

Case No. 210

THOMPSON, COMMISSIONER, *v.* LEO KAHN
FURNITURE COMPANY.

In this case, the Commissioner claims that Leo Kahn is liable to the State for Gross Receipts Tax under Act 386 of 1941 (§ 84-1901 Ark. Stats.), because of sales of merchandise made by Leo Kahn to residents of Arkansas. The facts were stipulated as follows:

“Plaintiff is a corporation organized under the laws of the State of Tennessee, engaged in selling merchandise at its place of business in Memphis, Tennessee. It has not qualified to do business in Arkansas, nor does it own or maintain a place of business in this state, neither does it have agents or drummers who solicit business herein.

“Plaintiff has heretofore sold merchandise to residents of Arkansas, all of such sales being made in the following manner:

“(a) Residents of Arkansas come in person to place of business conducted by plaintiff in Memphis, Tennessee, and purchase and pay the consideration for certain items of merchandise, and

“(b) Residents of Arkansas use the Federal postal service or interstate telephone or telegraph service and offer to purchase from plaintiff such items of merchandise, and such offers are accepted or rejected by defendant in Memphis, Tennessee.

“That in either or all such transactions so had, the offer to buy such merchandise so made by the resident of Arkansas, and the acceptance thereof by plaintiff, was made in Tennessee, and the consideration therefor was paid in Tennessee. Thereafter, plaintiff delivered the merchandise so purchased without additional charge to the home or place of business of the Arkansas resident by its truck. Plaintiff has an established policy generally

known to its customers that such deliveries will be made within a radius of 100 miles of Memphis, Tennessee, at no cost to the purchaser . . .”

This is also a case involving the Gross Receipts Tax levied under Act 386 of 1941 (§ 84-1901 Ark. Stats.), which is a Sales Tax; and what we said in the Rhodes-Jennings case applies here.

Therefore, we affirm the decree of the Pulaski Chancery Court in favor of Leo Kahn Furniture Company.
