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Browning. Early West Virginia cases established the principle that constitutional provisions dealing with the executive power of veto were not intended to be merely directory. Consequently the modern budget amendment, dealing with the executive veto, had to be afforded full and literal compliance.

The holding of the court in *State ex rel. Browning* voided the actions of the governor and sustained the Legislature's apportionment of funds for the fiscal year 1970-71.

Taxation—"Retail Dealer" And "Sale of Gasoline" Defined

A partnership leased certain heavy equipment which was used in operating its coal mines. The lessors of the equipment had the right to supply their own gasoline for the equipment, but under certain circumstances, the partnership would furnish gasoline purchased from a distributor. The actual cost of the supplied gasoline was deducted by the partnership from the gross amount owed the lessor.

The state tax commissioner issued an assessment against the partnership for the amount of gasoline supplied the lessor. The assessment was based on a decision by the tax commissioner that the partnership was a "retail dealer" and that the arrangement between the partnership and the lessor constituted a "sale" within the meaning of W. VA. CODE chapter 11, article 14, section 1 (Michie 1966). On appeal the decision of the tax commissioner was reversed by the circuit court. From that judgment the tax commissioner was granted an appeal to the West Virginia Supreme Court of Appeals.

The sole issue before the court was whether the partnership was a "retail dealer" engaged in selling gasoline and was taxable as such in accordance with W. VA. CODE chapter 11, article 14, section 1 (Michie 1966). The Code contains the following definitions:

The term 'retail dealer' shall mean and include any person not a distributor who sells gasoline in this state to consumer only.

The term 'sale' shall include any exchange, gift, or other disposition, and 'purchase' shall include any acquisition of ownership.

Held, reversed. The partnership was clearly a retail dealer as defined by the statute because it sold gasoline to consumers within West Virginia. Under the statutory definition a retail dealer is not required to sell gasoline to the general public. Nor is liability for the tax dependent upon whether one makes a profit from the sale of gasoline. Furthermore, the fact that the lessors did not pay for the gasoline in cash is not material under the broad statutory definition of "sale." Consequently, the tax assessment was approved. *Desrosiers Brothers v. Haden*, 175 S.E.2d 457 (W. Va. 1970).

Although the statute as worded and interpreted gives a broad meaning to the word "sale," one should note that this meaning is applicable only to the gasoline tax statute. Other areas of the West Virginia Code, particularly, the various tax sections, have individual definitions of "sale" which, in most cases, are much narrower than the definition stated in the gasoline tax section. For example under the Uniform Commercial Code in W. VA. CODE chapter 46, article 2, section 106, (Michie 1966), "A 'sale' consists of the passing of title from the "saler to the buyer for a price." Also for purposes of the Business and Occupation Tax as set forth in W. VA. CODE chapter 11, article 13, section 1, (Michie 1966), " 'Sale' . . . includes any transfer of the ownership of, or title to, property, whether for money or in exchange for other property."

Therefore the scope of the *Desrosiers Bros.* decision regarding the definition of "sale" is limited to litigation involving the gasoline tax statute.