SUPREME COURT OF SOUTH DAKOTA

Watertown Cooperative Elevator Association v. South Dakota Department of Revenue; Farmers Union Oil Co. v. South Dakota Department of Revenue, 2001 SD 56

627 N.W.2d 167 (S.D. 2001) · No. No. 21570 · Decided January 25, 2002

SUMMARY

The Supreme Court of South Dakota held that taxpayers' appeal from a Department of Revenue decision was timely because charging the filing fee to their law firm's clerk-of-court account perfected the appeal within the statutory deadline. The court further held that payments for production specialist services were subject to use tax because the program constituted a distinct transaction involving predominantly the performance of services. The court reversed the circuit court's ruling, while two justices dissented on the taxability issue.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	KONENKAMP, Justice; MILLER, Chief Justice; SABERS, Justice; AMUNDSON, Justice; GILBERTSON, Justice
JURISDICTION	South Dakota
DECIDED	January 25, 2002
DOCKET	No. 21570
DISPOSITION	reversed
PROCEDURAL POSTURE	Consolidated appeals from the Hughes County Circuit Court's review of the Secretary of Revenue's administrative decisions imposing use tax on payments for production specialist services.
STANDARD OF REVIEW	The court reviewed dismissal as a legal question. In administrative appeals, factual determinations are reviewed for clear error, except that documentary-evidence determinations are reviewed de novo; whether a statute imposes a tax under given facts is a question of law reviewed without deference.
PRECEDENTIAL VALUE	Published South Dakota Supreme Court opinion; precedential.
PARTIES	South Dakota Department of Revenue v. Watertown Cooperative Elevator Association, Farmers Union Oil Co.

(Wecota/Faulkton/Onaka)

TOPICS

sales and use tax | tax court procedure | appellate procedure | statutory interpretation | administrative law

PRACTICE AREAS

state and local tax | administrative law | appellate procedure

QUESTIONS PRESENTED

1. Whether the taxpayers perfected their administrative appeals within the statutory thirty-day period by charging the filing fee to their law firm's account with the clerk.
2. Whether payments for production specialist services constituted taxable services subject to use tax under SDCL 10-46-2.1.
3. Whether the Secretary of Revenue acted arbitrarily by rejecting the hearing examiner's findings without sufficiently detailed written reasons or a clearly erroneous analysis.

HOLDINGS

1. Charging the filing fee to a law firm's account maintained with the clerk at the time the notice of appeal was filed was equivalent to depositing the fee and perfected the appeal within the statutory thirty-day period.
2. The payments for production specialist services were taxable services and were properly subject to use tax under SDCL 10-46-2.1.
3. The Secretary's decision was not rendered arbitrary merely because the written rejection of the hearing examiner's findings was brief or lacked an express clearly erroneous analysis; the Secretary's findings and conclusions permitted meaningful appellate review, and the taxability question was one of law.

KEY QUOTATIONS

> *“We conclude that the production specialist program involves "predominantly the performance of a service as distinguished from selling property."”* (172)

> *“In an administrative appeal, we review the Department's decision the same as the circuit court, unaided by any presumption that the court was correct.”* (173)

> *“A charge to a firm's account at the time of filing is equivalent to depositing a fee.”* (171)

FACTUAL BACKGROUND

Watertown Cooperative Elevator Association and Farmers Union Oil Co. sold agronomy products, while distributors separately contracted to provide crop or livestock production specialists. The taxpayers reimbursed the distributors for the specialists' salaries and expenses. The specialists spent approximately eighty percent of their time contacting farmers and ranchers, promoting distributor products, taking orders, making recommendations, and assisting with management programs; customers were not separately charged, and the taxpayers recovered the program's cost through product margins. The Department assessed use tax on the payments for the specialists.

PROCEDURAL HISTORY

The Department of Revenue audited both taxpayers and assessed use tax on fees paid to distributors for production specialist services. After an administrative hearing, the hearing examiner ruled for the taxpayers, but the Secretary of Revenue rejected the proposed findings and issued his own decision. The circuit court denied the Department's motion to dismiss for untimeliness, then ruled that the Secretary acted arbitrarily and that the services were exempt. The Department appealed.

DISPOSITION

reversed

CASES CITED

- Hansen v. South Dakota Board of Pardons and Paroles, 1999 SD 135, 601 N.W.2d 617
- White Eagle v. City of Fort Pierre, 2000 SD 34, 606 N.W.2d 926
- Sopko v. C & R Transfer Co., Inc., 1998 SD 8, 575 N.W.2d 225
- Kurtz v. SCI, 1998 SD 37, 576 N.W.2d 878
- Department of Revenue v. Sanborn Telephone Cooperative, 455 N.W.2d 223 (S.D. 1990)
- Midcontinent Broadcasting Co. v. Department of Revenue, 424 N.W.2d 153 (S.D. 1988)
- Matter of State & City Sales Tax Liability of Quality Service Railcar Repair Corp., 437 N.W.2d 209 (S.D. 1989)
- Nash Finch Co. v. South Dakota Department of Revenue, 312 N.W.2d 470 (S.D. 1981)
- EG & G, Inc. v. Director of Revenue, 94 N.M. 143, 607 P.2d 1161 (N.M. App. 1979)
- Sioux Falls Newspapers, Inc. v. Secretary of Revenue, 423 N.W.2d 806 (S.D. 1988)
- In the Matter of SDDS, Inc., 472 N.W.2d 502 (S.D. 1991)
- Zoss v. United Building Centers, Inc., 1997 SD 93, 566 N.W.2d 840
- Grand State Property, Inc. v. Woods, Fuller, Shultz, & Smith, 1996 SD 139, 556 N.W.2d 84
- Jameson v. Jameson, 1999 SD 129, 600 N.W.2d 577
- Matter of Loomis, 1998 SD 113, 587 N.W.2d 427