SUPREME COURT OF NEW HAMPSHIRE

Vector Marketing Corp. v. N.H. Dep't of Revenue Admin., 156 N.H. 781

942 A.2d 1261 (2008) · No. No. 2007-330 · Decided March 7, 2008

SUMMARY

The Supreme Court of New Hampshire considered whether Vector Marketing Corporation's district managers qualified as independent contractors under New Hampshire Administrative Rule Rev 301.17. The court held that the 1998 version of the rule required satisfaction of subparts (a) and (b), plus either subpart (c) or (d), and therefore affirmed summary judgment for the Department of Revenue Administration regarding liability for the business profits tax.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Dalianis, J.; Broderick, C.J.; Duggan, J.; Galway, J.; Hicks, J.
JURISDICTION	New Hampshire
DECIDED	March 7, 2008
DOCKET	No. 2007-330
DISPOSITION	affirmed
PROCEDURAL POSTURE	Vector Marketing appealed the superior court's grant of summary judgment to the New Hampshire Department of Revenue Administration in a dispute over whether Vector's district managers qualified as independent contractors under New Hampshire Administrative Rule Rev 301.17 and whether Vector was subject to the business profits tax.
STANDARD OF REVIEW	Summary judgment is affirmed when, viewing the evidence and reasonable inferences in the light most favorable to the nonmoving party, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. The interpretation of administrative rules is reviewed de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Vector Marketing Corporation v. New Hampshire Department of Revenue Administration

TOPICS

tax · administrative law · statutory interpretation · standard of review · appellate procedure

PRACTICE AREAS

state and local taxation · administrative law · appellate practice

QUESTIONS PRESENTED

1. Whether the 1998 version of New Hampshire Administrative Rule Rev 301.17 required an independent contractor to satisfy subparts (a) and (b) and either subpart (c) or subpart (d), or whether subpart (d) provided an alternative test independent of subpart (b).
2. Whether Vector's district managers qualified as independent contractors under Rule Rev 301.17 and thereby exempted Vector from the New Hampshire business profits tax.

HOLDINGS

1. The 1998 version of Rule Rev 301.17 requires an independent contractor to satisfy subparts (a) and (b) and either subpart (c) or subpart (d); IRS independent-contractor status under subpart (d) is not an alternative to the multiple-business-organizations requirement in subpart (b).
2. Vector's district managers were not independent contractors under Rule Rev 301.17 because they did not work for multiple business organizations, notwithstanding their IRS independent-contractor status.

KEY QUOTATIONS

> *"Accordingly, because the DRA's interpretation of Rule 301.17 is consistent with Section 381 and the subsequent regulatory history, we give deference to its reasonable interpretation of its own rule, and hold that an independent contractor under the 1998 version of Rule 301.17 must meet subparts (a), (b) and either (c) or (d)."* (156 N.H. at 789; 942 A.2d at 1268)

> *"For the foregoing reasons, we hold that the 1998 version of Rule 301.17 requires that independent contractors meet subparts (a) and (b) and either subpart (c) or subpart (d) of Rule 301.17."* (156 N.H. at 789; 942 A.2d at 1268)

FACTUAL BACKGROUND

Vector Marketing Corporation, a Pennsylvania corporation headquartered in New York, sold Cutco cutlery in New Hampshire through district managers and sales representatives. It owned no New Hampshire property or fixed retail locations; orders were sent to New York for approval and products shipped from New York. Its district managers were paid solely by commission, were contractually designated independent contractors, and did not work for multiple business organizations. The IRS had treated the district managers as direct sellers and independent contractors for federal income tax purposes.

PROCEDURAL HISTORY

The DRA determined after an administrative hearing that Vector was subject to the New Hampshire business profits tax for tax years 1994 through 2002 because its district managers were employees rather than independent contractors. The superior court granted the DRA's motion for summary judgment and denied Vector's cross-motion. The Supreme Court of New Hampshire affirmed.

DISPOSITION

affirmed

CASES CITED

- N.H. Dep't of Env't Servs. v. Marino, 155 N.H. 709, 712-13, 928 A.2d 818 (2007)
- State v. Elementis Chem., 152 N.H. 794, 803, 887 A.2d 1133 (2005)
- Appeal of N.H. Dep't of Transp., 152 N.H. 565, 574, 883 A.2d 272 (2005)
- Petition of Chase Home for Children, 155 N.H. 528, 532, 926 A.2d 287 (2007)
- Appeal of City of Manchester, 149 N.H. 283, 286, 821 A.2d 1019 (2003)
- In the Matter of Baker & Winkler, 154 N.H. 186, 187, 908 A.2d 806 (2006)
- Pennelli v. Town of Pelham, 148 N.H. 365, 368, 807 A.2d 1256 (2002)
- Franklin v. Town of Newport, 151 N.H. 508, 512, 861 A.2d 777 (2004)
- Cagan's, Inc. v. Dep't of Rev. Admin., 126 N.H. 239, 248, 490 A.2d 1354 (1985)
- In re Estate of Martin, 125 N.H. 690, 691, 484 A.2d 1183 (1984)