

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

COPY

EXCEL CORPORATION, a foreign corporation,)
)
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 Petitioner,)
)
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 v.)
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)
 NEBRASKA DEPARTMENT OF REVENUE, an Agency of the State, & MARY JANE EGR, Tax Commissioner,)
)
)
 Respondents.)

Case No. CI99-1194

ORDER

This is an appeal pursuant to Neb. Rev. Stat. §§ 77-27,127, 77-27,128 (1996) and 84-917 (1999) from an Order of the State Tax Commissioner denying a petition for redetermination by Petitioner Excel Corporation ["Excel"] of the Nebraska Department of Revenue's denial of an exemption from personal property tax for the 1998 tax year sought pursuant to Neb. Rev. Stat. §§ 77-202(6) and 77-4105(2)(c). (E1, 34-40). Excel sought a redetermination of the Department's denial of Excel's attempt to add personal property to its Nebraska Personal Property Return (Form 775P) by filing an "amended" return after May 1, 1999; the Department approved the exemption only for personal property listed on the return filed by Excel on April 27, 1998. (E1, 5-13). The Tax Commissioner denied Excel's petition for redetermination, finding that the additional personal property listed on the return filed by Excel after May 1, 1999, was properly disapproved for exemption for the 1998 tax year. (E1, 39).

STANDARD OF REVIEW

Pursuant to Neb. Rev. Stat. § 84-917(5)(a) (1999), Excel's petition for judicial review shall be conducted "without a jury de novo on the record of the agency."

BACKGROUND

Excel, a foreign corporation authorized to do business in Nebraska, operates a beef processing facility in Colfax County, Nebraska. (E2, Exhibit 6,1). On November 17, 1989, Excel filed an application to enter into an agreement with the Tax Commissioner pursuant to the Nebraska Employment and Investment Growth Act, Neb. Rev. Stat. §§ 77-4101 to 77-4113 (1996 and Cum. Supp. 2000) (commonly referred to as "LB 775"). (E2, Exhibit 1, 1). On February 21, 1990, an LB 775 agreement between Excel and the Department was formally executed, which entitled Excel to certain tax benefits upon the execution of the agreement, and the obtainment of enumerated levels of investment and employment. (E2, Exhibit 1, 1). Among the various tax benefits to which Excel was entitled as a result of the LB 775 agreement was an exemption from personal property tax for "business equipment involved directly in the manufacture or processing of agricultural products. . . ." Neb. Rev. Stat. § 77-4105(2)(c) (Cum. Supp. 2000).

Pursuant to its regulatory authority over the administration of LB 775, the Tax Commissioner and Department, in 1993, promulgated Revenue Ruling 29-93-2. (E2, Exhibit 7, 2). Generally, this ruling sets forth an application process for qualified businesses to follow when claiming a personal property tax exemption within the context of the Nebraska Employment and Investment Growth Act. In addition to prescribing the personal property tax return form (Form 775P) and accompanying schedules, the Department's ruling explicitly states that failure to file the requisite returns and schedules by May 1 will result in "a waiver of the exemption. . . for that tax year." (E2, Exhibit 6, 2).

Excel filed its Nebraska Personal Property Tax Return, Form 775P, and schedules, with the Department on April 27, 1998, listing \$17,098,529 in personal property that was qualified for the personal property tax exemption. (E2, Exhibit 2, 1-14). Due to the discovery of additional qualified personal property, valued at approximately six million dollars, Excel filed what it labeled an

“amended” Form 775P, on or about June 9, 1998, setting forth the previously returned personal property and the recently discovered personal property, bringing the total amount claimed to \$23,799,653. (E2, Exhibit 1, 2; Exhibit 3, 1-18). On August 5, 1998, the Department issued to Excel a “Notice of Personal Property Determination” advising Excel that the Department approved Excel’s personal property tax exemption in the amount of \$17,098,529, which was the value of the personal property listed on the return filed on April 27, 1998. (E2, Exhibit 4, 1-2). The Department did not “formally” reject the personal property tax exemption for additional property claimed by Excel on the return filed on June 9, 1998; rather, the Department did not act on the Form 775P filed on June 9, 1998. (E2, Exhibit 1, 2).

On or about August 20, 1998, at the request of the Colfax County Assessor, Excel provided to Colfax County a “second” Form 775P and a listing of the additional personal property that was omitted from its original return. (E2, Exhibit 1, 2). On or about August 27, 1998, the County Assessor for Colfax County issued a “Notice of Penalty on Personal Property” to Excel for failing to timely file a personal property return listing the additional property. (E2, Exhibit 5, 1). On September 4, 1998, Excel filed a “Petition for Redetermination” of the Department’s disallowance of the personal property tax exemption for the additional personal property that was returned and listed on June 9, 1998. (E2, Exhibit 1, 2; Exhibit 6, 1-2). Excel and the Department stipulated before the Commissioner that the additional personal property listed on the Form 775P filed on June 9, 1998, if listed on the original Form 775P filed before May 1, 1998, would have been qualified property eligible for exemption. (E2, Exhibit 1, 2).

ISSUE

The sole question presented is whether the Tax Commissioner properly determined that only the personal property identified on Excel’s Form 775P filed prior to May 1, 1998, was entitled to

exemption for the 1998 tax year, and that the additional personal property identified by Excel on the “amended” return filed on June 9, 1998, was not eligible for the personal property tax exemption provided under LB 775 for the 1998 tax year.

DISCUSSION

In 1987, the Legislature enacted the Nebraska Employment and Investment Growth Act (1987 Neb. Laws, LB 775, *codified as amended at* Neb. Rev. Stat. §§ 77-4101 to 77-4113 (1996 and Cum. Supp. 2000)) (“LB 775” or the “Act”). The general purpose of LB 775 is stated in Neb. Rev. Stat. §77-4102 (1996), which provides, in pertinent part:

It is the policy of this state to make revisions in Nebraska’s tax structure in order to encourage new businesses to relocate to Nebraska, retain existing businesses and aid in their expansion, promote the creation and retention of new jobs in Nebraska, and attract and retain investment capital in the State of Nebraska.

In order to accomplish the stated purpose of LB775, the Legislature provided a series of tax incentives and benefits for businesses which meet required levels of investment and employment in Nebraska. Under LB 775, a taxpayer may file an application with the Tax Commissioner to enter into an agreement to obtain the tax incentives provided under the Act. Neb. Rev. Stat. § 77-4104(1) and (2) (Cum. Supp. 2000). If a taxpayer agrees to undertake a project involving a minimum investment of \$10,000,000 and the creation of 100 new jobs, the taxpayer is eligible to receive certain tax benefits. Neb. Rev. Stat. § 77-4105 (1996). One of the tax benefits a taxpayer meeting these investment and employment thresholds may receive is an exemption from personal property tax for the following types of personal property:

- (a) Turbine-powered aircraft, including turboprop, turbojet, and turbofan aircraft, except when any such aircraft is used for fundraising for or for the transportation of an elected official;
- (b) Mainframe business computers used for business information processing which require environmental controls of temperature and power and which are capable of simultaneously supporting more than one transaction and more than one user plus peripheral components which require environmental controls of temperature and power connected to such computers. Computer peripheral components shall be limited to additional memory units, tape drives, disk drives, power supplies, cooling units, and communication controllers; and
- (c) Personal property which is business equipment located in a single project if (i) the business equipment is involved directly in the manufacture or processing of agricultural products, (ii) the investment in the single project exceeds ten million dollars, and (iii) the use, value, and proper classification of the business equipment has been certified by the Tax Commissioner.

Neb. Rev. Stat. § 77-4105(2) (Cum. Supp. 2000).

For the above-enumerated three classes of personal property, § 77-4105 (2)(c), further provides:

Such property shall be exempt from the tax on personal property from the first January 1 following the date of acquisition for property in subdivision (2)(a) of this section, or from the first January 1 following the end of the year during which the required levels were exceeded for property in subdivisions 2(b) and (2)(c) of this section, through the sixteenth December 31 after the filing of an application.

Neb. Rev. Stat. § 77-4111(1996) provides: “The Tax Commissioner shall adopt all rules and regulations necessary to carry out the purposes of the Employment and Investment Growth Act.” Pursuant to this statutory authority, the Tax Commissioner, in 1993, issued Revenue Ruling 29-93-2, (E2, Exhibit 7, 1-2), entitled “Economic Development Tax Incentives-Form 775P Filing.” This ruling provides, in pertinent part:

The Nebraska Personal Property Return, Form 775P, with accompanying schedules, must be filed with the Nebraska Department of Revenue on or before May 1 of each year. Under no circumstances will an extension be granted.

Failure to timely file Form 775P will be deemed to be a waiver of the exemption of that property for that tax year. Any return and accompanying schedules filed after May 1 will be denied, and the property subject to tax by the counties.

(E2, Exhibit 7, 2) (emphasis added).

The Tax Commissioner found that the Department properly denied Excel’s claim for exemption of the additional personal property which was returned after the May 1 deadline set forth in Revenue Ruling 29-93-2. Excel maintains that the Commissioner erred in relying on the Revenue Ruling, as it “does not further the statutory purposes” of the Nebraska Employment and Investment Act, which are generally to encourage and reward business investment in this state.

The court concludes that the Commissioner’s decision, and the Revenue Ruling, are consistent with the Act. As the Commissioner noted in her Order:

Property tax administration depends on a precise time table beginning with the listing of personal property by the taxpayer (assessment by the county in the case of real property), equalization by the county board, the setting of the tax rate, the levying of the taxes, and the finalization of the tax list for collection purposes. Failure to adhere to any of the statutory

dates in this scheme would destabilize the process upon which local subdivisions depend for their operating revenues. The administratively adopted May 1 deadline for the submission of personal property that potentially qualifies for an LB 775 exemption is the same deadline that is outlined in the statutes for the listing of all personal property [Neb. Rev. Stat. § 77-1229 (Reissue 1996)]. . . . Unlike the general personal property tax listings, the investment and employment criteria which the Legislature has determined must exist before the exemption is granted must be verified by the Department. If the 775P returns were allowed to be amended at any time, there could never be any finalization to the tax list. The due date for the submission of the 775P returns must remain fixed in order to allow the entire property taxation scheme to remain on its statutory schedule.

(E1, 38).

“[A]lthough construction of a statute by a department charged with enforcing it is not controlling, considerable weight will be given to such a construction, particularly when the Legislature has failed to take any action to change such an interpretation.” *Omaha Public Power Dist. v. Nebraska Dep’t of Revenue*, 248 Neb. 518, 529, 537 N.W.2d 312, 319 (1995); *accord McCaul v. American Savings Co.*, 213 Neb. 841, 846, 331 N.W.2d 795, 798 (1983). The Nebraska Supreme Court has specifically recognized that revenue rulings issued by the Tax Commissioner and Department constitute administrative interpretations of statutes which are “entitled to weight.” *Vulcraft v. Karnes*, 229 Neb. 676, 678, 428 N.W.2d 505, 507 (1988); *accord Omaha Public Power Dist. v. Nebraska Dep’t of Revenue*, 248 Neb. at 529, 537 N.W.2d at 319. The Department’s Revenue Ruling properly recognizes that personal property tax returns listing personal property claimed to be exempt under § 77-4105(2) must be filed by the due date for the filing of personal

property tax lists which, pursuant to Neb. Rev. Stat. § 77-1229 (1996), *amended by* 2000 Neb. Laws, LB 968, § 43, is “on or before May 1”

Revenue Ruling 29-93-2 is not unreasonable in light of the necessity of adhering to the various deadlines and time constraints within the property tax laws. Although the general purpose of the Employment and Investment Growth Act is to encourage and reward investment in this state, rules and regulations must be adopted to provide for a reasonable and timely process. By requiring a taxpayer to file a return by May 1, listing all of the property for which such taxpayer is claiming an exemption, the Revenue Ruling in no way thwarts the purposes of the Act. When filing a return, a taxpayer must simply know what items of personal property it owned as of the previous January 1. The Revenue Ruling provides a rational method of carrying out the purposes of the Act. The refusal to allow a property tax exemption for the year in which a timely application was not filed does not defeat the purpose of the Act.

Significant to this determination is the fact that Revenue Ruling 29-93-2 adopted by the Commissioner and Department has been statutorily codified by recent amendments to §§ 77-1229 and 77-4105(2). In 2000, § 77-4105(2) was amended to provide that the Property Tax Administrator, not the Commissioner or Department, would assume responsibility for determining the eligibility of personal property for exemption. 2000 Neb. Laws, LB 968, § 73 (*codified at* Neb. Rev. Stat. § 77-4105 (Cum. Supp. 2000)). Section 77-4105(2)(c) now specifically provides that “the taxpayer shall annually file a claim for exemption with the Property Tax Administrator on or before May 1” Neb. Rev. Stat. § 77-4105(2)(c) (Cum. Supp. 2000). In addition, § 77-1229 was amended by adding a new subsection which provides, in pertinent part:

Any person seeking a personal property tax exemption pursuant to subsection (2) of section 77-4105 shall annually file a copy of the forms required pursuant to section 77-4105 with

the county assessor in each county in which the person is requesting exemption. The copy shall be filed on or before May 1. **Failure to timely file the required forms shall cause the forfeiture of the exemption for the tax year**

Neb. Rev. Stat. § 77-1229(2) (Cum. Supp. 2000) (emphasis added).

“In order to ascertain the proper meaning of a statute, reference may be had to later as well as earlier legislation upon the same subject.” *Big John's Billiards, Inc. v. Balka*, 260 Neb. 702, 709, 619 N.W.2d 444, 450 (2000). “All existing acts should be considered, and a subsequent statute may often aid in the interpretation of a prior one.” *Id.* During her testimony before the Revenue Committee, the Property Tax Administrator described these amendments as “some administrative date-specific filing requirements for the 775 companies,” which “[had] been in practice administratively since the inception of LB 775.” Committee Records on LB 1188, 96th Leg., 2nd Sess., 79 (January 21, 2000) (Statement of Property Tax Administrator Catherine Lang). The Property Tax Administrator explained that the amendments were “simply codifying [these administrative requirements] into law. . . [to ensure] consistency in what these companies do as they go forward to try and receive their exemptions.” *Id.* at 79-80. The recent amendments to §§ 77-4105(2)(c) and 77-1229 indicate a legislative intent to affirm the administrative interpretation previously adopted by the Commissioner and Department by codifying the procedural requirements outlined in Revenue Ruling 29-93-2. This subsequent legislative action supports the propriety of the Commissioner’s decision denying Excel’s petition for redetermination.


CONCLUSION

In light of the foregoing, it is the conclusion of this court that the Order of the State Tax Commissioner should be affirmed.

IT IS THEREFORE HEREBY ORDERED, ADJUDGED AND DECREED that the order of the Tax Commissioner is affirmed and the Petition on Appeal is denied and dismissed.

Dated this 25th day of April, 2001.

BY THE COURT:


John A. Colborn
District Judge