SUPREME COURT OF NORTH DAKOTA

State ex rel. Clayburgh v. American West Community Promotions, Inc.

645 N.W.2d 196 (N.D. 2002) · No. No. 20010223 · Decided June 4, 2002

SUMMARY

The Supreme Court of North Dakota considered whether sales of promotional coupon books were taxable sales of tangible personal property under North Dakota law. The court held that the Tax Commissioner's rule treating coupon books as taxable tangible personal property exceeded statutory authority and reversed the district court's judgment, remanding for further proceedings.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Maring, Justice; De Walle, Chief Justice; Kapsner, Justice; Neumann, Justice; Sandstrom, Justice
JURISDICTION	North Dakota
DECIDED	June 4, 2002
DOCKET	No. 20010223
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	American West appealed a district court judgment affirming the North Dakota State Tax Commissioner's order assessing $20,883.51 in sales tax on its sales of promotional coupon books.
STANDARD OF REVIEW	Under N.D.C.C. § 28-32-19, the court reviews the administrative agency's decision on the agency record and does not review the district court's decision. The agency's findings are accepted unless unsupported by a preponderance of the evidence, insufficient to support the conclusions and decision, constitutionally infirm, procedurally defective, unfair, or not in accordance with law. Interpretation of the statute and the true object of the transaction were reviewed de novo as questions of law. The Commissioner's interpretation received limited deference because the issue was a nontechnical question of pure statutory construction.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; binding precedent in North Dakota.

PARTIES	American West Community Promotions, Inc. v. State of North Dakota, by and through its Tax Commissioner, Rick Clayburgh

TOPICS

sales and use tax · administrative law · statutory interpretation · judicial review of agency action · appellate procedure

PRACTICE AREAS

state and local tax · sales and use tax · administrative law · statutory interpretation · appellate procedure

QUESTIONS PRESENTED

1. Whether sales of American West's promotional coupon books constituted taxable sales of tangible personal property consisting of goods, wares, or merchandise under N.D.C.C. § 57-39.2-02.1(1)(a).
2. Whether the Tax Commissioner exceeded statutory authority by promulgating N.D. Admin. Code § 81-04.1-01-28, which classified sales of coupons and coupon books as taxable sales of tangible personal property.
3. Whether the true object or essence of the coupon-book transactions was the tangible book itself or the intangible right to receive discounts and free products and services.

HOLDINGS

1. Sales of American West's coupon books are not sales of tangible personal property consisting of goods, wares, or merchandise under N.D.C.C. § 57-39.2-02.1(1)(a). The true object of the transactions is the intangible right to receive discounts and free products and services, while the physical coupon books are merely tangible mediums evidencing or transmitting that right.
2. The portion of N.D. Admin. Code § 81-04.1-01-28 providing that sales of coupons, coupon books, and similar certificates are taxable as sales of tangible personal property exceeds the Commissioner's statutory authority and is void.
3. The Commissioner's interpretation was entitled to some, but not appreciable, deference because the classification of coupon books under the statutory phrase 'tangible personal property' presented a nontechnical question of pure statutory interpretation.

KEY QUOTATIONS

> *“It, therefore, seems evident that when a consumer pays American West $43.95 for a coupon book, the true object of the transaction is not the purchase of the tangible coupon books, but the purchase of the intangible right to receive discounts and free products and services from American West's clients.”* (645 N.W.2d at 211)

> *“Thus, the portion of N.D. Admin. Code § 81-04.1-01-28 which provides: "Sales of coupons, coupon books, and other certificates which entitle the holder to a discount or other price advantage on the purchase of goods or services, whether or not the goods or services are subject to sales or use tax, are taxable as sales of*

> *tangible personal property," is beyond the scope of the Commissioner's statutory authority and is, therefore, void.”* (645 N.W.2d at 213)

FACTUAL BACKGROUND

American West is an advertising and marketing firm that produced and sold promotional coupon books for approximately $43.95. The books contained coupons entitling holders to discounts and free products or services from participating North Dakota merchants. After a sales and use tax audit, the Tax Commissioner treated the coupon books as taxable sales of tangible personal property and assessed $20,883.51 in sales tax. The parties stipulated to the relevant facts and did not dispute the ALJ's factual findings.

PROCEDURAL HISTORY

Following a 1999 sales and use tax audit, the Tax Commissioner determined that American West had made taxable sales of coupon books and had failed to pay the resulting sales tax. An administrative law judge upheld the assessment, and the Commissioner adopted the ALJ's findings and conclusions. The district court affirmed the Commissioner's order, and American West appealed to the North Dakota Supreme Court, which reviewed the agency decision directly from the administrative record.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

Reverse the district court's judgment and remand to the Tax Commissioner for further proceedings consistent with the opinion. The Commissioner must not assess the coupon-book sales as taxable sales of tangible personal property under the invalid portion of N.D. Admin. Code § 81-04.1-01-28.

CASES CITED

- Ringsaker v. Director, N.D. Department of Transportation, 1999 ND 127, ¶ 5, 596 N.W.2d 328
- Dworshak v. Moore, 1998 ND 172, ¶ 6, 583 N.W.2d 799
- Greenwood v. Moore, 545 N.W.2d 790, 793 (N.D. 1996)
- Northern X-Ray Co., Inc. v. State ex rel. Hanson, 542 N.W.2d 733, 735, 738 (N.D. 1996)
- Consol. Tel. v. Western Wireless Corp., 2001 ND 209, ¶ 7, 637 N.W.2d 699
- Rocky Mountain Oil & Gas Ass'n v. Conrad, 405 N.W.2d 279, 281, 283 (N.D. 1987)
- Moore v. N.D. Workmen's Compensation Bureau, 374 N.W.2d 71, 74 (N.D. 1985)
- Little v. Traynor, 1997 ND 128, ¶ 30, 565 N.W.2d 766
- Little v. Tracy, 497 N.W.2d 700, 704 (N.D. 1993)
- Estate of Thompson, 1998 ND 226, ¶ 7, 586 N.W.2d 847
- Bismarck Tribune Co. v. Omdahl, 147 N.W.2d 903, 906 (N.D. 1966)

- Navistar International Transportation Corp. v. State Board of Equalization, 8 Cal. 4th 868, 35 Cal. Rptr. 2d 651, 884 P.2d 108, 110, 113 (1994)
- Bruns v. N.D. Workers Compensation Bureau, 1999 ND 116, ¶ 16, 595 N.W.2d 298
- North Dakota Fair Housing Council, Inc. v. Peterson, 2001 ND 81, ¶ 19, 625 N.W.2d 551
- Adams County Record v. Greater North Dakota Association, 529 N.W.2d 830, 838 n. 2 (N.D. 1995)
- Dine Out Tonight Club, Inc. v. Department of Revenue Services, 210 Conn. 567, 556 A.2d 580, 581-583 (1989)
- Sneary v. Director of Revenue, 865 S.W.2d 342, 345 (Mo. 1993)
- Comptroller of Treasury v. Washington National Arena, Ltd., 66 Md. App. 416, 504 A.2d 666, 672 (Spec. App. 1986)
- Wisconsin Department of Revenue v. Milwaukee Brewers Baseball Club, 111 Wis. 2d 571, 331 N.W.2d 383, 388 (1983)
- Ash v. Traynor, 1998 ND 112, ¶ 5, 579 N.W.2d 180
- First National Bank v. Department of Revenue, 85 Ill. 2d 84, 51 Ill. Dec. 667, 421 N.E.2d 175, 176, 178-179 (1981)
- Occidental Chemical Corp. v. Department of Revenue and Taxation, 751 So. 2d 397, 400-401 (La. Ct. App. 2000)
- Fingerhut Products Co. v. Commissioner of Revenue, 258 N.W.2d 606, 610 (Minn. 1977)
- Time, Inc. v. Hulman, 31 Ill. 2d 344, 201 N.E.2d 374, 377 (1964)
- Sioux Falls Newspapers v. Secretary of Revenue, 423 N.W.2d 806, 810 (S.D. 1988)
- Payne v. Board of Trustees of the Teachers' Insurance & Retirement Fund, 76 N.D. 278, 35 N.W.2d 553, 557-558 (1948)
- Schmutzler v. Workmen's Compensation Bureau, 78 N.D. 377, 49 N.W.2d 649, 652 (1951)
- Eklund v. Eklund, 538 N.W.2d 182, 188 (N.D. 1995)
- Capital Electric Cooperative, Inc. v. Public Service Commission, 534 N.W.2d 587, 592 (N.D. 1995)
- Effertz v. North Dakota Workers Compensation Bureau, 525 N.W.2d 691, 693 (N.D. 1994)
- Voss v. Gray, 70 N.D. 727, 298 N.W. 1, 4-5 (1941)
- Northern States Power Co. v. Board of Railroad Commissioners, 71 N.D. 1, 298 N.W. 423, 430-431 (1941)