SUPREME COURT OF NEBRASKA

Woodmen of the World Life Insurance Society v. Nebraska Department of Revenue

299 Neb. 43 (2018) · No. No. S-17-319 · Decided February 16, 2018

SUMMARY

The Nebraska Supreme Court affirmed the denial of Woodmen of the World Life Insurance Society's application for exemption from Nebraska sales and use taxes and its request for a refund of previously paid taxes. The court held that Neb. Rev. Stat. § 44-1095 exempted the funds of a fraternal benefit society, but did not exempt the society's retail purchase activity from sales and use taxes. The court also rejected Woodmen's due process and expert-testimony arguments.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Stacy, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Kelch, J.; Funke, J.
JURISDICTION	Nebraska
DECIDED	February 16, 2018
DOCKET	No. S-17-319
DISPOSITION	affirmed
PROCEDURAL POSTURE	Woodmen appealed under the Nebraska Administrative Procedure Act from the Lancaster County District Court's judgment affirming the Tax Commissioner's denial of its application for exemption from Nebraska sales and use taxes and its claim for a refund of more than $2 million. The Nebraska Supreme Court granted Woodmen's petition to bypass the Court of Appeals.
STANDARD OF REVIEW	Under the Administrative Procedure Act, the Supreme Court reviews the district court's judgment for errors appearing on the record, asking whether the decision conforms to law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. Statutory and regulatory interpretation are reviewed independently as questions of law. The exclusion of otherwise relevant expert testimony is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion

PARTIES	Woodmen of the World Life Insurance Society v. Nebraska Department of Revenue, Tony Fulton, Tax Commissioner

TOPICS

sales and use tax · tax · administrative law · statutory interpretation · expert testimony

PRACTICE AREAS

taxation · administrative law · appellate procedure · evidence

QUESTIONS PRESENTED

1. Whether § 77-2704.12(1) exempts fraternal benefit societies from Nebraska sales and use taxes.
2. Whether § 44-1095, which exempts the funds of a fraternal benefit society from specified taxes, creates an entity-based exemption from sales and use taxes or otherwise exempts taxes paid from the society's funds.
3. Whether Woodmen was denied due process because the Department of Revenue initially gave a different reason for denying its exemption application.
4. Whether the hearing officer abused her discretion by excluding a tax law professor's proposed expert testimony concerning the interpretation of § 44-1095.
5. Whether Woodmen was entitled to a refund of sales and use taxes previously paid.

HOLDINGS

1. Section 77-2704.12(1) does not exempt Woodmen from sales and use taxes because fraternal benefit societies are not among the nonprofit organizations enumerated in the statute.
2. Section 44-1095 exempts taxes imposed on the funds of a fraternal benefit society, but it does not exempt the society from sales and use taxes because those taxes are imposed on retail purchase transactions, not on the society's funds.
3. Woodmen was not denied due process because it received adequate notice and a meaningful opportunity to be heard concerning the Department's legal theory before the Tax Commissioner hearing.
4. The hearing officer did not abuse her discretion by excluding expert testimony concerning the proper legal interpretation of § 44-1095.

KEY QUOTATIONS

> *“Sales and use taxes are not imposed on funds, they are imposed on the activity of retail transactions, measured by gross receipts.”* (299 Neb. at 57)

> *“It is the role of this court to declare the law as it finds it, and we decline Woodmen’s invitation to modernize statutory language through judicial legislation.”* (299 Neb. at 60)

> *“Consequently “‘expert testimony concerning a question of law is generally not admissible in evidence.’””*

> (299 Neb. at 63)

FACTUAL BACKGROUND

Woodmen is a Nebraska fraternal benefit society. It applied for an exemption from Nebraska sales and use taxes under § 44-1095 and sought a refund of more than $2 million in taxes previously paid. The relevant statutes exempted the funds of fraternal benefit societies from specified taxes, while § 77-2704.12(1) listed nonprofit organizations eligible for sales-and-use-tax exemptions but did not list fraternal benefit societies. The parties stipulated to the material facts, leaving statutory interpretation, due process, and the admissibility of proposed legal-expert testimony as the principal issues.

PROCEDURAL HISTORY

Woodmen applied to the Nebraska Department of Revenue for a sales-and-use-tax exemption under Neb. Rev. Stat. § 44-1095 and later sought a refund of previously paid taxes. The Department denied both requests, and the Tax Commissioner affirmed after a hearing. The Lancaster County District Court affirmed the agency decision, and the Nebraska Supreme Court affirmed the district court.

DISPOSITION

affirmed

CASES CITED

- Bridgeport Ethanol v. Nebraska Dept. of Rev., 284 Neb. 291, 818 N.W.2d 600 (2012)
- J.S. v. Grand Island Public Schools, 297 Neb. 347, 899 N.W.2d 893 (2017)
- DMK Biodiesel v. McCoy, 290 Neb. 286, 859 N.W.2d 867 (2015)
- Coffey v. Planet Group, 287 Neb. 834, 845 N.W.2d 255 (2014)
- Stick v. City of Omaha, 289 Neb. 752, 857 N.W.2d 561 (2015)
- Holdsworth v. Greenwood Farmers Co-op, 286 Neb. 49, 835 N.W.2d 30 (2013)
- In re Interest of Katrina R., 281 Neb. 907, 799 N.W.2d 673 (2011)
- Maycock v. Hoody, 281 Neb. 767, 799 N.W.2d 322 (2011)
- Lackawanna Leather Co. v. Nebraska Dept. of Rev., 259 Neb. 100, 608 N.W.2d 177 (2000)
- Archer Daniels Midland Co. v. State, 290 Neb. 780, 861 N.W.2d 733 (2015)
- Greenwood v. J.J. Hooligan’s, 297 Neb. 435, 899 N.W.2d 905 (2017)
- Anthony, Inc. v. City of Omaha, 283 Neb. 868, 813 N.W.2d 467 (2012)
- United Transp. Union v. Tracy, 82 Ohio St. 3d 333, 695 N.E.2d 770 (1998)
- Dept. of Rev. v. Woodmen of the World, 919 P.2d 806 (Colo. 1996)
- Supreme Council of the Royal Arcanum v. State Tax Commission, 358 Mass. 111, 260 N.E.2d 822 (1970)
- The State of Texas v. The Praetorians, 143 Tex. 565, 186 S.W.2d 973 (1945)
- Marshall v. Wimes, 261 Neb. 846, 626 N.W.2d 229 (2001)
- Prime Home Care v. Pathways to Compassion, 283 Neb. 77, 809 N.W.2d 751 (2012)

- Richardson v. Children’s Hosp., 280 Neb. 396, 787 N.W.2d 235 (2010)
- State v. Merchant, 285 Neb. 456, 827 N.W.2d 473 (2013)
- Sports Courts of Omaha v. Brower, 248 Neb. 272, 534 N.W.2d 317 (1995)
- Kaiser v. Western R/C Flyers, 239 Neb. 624, 477 N.W.2d 557 (1991)
- Sasich v. City of Omaha, 216 Neb. 864, 347 N.W.2d 93 (1984)
- State, ex rel. Beatrice Creamery Co., v. Marsh, 119 Neb. 197, 227 N.W. 926 (1929)
- Interstate Printing Co. v. Department of Revenue, 236 Neb. 110, 459 N.W.2d 519 (1990)
