, for use or consumption by them, and paid for out of their funds." (italics mine)

From the evidence and applicable law, the Court concludes that Head Start is "an other institution of learning"; that it is entitled to the exemption provided under Code Section 58-441.6 (t); and, is therefore entitled to a refund of the sales and use taxes assessed by and paid under protest to the Virginia Department of Taxation, as the same relates solely to such tangible property as was purchased with its funds and used by it in connection with its Child Development Head Start Program. By counsel's agreement, auditors are to segregate this portion of the taxes from the original total sum that was under consideration. The Court, depending on the wishes of counsel, will defer the presentation of a decree until such time as a specific sum can be set forth therein; or, if it be immaterial to counsel, a decree may be prepared now, which as to this aspect, will deal in a generality. At suchever time as is appropriate, counsel for petitioner is requested to prepare same and submit to the Department.

A copy hereof shall be furnished respective counsel and the original made a part of the record.

This the 18th day of January, 1974.

Robert B. Davis

Judge

ADDENDUM TO
MEMORANDUM OPINION

Through inadvertence the Court omitted from its Memorandum Opinion of January 18, 1974 any reference to its decision as to the issue of the period of limitations applicable to the remaining sales and use taxes involved.

The petitioner filed no return as to sales or use taxes, but used a Certificate of Exemption. The assessment for the taxes claimed was made October 10, 1973, covering a period from December, 1966 through May, 1973. This, petitioner says, is erroneous in that in part the assessment was made beyond the period of limitation prescribed by Virginia Code Section 58-441.38, which provides:

> "The taxes imposed by this chapter shall be assessed within three years from December thirty-one of the year in which such taxes became due and payable; provided, however, in the case of a false or fraudulent return with intent to evade payment of the taxes imposed by this chapter, or a failure to file a return, the taxes may be assessed, or a proceeding in court for the collection of such taxes may be begun without assessment, at any time within six years from December thirty-one of the year in which such taxes became due and payable."

Petitioner says the foregoing must be considered in connection with other sections of the Sales and Use Tax Act, namely: Section 58-441.20 which imposes on "every dealer" the obligation to file a sales or use tax return; Section 58-441.

12 which gives various definitions of the word "dealer"; and, Section 58-441.16 which it says narrows the meaning of "dealer" to those persons who engage or conduct business in the sale or lease of personal property. Petitioner says as it is nothing but a consumer or user of personal property it is not a "dealer" within the provision requiring the filing of returns; and, therefore is not under the six year period of limitation, but the three year.

In reply, respondent says Section 58-441.5 imposes a use tax applicable to "the use or consumption of tangible personal property in this State" upon which no sales tax was collected or billed at the time of its sale, under the provisions of 58-441.4. In addition, if purchaser gives a Sales and Use Tax Certificate of Exemption, when no exemption exists, then under the provisions of Code Section 58-441.17 (c) "such use shall be deemed a taxable sale by the purchaser", and the purchaser thereby becomes liable for the applicable sales tax; and, that petitioner was and is required to file returns as a "dealer" as defined by 58-441.12.

CONCLUSION

The Court concludes that among the various definitions of "dealer" in Section 58-441.12, the petitioner is clearly defined as such under two of its subsections; that there is nothing contained in Section 58-441.16 which was intended to, or in fact, narrows the definition of "dealer", as set forth in the definitive sections of 58-441.12, as would exclude the petitioner from its inclusion.

The six year limit therefore applies to the petitioner. As the returns are due and the taxes payable in the month following the month of purchase or use, purchases for December, 1966 are within the six year period.

Referring to any and all taxes, other than Head Start connected, it is the Court's conclusion that they were timely assessed and properly payable to the Department of Taxation.

In the decree to be prepared provision should be made for the foregoing.

This the 24th day of January, 1974.

Robert B. Davis

Judge

FINAL DECREE

On December 3, 1973, came the parties, by counsel, the petitioner represented by James P. Jones, Esq., and the respondent represented by Charles K. Trible, Esq., Assistant Attorney General of Virginia, and announced ready for trial upon the Application for Correction of Erroneous Assessment and the Answer thereto by the respondent.

Whereupon, the Court proceeded to hear evidence ore tenus, all of which more fully appears from the reporter's transcript of the evidence.

Upon mature consideration whereof, it being the opinion of the Court for the reasons stated in the Memorandum Opinion and Addendum to Memorandum Opinion, which opinions are filed herein and made a part of the record of this cause, that the assessment dated October 10, 1973, complained of by the applicant herein, is partially erroneous and should be in part corrected, it is ORDERED, ADJUDGED and DECREED that said assessment is erroneous as to that portion of it calculated from tangible personal property purchased and used by and in connection with the Child Development Head Start Program of the applicant and that said assessment is in all other respects correct and valid and is not barred by the period of limitations in any respect.

In accord with the Court's holding herein, and pursuant to the provisions of § 58-1134 of the Code of Virginia, it is ADJUDGED, ORDERED and DECREED that the respondent refund to the applicant The Progressive Community Club of Washington County, Virginia, Incorporated, the sum of $2,946.15, which

the parties agree is the amount of tax and interest applicable to said Child Development Head Start Program. In addition, pursuant to the provisions of § 58-1140.1 of the Code of Virginia, the respondent shall pay interest on said sum at the rate of one-half of one percent per month from October 10, 1973.

The petitioner duly objects and excepts for the reasons previously stated herein to the action of the Court in denying relief based on the claim of the period of limitations. The respondent duly objects and excepts for the reasons previously stated herein to the action of the Court in granting any relief.

Nothing further remaining to be done herein this cause is ORDERED stricken from the docket of this Court.

Requested:

PENN, STUART & ESKRIDGE

By _____
James P. Jones
Counsel for the Applicant

Seen:

_____
Charles K. Trible
Assistant Attorney General
of Virginia
Of Counsel for the Respondent

ENTER this 27 day of February, 1974.

_____
Judge

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

To: The Honorable C. W. Smith, Clerk

Pursuant to Rule 5:6 of the Rules of the Supreme Court of Virginia, the respondent, Commonwealth of Virginia, Department of Taxation, by the Attorney General of Virginia, hereby gives notice that she will apply to the Supreme Court of Virginia for an appeal from the Final Decree entered herein on February 27, 1974.

Counsel for the respondent gives further notice that in the application to the Supreme Court of Virginia the respondent assigns and will rely upon the following error:

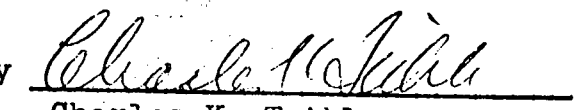
1. The Court erred in ruling that the petitioner is an "institution of learning" entitled to the sales and use tax exemption provided by § 58-441.6(t) and that a portion of the Virginia retail sales and use tax assessment against the petitioner was erroneous.

The transcript of the hearing will be filed in the office of the clerk.

Dated this 19th day of March, 1974.

COMMONWEALTH OF VIRGINIA

DEPARTMENT OF TAXATION

By 

Charles K. Trible
Assistant Attorney General
Of Counsel for Respondent

Andrew P. Miller
Attorney General of Virginia

Charles K. Trible
Assistant Attorney General
P. O. Box 6-L
Richmond, Virginia 23282

CERTIFICATION

I hereby certify that the original of the foregoing Notice of Appeal and Assignment of Error has been mailed to the Clerk of this Court for filing and a true copy thereof has been likewise mailed to James P. Jones, Esquire, Penn, Stuart & Eskridge, P. O. Box 759, Abingdon, Virginia 24210, counsel for petitioner, on this 19th day of March, 1974.

Assistant Attorney General

FILED
March 21, 1974
CLERK
CIRCUIT COURT
WASHINGTON COUNTY, VA.

1

2 the tax assessed in this case. Thank you.

3 MR. JONES: This is my first witness, Your Honor.

4 AMELIA B. McCONNELL

5 having first been duly sworn, was examined and deposed as

6 follows:

7 DIRECT EXAMINATION

8 BY MR. JONES:

9 Q. Would you state your name, please?

10 A. Amelia B. McConnell.

11 Q. Where do you live?

12 A. I live approximately six miles South of Abingdon

13 on Route 75 in Green Springs area.

14 Q. Of Washington County, Virginia?

15 A. Of Washington County, Virginia.

16 Q. Mrs. McConnell, by whom are you employed?

17 A. I am employed by the Progressive Community Club.

18 Q. I believe the full corporate title of Progressive

19 Community Club is the Progressive Community Club of Washington

20 County, Virginia, Inc., is that right?

21 A. That's correct.

22 Q. How long have you worked for the PCC?

23 A. I have been working for Progressive Community Club

24 since December of 1966.

25 Q. Is the Progressive Community Club a Virginia non-

stock corporation?

A. It is chartered in the State of Virginia as a non-profit corporation, yes.

Q. Does it have Federal income tax exemption?

A. Yes.

Q. And I believe the Progressive Community Club is a, was originally established as one of the Community Action Agencies of the Office of Economic Opportunity?

A. That's correct.

Q. Under the Federal Office of Economic Opportunity, is that correct?

A. Yes.

Q. And as such, it has and continues to administer a wide range of programs relating to social, health and other benefits in the County of Washington and City of Bristol, Virginia?

A. Yes, that's correct.

Q. What area are you concerned with?

A. I work with the Child Development Head Start Program.

Q. Has that program been in existence since you have been connected with the Progressive Community Club?

A. Yes, it has.

Q. How did you originally become involved or interested

in such a program?

A. Primarily as a parent and a taxpayer and an interested citizen in trying to enhance the educational opportunity of the children in our particular area. I have served on the State level of Virginia Congress of Parents and Teachers as a Board member since about that time. I have been on the Board for ten years, and the Virginia Congress of Parents and Teachers were very interested in incorporating and enhancing educational opportunities of all the children in the State of Virginia and that is what led to my interest in this particular job.

Q. Was the Head Start program one of the original programs put forth by the Federal Office of Economic Opportunity?

A. Yes sir.

Q. What Federal agency currently has supervision of the Head Start program?

A. The office of Child Development in the Department of Health, Education and Welfare.

Q. I believe it has been transferred from the office of Economic Opportunity fairly recently, is that correct?

A. That's correct.

Q. Would you describe the physical facilities that the Head Start program operated by the Progressive Community

1
2 Club has?
3 A. You mean in terms of location?
4 Q. Yes.
5 A. The Progressive Community Club sponsors three
6 Child Development Centers, one located in the City of
7 Bristol; one in the Benhams area, which is Northwest of the
8 City of Abingdon; and in the Damascus town, town of Damascus.
9 Q. Are these, what sort of physical buildings are
10 these operated in?
11 A. The Child Development Center is located in the
12 Lee Street Baptist Church. The Center in the Benhams area
13 is located in what was formerly an elementary school. The
14 Center in the Damascus area is now located in the Damascus
15 Presbyterian Church educational building.
16 Q. How many children currently are involved in the
17 Head Start Program at any one time?
18 A. A total of eighty-one.
19 Q. And are they divided among those three Centers?
20 A. Among those, yes.
21 Q. How many staff members are employed in the Head
22 Start Program?
23 A. There is a total of twenty-four, but they are not
24 all located, you know, in one particular Center. They are
25 divided among the three Centers.

Q. Do you know how many children have been served by the Head Start Program in Washington County since its inception, approximately?

A. Approximately two thousand.

Q. How does a child enroll in the Head Start program basically, generally speaking?

A. Well, of course, we advertise in the newspaper, over the radio, by word of mouth. We have referrals from the Health Department, Welfare Department, school system, many agencies refer children to us and we secure applications from them and this is the manner in which they apply.

Q. Are there geographical assignments of students to one of the particular schools?

A. Well, the Centers primarily serve the geographical area in which they are located.

Q. And I believe the three of them you described are spread out in the City of Bristol and Washington County, Virginia in different geographical areas, is that right?

A. Yes, this is correct.

Q. What about transportation of children to the Centers?

A. The transportation is provided through the program and we have three mini-buses,one for each Center, that provides the transportation for the children to and from the

Centers.

Q. Is the staff that you have, what different positions, just what type of positions do you have?

A. Well, we have a total of six classrooms among the three Centers. There are two staff people in each classroom working with particular children in that class. In addition to that, there is a coordinator and a combination custodian - bus driver in each Center. There is a social service aid that works primarily with the Bristol Center, and a social service aid with the two County Centers. We have a parent volunteer coordinator that works out of the office in the agency here in Abingdon and we have a coordinator and I,as administrator for the total program.

Q. What is, what was, initially, the purpose of the Head Start Program as it was originally founded?

A. As I understand it, it was primarily designed by educators on a national level who wanted to enhance the learning experience of children in early childhood. I believe that they, I understand that they felt that the learning began before the age of six, which is when our public school system takes children in the public school.

Q. What are the ages of the children that attend the Head Start Centers?

A. Three to five.

Q. Has this purpose that you mentioned, has that remained the purpose of the Head Start Program?

A. Yes.

Q. And this is a national program?

A. This is a national program.

Q. Does the Department of Health, Education and Welfare prescribe standards and performance levels for all Head Start Programs around the country?

A. Yes.

Q. And the program that the Progressive Community Club operates attempts to meet those standards?

A. We certainly attempt to meet that, yes.

Q. Now have you, yourself, received training since you have been with the Head Start Program, since 1966? Have you received training in the Head Start Program?

A. Yes.

Q. Have you attended conferences?

A. Conferences, work shops, national meetings, regional meetings, attended three or four different two-week work shops at the University of North Carolina. I have attended many at V.P.I. and I have served on a national advisory council level, advising about the program.

Q. Does the -- getting specific in terms of the Head Start Program, what happens to a child in terms of his schedule

when he comes to a Head Start Center? Is there a schedule or a course of study, a curriculum that the child follows?

A. Yes sir.

Q. Could you explain that with maybe some concrete examples?

A. Well, of course, we have daily schedules for the children. We have units of work that run anywhere from two to four weeks, depending on the length of time needed to help the children understand these units of work. The units include Math concepts, Science, reading readiness, Nature, the community around them, art, music and various things of this nature. The units of work are planned, designed so that it will meet the needs of the children at this particular age level and their level of understanding.

Q. You say the schedule is, for the day is prescribed ahead of time. What do you mean by that?

A. By this I mean that the children in a Center have a particular amount of time during the day, and we have it so scheduled that it can meet their needs for being creative, for learning common skills, verbalization, language, arts, block building, which increases their motor and muscle coordination; art activities in which they are taught to use crayons, tempora and different kinds of paint, which also increases their eye and hand coordination, which lead to

the necessary skills to begin reading.

Q. Does the staff and administrator meet periodically to make up these schedules?

A. Yes.

Q. Are there limitations or guide lines concerning the economic background of the children who enroll in the Head Start schools?

A. Yes sir.

Q. What, basically, is that?

A. The guide lines that have been handed down require that ninety percent of the children must fall within the low income economic level established by the Department; that ten percent of these children may be above the economic guide lines.

Q. Is that the approximate percentage that you have currently?

A. Yes.

Q. The money that comes to support this program, where does it come from?

A. Well, of course, it is Federal funds and it comes to us from the Region Three, which is located in Philadelphia and that comes to us from that source. We apply directly for funding.

Q. Is there any charge to the children or to their

parents?

A. Beginning in August of this year, Congress mandated that those children that were above the guide lines must pay fee schedules according to their demonstrated income.

Q. Does the Progressive Community Club and your office, has it produced handbooks for the guidance of the various people connected with the --

A. Yes, it has.

Q. --Progressive Community Club? What sort of guide books?

A. We are preparing staff handbooks which outline the schools, the course of work, the job descriptions of the various people that work in the program, the community resources, training that is being offered, schools and this sort of thing for the staff. There is also produced a handbook for the volunteers because we rely on volunteers from the community to come in and help us and we also provide a newspaper on a regular basis for the parents and interested people in the community, from the total program. We are also at the present time devising a handbook for the parents which explains the total program to them.

Q. Now, the teachers in the classrooms, I think you said you had six actual classrooms among the three Centers, is

that right?

A. Right, and twelve members for those six classrooms.

Q. What sort of training is provided for those teachers?

A. We have regularly, every month, in-service training, which is directed to teaching the teachers our methods in dealing with the curriculum as it has been established, in Math, Science, how to deal with discipline and behavior of young children, meeting their emotional needs, as well as the corps work for the curriculum.

Q. Are the teachers required to have collegiate degrees?

A. No sir.

Q. Are they required to meet certain levels of training, in-job and in-program training levels?

A. Of course, they are required to participate in any training that is offered through the program.

Q. I think you mentioned in terms of the curriculum, one of the things you mentioned was reading readiness, I believe?

A. This is correct.

THE COURT: I didn't hear you, Mr. Jones.

Q. Reading readiness. What is meant by that? What is taught the children in regard to reading? Are they taught to

1

2 read, for example?

3 A. Not unless they are ready, demonstrate an ability

4 to recognize words and ready to read. Any time a child

5 demonstrates this need, that need is met. But specifically,

6 reading is not taught. As far as reading readiness is

7 concerned, children must have eye and hand coordination;

8 they must know the significance of words across the page and

9 this sort of thing, and this is what is taught.

10 Q. How does this affect them later when they are

11 taught to read? Is this a benefit?

12 A. Well, it certainly is a benefit.

13 Q. What about in regard to writing?

14 A. By the same token, children's names are put on their

15 own papers, any possessions they have so they can recognize

16 their name and when they begin to want to do it themselves,

17 they are helped to learn to write.

18 Q. What about arithmetic or numbers?

19 A. No figures, counting, subtraction, adding, this

20 sort of thing or numbers is taught.

21 Q. How about time, and dates and so on?

22 A. Learning to tell time, reading the clock and this

23 sort of thing is also a part of it.

24 Q. I think you mentioned Science. Explain --

25 A. This is correct.

Q. --what is taught in that area?

A. Part of the aspect of the program is the children learn about the world around them. In the course of this, they take nature walks, pick up various materials and bring material in from home, such as rocks. They learn various things about geology, about the world around them; learn different seasons of the year, going out and recognizing what trees, doing this sort of thing.

Q. What is done for the children in regard to library books, or books, generally?

A. Well, visits are made to the library. The program has books. There is story time. There is time for the children to sit down and look at the books. They learn how to tell stories from the pictures. They also visit the library, and the Bookmobile comes to the center, County Centers. Children in the Bristol area go to the public library there.

Q. I think you also mentioned art and music.

A. This is correct.

Q. I suppose in these areas that the normal things that are taught with small children are taught?

A. Yes.

Q. Now, the term, Day Care Center has been used, Mrs. McConnell, in connection with Head Start Programs. State whether or not that that is an appropriate term?

A. Well, in the term that it provides care for people while they are at work, you might say in one context that it does, but any program that is funded for child development must also provide the educational experience. So, in that sense, I don't know whether you would say it is relevant to say it is a Day Care Center.

Q. Is it a Day Care Center or is it primarily an educational program for the children?

A. It is primarily an educational program for the children that attend that Center.

Q. In, what comparison would you make between the Head Start Program and the typical day care, custodial care situation of which you are familiar?

A. As I understand it, a typical day care center provides primarily custodial care, someone watching to see that the children are not hurt. The child development center in a sense is a planned program. They have a planned curriculum. They have a sequence of events that take place leading the children toward an educational approach.

Q. Based on your experience in the program and your knowledge of its effect both in Washington County and nationwide, how successful has the Head Start Program been in regard to the goals that it has had?

A. I think it's been very successful, in that it has

helped the counties to realize the value of pre-school experience and pre-school learning for young children.

Q. Has the concept of pre-primary school education been one that has found acceptance recently or over the past few years?

A. I would say yes, in the past five years it has.

Q. What has been the consensus among professional educators in regard to such pre-school education and training?

A. Well, many of our Colleges, of course, have added to their curriculum area childhood majors all the way through the Ph. D. Degree at this point in time and have been trying to prepare people to work with small children.

MR. JONES: I believe that's all I have, Your Honor.

CROSS-EXAMINATION

BY MR. TRIBLE:

Q. Mrs. McConnell, is that M c C o n n e l l (spelled)?

A. Yes.

Q. Did you state -- I didn't understand your educational background. Would you give me your educational background?

A. I attended Radford College in the College of Home Economics, but primarily my training has been through the Office of Child Development and Head Start and various

1

2 seminars, work shops and training programs.

3 Q. So you might say that you have not studied formally,

4 childhood education?

5 A. I don't know whether you could say that or not.

6 Q. In a collegiate major, in a College?

7 A. I guess, strictly, you would have to say that is

8 correct. But I don't know whether I could make a statement

9 to say that I have not had any training in early childhood.

10 Q. I don't mean that, but you have not taken a College

11 course in it for graduate credit?

12 A. No, I haven't.

13 Q. Or under-graduate credit? What, exactly, are

14 your duties with respect to the corporation? Do you oversee

15 these three --

16 A. Yes.

17 Q. --Centers?

18 A. I am administrative coordinator for the three

19 Centers.

20 Q. You don't have any function with respect to the

21 educational aspect of the program, other than just as an

22 administrator?

23 A. Part of my responsibility is to see that the

24 training is provided for the staff in these three Centers

25 that will help them to perform their duties and to receive

the training necessary to provide an education for pre-school, as far as early childhood is concerned.

Q. Who employs the twelve individuals that work directly with the children?

A. The Progressive Community Club.

Q. Well, when they went to apply for a job, do they come to you or do you have a personnel administrator?

A. They come to the agency for the applications and fill them out. They come to me or the assistant administrator of the Child Development Program and we have a personnel committee who reviews their applications and interviews applicants.

Q. What qualifications would one be required to have prior to being engaged as one of these twelve individuals to work with the children?

A. I believe that our qualifications state that they must be warm individuals with an interest in young children and the attributes that will be necessary for them to learn how to work with small children.

Q. Do most of them have children of their own?

A. Yes.

Q. What about the educational requirements for the job? Do they have to have High School education?

A. High School diploma.

1

2 Q. There is no requirement that they have had, prior
3 to coming with the Progressive organization, any formal
4 education with respect to childhood development?
5 A. No.
6 Q. Do you have any of the twelve who have had such
7 education?
8 A. Yes.
9 Q. Prior to being employed? And how many do you have?
10 A. We have three people at this time who have degrees.
11 We have others who have several hours towards a degree.
12 Q . Of the three with degrees, did any of these have
13 a degree in, a major in childhood education development?
14 A. I believe one of the three has a minor in early
15 childhood, a B.S. in Home Economics, which includes many
16 courses in early childhood and child development.
17 Q. Turning to the program, would it be fair to say that
18 it seeks to prepare disadvantaged children probably in the
19 same level of development as more advantaged children by the
20 time of the first grade of the public schools or kindergarten?
21 A. Would you re-state that?
22 Q. Well, I probably made it too complicated. I am
23 just trying to find out if the objective of this program is
24 to more or less raise the development of children from more
25 disadvantaged backgrounds to that that you would find, say, in

1

2 the average middle-class home, so that they would all enter the
3 first grade on approximately the same standards?
4 A. I guess what I am having the problem with is the
5 disadvantaged as opposed to the middle-class. Because there
6 are disadvantaged children in the middle-class homes that also
7 need this same type of education.
8 Q. Let me say economically disadvantaged, then, since
9 there are ninety percent of them have to be from homes with
10 a certain maximum income, I guess economically disadvantaged
11 would be --
12 A. I think that would be a better statement.
13 Q. If you use economically disadvantaged in comparison
14 to economically advantaged children then, would the objective
15 be to bring the economically disadvantaged up to the
16 development level of the average economically advantaged
17 children by the time they enter the first grade in public
18 schools?
19 A. Here again, I have a problem.
20 Q. Well, just tell me simply what you are trying to do
21 with these children? I have heard the educational aspects
22 of it. If the child did not attend this program, would he
23 go into the public schools less prepared?
24 A. I think this is correct.
25 Q. Well, if he graduates through the public schools, I

presume that by the time he's in the second or third grade, that is to say, going through the public schools, having had this program, is he going to be better qualified to compete with the others that have not had this program or is he going to be ahead of those?

A. I would certainly hope he would be able to compete.

Q. Do you have a kindergarten here?

A. Public school kindergarten.

Q. Public school?

A. Yes, we do.

Q. When they go into that, do they go in at a greater, with a greater background than the average child that has not had this program?

A. We understand that this is the case.

Q. But you don't know, since you are not working in the public schools, you really can't say, I guess?

A. We have been told by the public schools that they were much better prepared than those who do not attend the program.

Q. Are they much better prepared than what we have denominated as economically advantaged children, who did not attend the program?

A. I don't have any way of learning that.

Q. Right, that's understandable. If you could just

give the Court a general idea of what a child might do during the day there at the Center. Just the routine day, without going into extensive detail, but how much time, for instance, would he spend with books and how much with rest and how much with play and that sort of thing. It might give us a better idea of the average day at the Center.

A. WHen the children come into the Center, we have the classroom divided into areas of interest. There is a block building area; there is a housekeeping area; there is a music center, an art center; there is a library center, where the children can go and read books. They have a certain period of time, say about a half an hour as they come into the Center that they go into one of these centers of learning and explore for themselves. Then they go from that to another center where the activities are planned. They have art work each day; they have work where they learn how to enjoy records, use the record players; they have a period of time in which they have stories read; they have puppets; they have flannel boards in which they can take stories they have learned and tell their own stories and demonstrate this to other children and to the adults in the classroom; they learn Science, Math; they learn the many differences -- what is greater than, more than, smaller, bigger, this sort of thing that is necessary for them to learn how to read.

Q. Would one of your children be able to look at the clock, for instance, and tell us what time it is?

A. Possibly, after they have been there six months or so, because they come to us at the age of three. And by and large, by the time they leave the Center after a year's activities, the majority of them can tell time. You know, children are individuals.

Q. Right, I understand that. What I am interested in is the average individual that is in your program, of course, not the most gifted or the least gifted, but the average. The average child, would he be able to read by the time he is ready to enter the kindergarten program in the public schools?

A. We don't teach reading as such. He would be ready to begin to read.

Q. Ready to learn to read?

A. Ready to learn to read. There are many things that go into helping the child to be able to read.

Q. How far would he be able to get? Would he know the numbers from one to ten or one to one hundred?

A. That, here again, depends on the individual. Some can count to one hundred; some can only count to ten, depends on their individual capability and their aptitude for it.

Q. Would most of them, say, be able to count from one

to ten?

A. Yes.

Q. One to fifty, one to one hundred?

A. I am sure the majority of them could count at least to ten, if not more.

Q. What about ABCs, would they know the twenty-six letters of the alphabet?

A. We are not a structured program as such. They can recognize the letters, but as far as repeating by rote, they do not. They do sing songs that include all of them, but it would not, as saying the twenty-six letters of the alphabet, even though they can sing all of them. It is the manner in which it is done.

Q. If you gave them three blocks in sequence from the middle of the alphabet, would they be able to organize them, H I J, instead of backwards?

A. I haven't attempted that. This, I cannot say.

Q. What type of Science program do you have?

A. The children, of course, go on nature walks. They learn about the birds; they learn about the seasons; they learn about the trees around them, rocks, bird nests, this sort of thing and they have a Science table in their classroom, which they are welcome to bring things they have picked up themselves, and they discuss.

Q. Have you raised any children of your own?

A. Yes sir.

Q. How many did you have?

A. Seven.

Q. Seven? Did your children attend any pre-school program?

A. No sir, we didn't have public school kindergarten or a program of this nature when my children were young.

Q. Did you attempt in any way to work with them as far as the letters of the alphabet, the numbers, the seasons, and that sort of thing during the time --

A. As time permitted; since they were all young at the same time, that rather limits your amount of time when you have to work, when you have seven children under ten years of age at the same time.

Q. Well, if you had had such a program available, would you have sent your children to it?

A. I certainly would. I attended kindergarten myself, and I was very unhappy my children didn't have it available. So you might say that was an added impetus that I get this experience for children.

Q. The kindergarten age, I guess, is five?

A. This is correct.

Q. You do not do anything with respect to children

1

2 that are of the age that they can enter kindergarten?

3 A. Not at this time. When the program began it was

4 primarily for children, for age five, before public kinder-

5 garten came into being, for the children in this area. But

6 at the present time, we take no children age five unless

7 they are referred to us by the school system or by the Health

8 and Welfare Departments. And this has to be worked out with

9 the system.

10 Q. You mentioned library, how many books do you have

11 in each of the Centers or just approximately?

12 A. Approximately fifty.

13 Q. This would be fifty books for one-third of eighty-

14 one children, I suppose? In other words, you have one hundred

15 fifty books and you have eighty-one children?

16 A. Yes.

17 Q. So, you have an average of two books perchild?

18 A. Right.

19 Q. Do you know, or -- well, are you a member or is

20 the organization a member of the National Association for

21 the Education of Young Children, Washington, D. C.?

22 A. Yes, I am.

23 Q. And are any of the twelve individuals that work

24 with the children members?

25 A. Part of them are, yes.

Q. Are you familiar with the Montessorian school concept?

A. Yes.

Q. If you had to attempt to compare your program with its, how would it stand, what would be the similarities and dis-similarities?

A. The similarities are, we attempt to do the same things they do, in allowing the child to learn at his own rate of speed and to be creative as he learns. But as far as the Montessorian system, it is a very expensive system, as far as the materials and equipment they have to work with. And as I understand it, from visiting various Montessorian schools, the majority of those children are what you would say gifted and very affluent.

Q. You would probably say, as far as equipment and facilities, and so forth, they would be much better financed?

A. More expensively financed. We think we are very well equipped.

MR. TRIBLE: I think -- I don't believe I have any further questions; thank you.

MR. JONES: Just a couple of questions, Your Honor, that came up during the cross-examination.

RE-DIRECT EXAMINATION

BY MR. JONES:

Q. We were talking about the hours. Are there regular hours for the Head Start Centers?

A. Yes, the children are there at least four hours a day.

Q. When did public school kindergarten start in the area served by the Progressive Community Club?

A. I cannot recall whether it was '70 or '71, because for many years we had a summer program and it was operated part of the time jointly with the school system to provide a summer kindergarten experience.

Q. But in terms of a regular kindergarten program, that's just started in the last few years?

A. Yes.

Q. Now, how does that compare with the public school kindergarten? I assume you are familiar with its program, are you not?

A. To some degree.

Q. How does it compare with the training that is received in the Head Start Centers?

A. Well, I think it is very, apparently about the same, other than the public school kindergarten is more structured and that the children are not as free to move around and learn at their own rate. The Head Start Centers are what I would consider an open classroom concept, which

hasn't come into the total educational system, as far as elementary schools are concerned at this point.

Q. This open classroom system, you consider that the Head Start Centers operate under the open classroom system?

A. Yes.

Q. Is that an important concept today in education of children, both in elementary school and pre-elementary school?

A. As I understand from reading various educational journals, early childhood through the secondary school is there is more freedom needed for children to progress, and the open classroom term teaching concept is very desirable.

Q. What is the open classroom, just --

A. I guess you could say specifically, it is allowing a child to move from one area of learning, going from Math to Science at his own rate of speed, rather than sitting at a desk without being allowed to speak or open his mouth.

Q. Do you know whether or not the Washington County School System is planning on the construction of new elementary schools to adopt the open classroom system?

A. The open classroom is now being used in some portions of the educational system, at certain schools now.

Q. That is, in the public schools?

A. Yes.

Q. Elementary schools?

1

2 A. This is correct. I don't believe it is being
3 used in all of the elementary schools at this time.
4 Q. Do you attempt to work with the Public School
5 authorities in terms of coordination of your program with the
6 elementary schools?
7 A. Very closely.
8 MR. JONES: THat's all. Does Your Honor have any
9 questions?
10 THE COURT: Mrs. McConnell, you say we accept no
11 children ~~unless~~ five years of age, unless the School
12 System refers a child to you. Does the School
13 System refer any child to you?
14 A. Yes sir, on occasion they have.
15 THE COURT: Did I understand you, is the correct
16 name of this association Mr. Trible asked you,
17 the National Association of Education for the
18 Young Children?
19 A. Yes sir.
20 THE COURT: Is that it's correct terminology?
21 A. Yes sir.
22 THE COURT: And you are a member of it?
23 A. Yes sir.
24 THE COURT: All right, any further questions, gentlemen?
25 MR. JONES: We have no further evidence, Your Honor.

1

2 Q. Mr. Lewis, would you state your name and occupation

3 for the Court?

4 A. Frank W. Lewis III, Director of the Sales Tax

5 Division.

6 Q. How long have you been employed by the Virginia

7 Department of Taxation?

8 A. '67, August.

9 Q. And how much of the period from '67 to the present

10 time have you been engaged with the sales and use tax division?

11 A. The entire time.

12 Q. When you were employed, what was your position, in

13 '67?

14 A. I began as, answering correspondence from tax-

15 payers on how the tax applied to various businesses and items

16 of personal property.

17 Q. Was this in the Regional Office?

18 A. Yes, it was.

19 Q. And did you subsequently transfer to a Field Office?

20 A. Yes. I transferred about two years after that, to

21 the Northern Virginia District Office in Falls Church, Virginia,

22 and supervised one of the District Field Offices.

23 Q. What were your duties there as supervisor in the

24 Northern District Virginia Office?

25 A. I was responsible for about eight counties and three

cities, and the responsibility was for supervision of about thirty personnel, about half of which were auditors that were auditing for sales tax, and the other half were collectors who were especially for collecting delinquent taxes, and the responsibilities were to supervise that group. Also, to assist taxpayers in the entire Northern Virginia area on any sales tax questions and help them with writings or whatever in the matter of sales tax problems.

Q. How long were you in that position?

A. About two years.

Q. What position did you go to following that period of time?

A. I returned to the Regional Home Office and was supervisor of field operations for the State, which was all eight District Offices and all the field operations throughout the whole State.

Q. In that position, did you have any responsibility for tax policy?

A. Yes, one of the prime responsibilities was to meet with representatives in various businesses who had been audited but did not agree with the audit as far as the tax application.

Q. Now, how long were you supervisor of field operations before you were promoted as Director to the Sales and Use Tax

Division?

A. I believe it was about a year, a year and a half.

Q. How long have you been Director of the Sales and Use Tax Division?

A. Approximately two years.

Q. In that position to whom do you report?

A. To the acting State Tax Commissioner at the present time, Mr. Stewart W. Connell. Normally, I would report to the Assistant Tax Commissioner, but the Department hasn't had one since the former Commissioner, Mr. Forbes, has been acting as Secretary of Finance.

Q. Would it be fair to say you are the highest policy making official in the Department dealing exclusively with sales and use tax?

A. Next to the Commissioner, at the present time.

Q. But he does not deal exclusively with sales and use tax?

A. That's true.

Q. Now, in this position, since your employment with the Department in 1967, have you had occasion on various audits or contact with taxpayers to apply the exemption in Section 58-441.6 (t)?

A. Yes.

Q. And what has been the Department's application of

this exemption? In other words, what criteria must a taxpayer meet before the exemption has been allowed?

A. Well, generally, we follow the criteria, first, theorganization has to be non-profit; has to be something like a college with a faculty, student body and the prescribed courses of study and has to be above pre-grade school, and if it meets those tests, generally the rule has been to grant the exemption. If it does not, the rule has been not to grant the exemption.

Q. Without -- of course, we realize that Section 58-46 prohibits any member of the Department from divulging any information with respect to any particular taxpayer, but have there been applications from any of the Montessorian schools, without naming any specific school, for an exemption under this Statute?

MR. JONES: Excuse me, Your Honor, I really don't think this is relevant. I think the guide lines that Mr. Lewis has testified to, of course, are contained in the regulations in large part, and I think they are admissible, but what the Department does in individual cases really doesn't seem to me to be relevant to His Honor's determination as to what the interpretation of the Statute is.

MR. TRIBLE: Well, the witness for the Petitioner has

1
2 indicated a familiarity with the Montessorian school
3 concept and has indicated that there are certain
4 similarities between that school and this in-
5 stitution. And we feel that all the Department is
6 trying to do is to get information before the
7 Court as to its application of the law, uniformly
8 throughout the Commonwealth since the inception of
9 the Sales and Use Tax Statute. And certainly, the
10 Courts have held that the administrative construction
11 of the Statute is entitled to great weight.
12 And obviously, in this case, the administrative
13 construction is that the exemption does not apply
14 or we would not be here today. But it would appear
15 beneficial to the Court to have a partial background
16 as to the uniformity of administration, certainly,
17 so that it would not be construed that this was
18 any unusual case or that the exemption has not
19 been applied uniformly. I think the question
20 I asked was designed to do nothing more than that.
21 THE COURT: Overruled; go ahead.
22 MR. TRIBLE: Now then, could you read back that question?
23 A. The question is whether any Montessorian schools
24 have applied and the answer is yes.
25 Q. Did the Department grant them an exemption?

A. No, they did not.

Q. And what was the reason that they did not qualify, were they non-profit?

A. They were non-profit, but the Department felt that pre-grade school education is not something like a college and those schools are pre-grade school education, the type of education that is taught in the home by Mothers and Fathers.

Q. Now, is there anything unusual about the facts in this particular case? You have been present in the Court and you have heard the evidence and you have an understanding of what transpires during the day at these child care centers. Is there anything in these facts that would indicate to you that the exemption is warranted or after hearing all of the evidence, are you satisfied that this taxpayer has been treated exactly like others in similar situations?

A. I believe that this taxpayer has been treated the same as others in pre-school education type activity.

Q. Are you familiar with --

MR. TRIBLE: Counsel, do you agree -- Your Honor, please, we would like to introduce into evidence at this time a copy of the Retail Sales and Use Tax Rules and Regulations, a copy of form ST-7, Consumers Use Tax Return.

(Exhibits marked, Respondent's Exhibits 1 through 5)

for government use only.

Q. If the Department were required to administer the exemption under 441.6 (t) in such a manner that certain pre-grade school programs would be entitled to the exemption but others not, based upon the extent of the training activity and quality of the programs and background of instructors, and amount of equipment and library available, what difficulty, if any, would arise in that type of situation?

A. It would be difficult to determine where to draw the line on the exemption, based on, for instance, whether one nursery school taught the alphabet and the other one did not; and one taught various types of things. It would be extremely difficult to administer, if you make the judgment as to who should have exemption and who should not have exemption. It could also get to the ridiculous, that the housewife had to teach her child how to build blocks and wanted to avoid paying tax on the blocks when she bought them.

Q. Do you feel like the manner in which the exemption has been administered since the inception or passing of the Statute has been even-handed and applied on a uniform basis throughout the Commonwealth?

A. There's certainly been an attempt to apply it uniformly

and equally throughout the Commonwealth.

MR. TRIBLE: I have no further questions.

CROSS-EXAMINATION

BY MR. JONES:

Q. Mr. Lewis, you stated that the Department construed 441.6 (t), the institution of learning exemption, under certain guide lines, and I think you mentioned those as one, it would have to be non-profit. Of course, that's stated in the Statute. And the other was that it would have to be like a College, and you said there were certain things that meant it was like a College. What were those again?

A. A faculty, student body and prescribed course of study.

Q. Of course, under your construction that could be the first grade, in a private school, conducted not for profit, the average first grade would meet those requirements, would they not?

A. I would think so, yes sir.

Q. And then the final construction is that it must be at least the first grade under our normal system of education, is that correct?

A. Yes sir.

Q. And that's the crucial one in the present case, is it not? Isn't that the problem with the Department granting

the exemption in the present case?

A. What would the problem be again, sir?

Q. That it doesn't meet the guide line of being at least the first grade?

A. Not necessarily the first grade. That's a pre-grade school.

Q. My point is, the Department has a rule in the construction of this Statute, that no institution of learning, even if it meets all the other criteria, no institution of learning can get from the Department an exemption unless it is at least the first grade, is that correct?

A. Not necessarily so. However, through testimony here, it's been heard that some High Schools and elementary schools might include a kindergarten level structure in their schools. Strictly on an administrative type of out-look it would be rather ridiculous to limit an elementary school exemption only on the first grade up and try to figure out what they bought for the kindergarten.

Q. So, in other words, if a private school -- we are just talking about private schools here because public schools have a kindergarten exemption, don't they?

A. Yes, they do.

Q. We are just talking about privately operated schools. If a private school has a kindergarten, then the

1

2 kindergarten is exempt, too, is it not?

3 A. This has never really been faced, to decide, to

4 be honest with you.

5 Q. I thought you just said those are administrative

6 problems?

7 A. This has never come up and no one has ever said,

8 we have a kindergarten in our elementary school, and does

9 this mean we don't have an exemption for the kindergarten.

10 However, there is some possibility and if it came up --

11 Q. It would be exempt?

12 A. It would be difficult to try to tax one claim within

13 our office.

14 Q. So, really the construction is it may meet all the

15 other criteria in the institution of learning, but if it

16 doesn't have grades above, the first and above, then it

17 can't get the exemption?

18 A. Yes sir.

19 Q. And that is regardless of any evidence presented to

20 the Department concerning the educational equipment or the

21 educational nature of the particular institution?

22 A. No sir. All the facts would have to be sent in.

23 Q. Mr. Lewis, I can't understand. That is either the

24 rule or it is not. That's the general guide line you follow?

25 A. But I can see where there would be a possibility

that schools were actually set up and taught to really advanced children. The facts have to be submitted.

Q. So then, you admit that it does depend on the facts of the individual case?

A. Yes.

Q. As to whether it is an educational institution?

A. Yes sir.

Q. And it doesn't necessarily depend then on whether it is pre-school, pre-grade school or not?

A. That's just been the general rule.

Q. That's just the rule of thumb?

A. Yes sir.

Q. But it does, in fact, depend on the facts of the inidividual case concerning evidence presented to you, to the Department concerning the educational benefits and nature of the particular school?

A. Yes.

Q. And just in your judgment or the Department's judgment or whoever happened to look at this school initially, it fell on one side of the scale, is that correct?

A. The taxable side.

Q. The taxable side? And the Montessorian schools were also judged, based on all their facts, is that correct?

A. Yes sir.

Q. And they fell on the taxable side?

A. Yes sir. I might have to correct what I have given. I may have given the idea there has been given an exemption to pre-grade schools. To my knowledge, there never has. The whole principle behind this is simply there are so many types of organizations and agencies in the area of education for children at young ages -- this is also done in the homes -- in day care centers, in nursery centers. It is just felt that pre-grade school is not, could not be considered something like a college.

Q. Well, again, I am confused, Mr. Lewis. It seems to me that either this pre-grade school test is a final one or it is not. In fact, I thought you said in answer to Mr. Trible's question that that was one of the criteria, that if it was pre-grade school, it could not get an exemption? But then I thought you said to me, that wasn't necessarily true, the Department would look at all the facts and that was just one factor to consider along with others. Which is it?

A. I am just considering there is a possibility that the future may hold three to five year old children taking High School courses, and if something like this would happen, you would have to look at the facts and not just make a judgment that pre-grade school education is out.

Q. What about three to five year olds not taking

courses that were called High School courses but were taking courses that were in the opinion of those who know, were educational?

A. We would just have to take a look at these and see if a different interpretation --

Q. You would just have to do it on a case by case basis?

A. Yes sir.

Q. Now, you -- there's been introduced in evidence the "Consumer's Use Tax Return" and the "Dealer's Sales Tax Return". Now, as I understand the general scheme of things, the vast majority of monies that the Department receives through the Sales and Use Tax Act comes from dealers; that is, sellers and vendors of personal property at retail who collect the tax upon the sale of the personal property and then remit it monthly to the State, is that true?

A. That's true.

Q. But the Act also provides for a tax on the consumer or user of personal property where it has not been previously taxed?

A. That's true.

Q. And if you went into another State and brought some property back in that had not been taxed when it was sold, theoretically, you are supposed to pay a use tax?

1 that we are going to do that.

2 Q. And this was a first audit?

3 A. Yes, it was.

4 Q. So, if you audited Progressive Community Club

5 subsequently, you would not recommend to waive the penalty?

6 A. No, I would not.

7 MR. TRIBLE: No further questions.

8 I have no further evidence.

9 MR. JONES: Let me put Mrs. McConnell back on the stand

10 just for a moment, Your Honor, and ask her about

11 that thing Your Honor has mentioned.

12 AT THIS POINT, AMELIA B. McCONELL was recalled

13 for further

14 RE-DIRECT EXAMINATION

15 BY MR. JONES:

16 Q. Mrs. McConnell, is the Head Start Program operated

17 by the Progressive Community Club licensed by the Virginia

18 Department of Welfare and Institutions?

19 A. Yes sir.

20 Q. And do they have a Department of Licensing of

21 child care centers in the State?

22 A. Yes sir.

23 Q. You mentioned that you were a member of an organiza-

24 tion and I have forgotten the name.

25

A. The National Association for the Education of Young Children.

Q. What is the membership of this organization? Who are they, generally?

A. Educators, teachers, professional administrators, college institution personnel who deal with training people for early childhood programs.

MR. JONES: That's all I have, Your Honor.

RE-CROSS-EXAMINATION

BY MR. TRIBLE:

Q. You say you are licensed by the Commonwealth of Virginia. You are licensed as a child care center?

A. Yes sir.

Q. What criteria do you have to meet in order to be licensed? Is this a license based upon the nature of the instruction or supervision or is it based upon the quality of the facility and cleanliness and qualifications of the staff and that sort of thing?

A. The latter. The main standards as set forth by the State Department of Welfare and Institutions are concerned with the facility, whether the facility is properly heated, safety, space requirements and educational background of, a certain minimum education requirement of the staff.

Q. Now, the definition of child care center then

1 includes day care centers and day nurseries and it excludes
2 kindergartens, is that not proper?
3 A. As I understand it public schools are exempt from
4 this .
5 Q. In other words, they are interested in the building,
6 such as provision for kitchen space, with a play space,
7 toilet and washing facilities, and that sort of thing?
8 A. Yes, that's part of it.
9 Q. And they require that you have hand washing
10 facilities, with a basin, running water, soap, paper towels?
11 A. Yes.
12 Q. You have adequate light, ventilation and heat?
13 A. Right.
14 Q. And you have adequate play facilities, indoors,
15 minimum of twenty square feet of indoor play space per child?
16 A. Yes.
17 Q. Sleeping facilities, two hundred cubic feet of
18 air space per child?
19 A. Yes.
20 Q. And kitchen facilities sufficient for the preparation
21 of hot lunches?
22 A. Yes.
23 Q. Now, do they have any requirements about how many
24 books you have to have?
25

A. Not to my knowledge.

Q. Or how many educational toys,, so-to-speak, the blocks, and that sort of thing?

A. They have, as I understand it, the recommended materials and equipment, but no specific mention that it has to be this amount or this number.

Q. Children have to have medical certificates before they are accepted?

A. Yes.

Q. And you are required to have a procedure for illness and accidents?

A. Yes.

Q. Cannot dispense any medication, without the parents' written consent?

A. That's correct.

Q. And you keep a first aid kit?

A. Yes sir.

Q. Now, you mentioned you were a member of the National Association for the Education of Young Children. Are you also a member of the National Education Association?

A. No sir.

Q. How about Day Care and Child Development Council of America?

A. No sir.

Q. And Association for Childhood Education International?

A. No sir.

MR. TRIBLE: I have no further questions.

THE COURT: Mrs. McConnell, what did you say your official title was?

A. I go under many, Your Honor. Director of the Child Development Program, Coordinator of the programs, but I would assume what I would be called, would be Director of the Child Development Programs for the Progressive Community Club.

THE COURT: All right; thank you.

MR. JONES: Thank you. We have no further evidence, Your Honor.

THE COURT: All right, gentlemen, do you all want to argue?

THEREUPON, argument was presented by Counsel on behalf of the Parties.

- - - - - - - - - - - - - - - - - -

THIS WAS ALL THE EVIDENCE INTRODUCED AT THE HEARING OF THE WITHIN STYLED CAUSE ON THIS DECEMBER 3, 1973.

- - - - - - - - - - - - - - - - - - -

Exhibit No. 1

Virginia Retail Sales and Use Tax Rules and Regulations

§ 1-96. Schools, colleges and other institutions of learning at all levels. —(a) *When not conducted for profit.*—The Act exempts "Tangible personal property for use or consumption by a college or other institution of learning. . . . provided such college, institution of learning. . . . is not conducted for profit." (§ 58-441.6(t).) The term "college or other institution of learning" contemplates the existence of a faculty, a student body and prescribed courses of study. The "other institution of learning" must be something like a college under a rule of statutory construction generally applicable where general words follow a particular designation.

The tax does not apply to sales of tangible personal property to *non-profit* schools, colleges and other institutions of learning at any level, for use or consumption by them, and paid for out of their funds. Sales to institutions of learning owned and operated by the State, for use or consumption by them, take the same status as other sales to the State for use or consumption by it. (See § 1-45(b).) School textbooks sold by a college or other institution of learning at any level, not conducted for profit, for use of students attending such institution of learning, are exempt. This exemption does not extend to other sales by such institutions. If they sell meals to students and others and the meals are paid for by means other than the charge for such meals having been included in room, board and tuition fees and charges, the institutions are required to collect the tax from such students and others on such sales as retail sales.

Sales to independent athletic and other like or similar associations, whether affiliated in some way with a non-profit institution of learning at any level or not, and whether such affiliation be with a State institution of learning or not, are taxable, except that sales to such associations for resale may be purchased under Certificates of Exemption. Sales of school textbooks and other tangible personal property by such associations are taxable.

(b) *When conducted for profit.*—The tax applies to sales of tangible personal property to schools, colleges and other institutions of learning at all levels when they are conducted for profit; and they are required to pay the tax as users or consumers to their vendors at the time of purchase, except when purchases are made for resale as dealers. All sales of tangible personal property made by such institutions are taxable. If they sell meals to students and others and the meals are paid for by means other than the charge for such meals having been included in room, board and tuition fees and charges, they are required to collect the tax from such students and others on such sales as retail sales.

(c) PUBLIC SCHOOL SYSTEM.—The tax does not apply to sales to public free schools, for use or consumption by them, provided purchases are made pursuant to official purchase orders to be paid for out of public funds. The tax applies to sales not paid for out of public funds.

Purchases to be paid for out of school activity funds.—(a) The tax applies to purchases of tangible personal property such as yearbooks, class rings, graduation gowns and caps, photographs, school supplies, etc., for use by pupils, and other purchases of tangible personal property made for the use of any school class, club, group, organization, association, or individual, to be paid for out of funds other than public funds. Such items may not be purchased under Certificates of Exemption, and the tax thereon must be paid to dealers (vendors) on such purchases. The school class, club, group, organization, association or individual making such purchases, and not the school, is deemed to be the consumer of such items of tangible personal property, and such items shall not be subject to any further tax under the Act. As to school lunches, see the paragraph below on "School lunches."

(b) The tax does not apply to purchases of tangible personal property by a school, such as athletic equipment, band instruments, etc., to be paid for out of school activity funds where the property so purchased becomes the property of the school; and such items may be purchased under Certificates of Exemption.

School lunches.—The tax does not apply to school lunches sold and served to pupils and employees of schools and subsidized by government at any level; and the ingredients for providing such lunches may be purchased under Certificates of Exemption. Equipment and supplies purchased by a school for use by the school in preparing and serving such school lunches and which become the property of the school may be purchased under Certificates of Exemption. (This exemption applies also to non-public schools whenever school lunches sold by them and served to pupils and employees of such schools are subsidized by government at any level.)

School textbooks sold by local school boards.—The tax does not apply to school textbooks sold by a local school board or authorized agency thereof. This exemption is restricted to school textbooks so sold.

Parent Teacher Associations and other groups.—Where Parent Teacher Associations or other groups engage in fund raising projects, they are deemed to be the consumers of the tangible personal property they may purchase for such projects. The tax shall be paid by them to their suppliers, and such property shall not be subject to any further tax under the Act.