

Mr. William M. Kinnersley, Jr., Superintendent of Receipts (cont'd)

That the inhabitants of Baltimore City incur a liability for the tax when they use or consume the out of City bought fuel in Baltimore City cannot be doubted. The issue to be decided is whether there is some jurisdictional basis present in these cases that would shift the burden of collecting and paying the tax of the purchaser to a foreign merchant.

The Supreme Court of the United States in the recent case of Miller Brothers Company v. State of Maryland, 22 Law Week, p. 4181, filed April 5, 1954, held that a Delaware Corporation, which only sells directly to customers at its store in Wilmington, Delaware, is not bound to collect the 2% Maryland use tax from Maryland purchasers who cross the State line to make purchases. There was a strong dissent by Justices Douglas, Black and Clarke; and the Court made it clear that the decision covered only purchases made in an out-of-State store, and not to mail order or telephone order purchases.

The Court said that due process requires some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax, and that there was an absence of such a jurisdictional basis in this case.

The Court in distinguishing the case of General Trading Co. v. State Tax Commission, 322 U.S. 335, said:

"It is clear that circumstances absent here were there present to justify the Court's approval of liability for collecting the tax. That was the case of an out-of-State merchant entering the taxing state through traveling sales agents to conduct continuous local solicitation followed by delivery of ordered goods to the customers, the only non-local phase of the total sale being acceptance of the order. Probably, except for credit reasons, acceptance was a mere formality, since one hardly incurs the cost of soliciting orders to reject. The Court could properly approve the State's decision to regard such a rivalry with its local merchants as equivalent to being a local merchant. But there is a wide gulf between this type of active and aggressive operation within a taxing state and the occasional delivery of goods sold at an out-of-State store with no solicitation other than the incidental effects of general advertising. Here there was no invasion or exploitation of the consumer market in Maryland. On the contrary, these sales resulted from purchasers traveling from Maryland to Delaware to exploit its less tax-burdened selling market."

The Supreme Court also dealt with this matter in McGoldrick vs. Berwind-White Co., 309 U.S. 33. In that case, by contracts of sale made, through a sales office in the City of New York, with public utility and steamship companies in that City, a