SUPREME COURT OF NEBRASKA

Farmers Cooperative v. State

296 Neb. 347 (2017) · No. Nos. S-16-312, S-16-313 · Decided April 7, 2017

SUMMARY

The Nebraska Supreme Court affirmed decisions partially denying Farmers Cooperative's and Frontier Cooperative Company's requests for refunds of sales and use taxes paid on repairs and parts for agricultural machinery and equipment. The court held that the phrase "depreciable repairs or parts" in Nebraska Revised Statutes § 77-2708.01 is ambiguous and interpreted it to mean repairs or parts that appreciably prolong property life, arrest deterioration, or increase value or usefulness and are ordinarily capital expenditures recovered through depreciation. The court also held that the claimants bore the burden of proving entitlement to the tax refunds.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Funke, J.; Heavican, C.J.; Wright, J.; Miller-Lerman, J.; Cassel, J.; Kelch, J.
JURISDICTION	Nebraska
DECIDED	April 7, 2017
DOCKET	Nos. S-16-312, S-16-313
DISPOSITION	affirmed
PROCEDURAL POSTURE	Consolidated appeals from Lancaster County District Court orders affirming decisions of the Nebraska Department of Revenue and the acting Tax Commissioner that partially denied the cooperatives' sales and use tax refund claims.
STANDARD OF REVIEW	Under the Nebraska Administrative Procedure Act, the appellate court reviews the district court's judgment or final order 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 interpretation presents a question of law reviewed independently.
PRECEDENTIAL VALUE	published and precedential Nebraska Supreme Court opinion
PARTIES	Farmers Cooperative, Frontier Cooperative Company v. State of Nebraska, Nebraska Department of Revenue, Acting Tax

Commissioner of the State of Nebraska

TOPICS

sales and use tax | tax refunds | statutory interpretation | administrative law | judicial review of agency action

PRACTICE AREAS

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

QUESTIONS PRESENTED

1. Whether the phrase "depreciable repairs or parts" in Neb. Rev. Stat. § 77-2708.01 is ambiguous.
2. How the phrase "depreciable repairs or parts" should be interpreted for purposes of the agricultural machinery and equipment sales and use tax refund.
3. Whether the cooperatives established their entitlement to the portions of the requested tax refunds denied by the Tax Commissioner.

HOLDINGS

1. The phrase "depreciable repairs or parts" is ambiguous because it is not defined in the statute or related statutes and cannot be resolved by the competing statutory definitions or ordinary meaning alone.
2. "Depreciable repairs or parts" means repairs or parts that appreciably prolong the life of property, arrest its deterioration, or increase its value or usefulness, and that are ordinarily capital expenditures for which a deduction is allowed only through the depreciation recovery allowance.
3. The cooperatives failed to establish entitlement to the denied portions of their tax refunds because they did not provide evidence showing that the claimed repairs or parts were subject to personal property tax or otherwise qualified as depreciable repairs or parts.

KEY QUOTATIONS

> *"The 1993 amendment to § 77-2708.01 which included the refund for depreciable repairs or parts was added to L.B. 345 as amendment 2590, referred to as the "Wickersham amendment.""* (296 Neb. at 362)

> *"The legislative history set forth above shows that the intent of creating the refund for depreciable repairs or parts, in § 77-2708.01, was to prevent double taxation but also to ensure that all depreciable repairs and parts were subject to personal property tax."* (296 Neb. at 362)

> *"Therefore, we interpret the phrase "depreciable repairs or parts" as repairs or parts that appreciably prolong the life of the property, arrest its deterioration, or increase its value or usefulness, and are ordinarily capital expenditures for which a deduction is allowed only through the depreciation recovery allowance."* (296 Neb. at 362)

FACTUAL BACKGROUND

Farmers Cooperative and Frontier Cooperative Company purchased repairs and parts for agricultural machinery and equipment used in commercial agriculture and sought refunds of sales and use taxes under Neb. Rev. Stat. § 77-2708.01. The Department allowed portions of their claims but denied amounts associated with items such as alternators, bolts, gaskets, sensors, hoses, and an air conditioner because the cooperatives did not establish that the items were depreciable or had been subjected to personal property tax. Neither cooperative supplied the requested personal property tax returns or depreciation schedules, and neither requested a formal administrative hearing to develop additional evidence.

PROCEDURAL HISTORY

Farmers Cooperative and Frontier Cooperative Company sought refunds of sales and use taxes paid on repairs and parts for agricultural machinery under Neb. Rev. Stat. § 77-2708.01. The Tax Commissioner partially denied the claims because the disallowed items were not shown to be depreciable repairs or parts and were not verified as subject to personal property tax. The cooperatives appealed to the Lancaster County District Court, which affirmed the administrative decisions. The Nebraska Supreme Court consolidated the appeals and affirmed.

DISPOSITION

affirmed

CASES CITED

- Stew. v. Nebraska Department of Revenue, 294 Neb. 1010, 885 N.W.2d 723 (2016)
- Archer Daniels Midland Co. v. State, 290 Neb. 780, 861 N.W.2d 733 (2015)
- Project Extra Mile v. Nebraska Liquor Control Commission, 283 Neb. 379, 396, 810 N.W.2d 149, 164 (2012)
- Trumble v. Sarpy County Board, 283 Neb. 486, 810 N.W.2d 732 (2012)
- Dean v. State, 288 Neb. 530, 849 N.W.2d 138 (2014)
- State v. Duncan, 294 Neb. 162, 882 N.W.2d 650 (2016)
- Bridgeport Ethanol v. Nebraska Department of Revenue, 284 Neb. 291, 818 N.W.2d 600 (2012)
- Goodyear Tire & Rubber Co. v. State, 275 Neb. 594, 748 N.W.2d 42 (2008)

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