IN THE COURT OF APPEALS OF IOWA

No. 1-638 / 91-0837

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CLERK SUPREME COURT

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GENERAL ELECTRIC COMPANY,

Appellant,

vs.

IOWA STATE BOARD OF TAX REVIEW,

Appellee.

Appeal from the Iowa District Court for Polk County, Robert A. Hutchison, Judge.

General Electric appeals the district court affirmance of the Iowa Department of Revenue and Finance Director's decision which precludes General Electric from obtaining a refund of tax paid after the expiration of the statute of limitations. **AFFIRMED.**

Burns Mossman, Drew R. Tillotson, and Bruce W. Baker, of Nyemaster, Goode, McLaughlin, Voigts, West, Hansell & O'Brien, Des Moines, for appellant.

Bonnie J. Campbell, Attorney General, and Harry M. Griger, Special Assistant Attorney General, for appellee.

Heard by Oxberger, C.J., and Schlegel and Sackett, JJ.

SCHLEGEL, J.

In December 1985, the Department of Revenue and Finance commenced an examination of General Electric's income tax liabilities for the years 1977-84. Following negotiations between the Department and General Electric concerning the tax liability, General Electric on October 28, 1986, paid $3,366,767.82 in taxes and interest for the years 1977 through 1984. At the time these taxes were paid, the period of limitations under Iowa Code section 422.25(1) for assessment of additional taxes for the years 1980-84 had expired because no notice of assessment had been issued and no assessment had been made.[1] Although this issue was never discussed, both parties believed the Department could issue a notice of assessment with respect to the tax liabilities in dispute.

On October 26, 1987, General Electric filed a refund claim seeking a refund of the audited tax and interest it paid for the years 1980-84. General Electric's claim was predicated on a then recent supreme court decision. Kelly-Springfield Tire Co. v. Iowa State Bd. of Tax Review, 414 N.W.2d 113, 115-16 (Iowa 1987). In that case the supreme court held the internal revenue service audit exceptions to the general three-year statute of limitations in section 422.25(1) limit the scope of an Iowa examination made subsequent to such three-year period only to those

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1. The Department reaudited General Electric's tax years 1977-79; these years are not before us on appeal.

adjustments made by the internal revenue service which affect the taxpayer's Iowa tax liability. Id. General Electric claimed the Department was barred from assessing and collecting additional taxes for the years 1980-82 after June 15, 1986.

When General Electric paid the taxes in October 1986, it did not apply for the amnesty program which was in effect at the time. However, the Department, for purposes of computing accrued interest and penalties, applied amnesty principles. The Department included the October 1986 payment in its records of amnesty payments. The Department denied General Electric's claim for a refund on the grounds that it did not believe General Electric had overpaid its tax share and that the claims for the years 1980-84 had already been settled and resolved. General Electric appeals.

General Electric argues there was no settlement of its tax liability precluding it from obtaining a refund. It maintains there never was any discussion between it and the Department as to whether the October 1986 payment was a final or binding resolution of the audit. General Electric argues that under Iowa Administrative Code section 701-55.1(2), where an audit has been completed but no assessment made, a taxpayer may negotiate with the Department, pay the tax, and file a claim for refund and contest the Department's refusal to pay the refund.

In the alternative, General Electric argues that even if it is not entitled to a refund under Iowa Code section 422.73(2), any settlement is voidable because of a mutual mistake. General Electric believes if the parties had known the three-year statute of limitations had been applicable, there would have been no agreement, and no payments would have been made. General Electric maintains at the time of the payment the Department's claim was not enforceable, and could not have been due.

A court may alter an agency's determination if it is unsupported by substantial evidence when the record is reviewed as a whole. Iowa Code § 17A.19(8)(f) (1991). Evidence is substantial if a reasonable person would find it adequate to reach the same conclusion, even if the reviewing court may draw a contrary inference. Mercy Health Center v. State Health Facilities Council, 360 N.W.2d 808, 811-12 (Iowa 1985) (citation omitted). The agency weighs the evidence, and the court should broadly and liberally apply the agency's findings in order to uphold rather than defeat the agency's decision. Ward v. Iowa Dep't of Transp., 304 N.W.2d 236, 237 (Iowa 1981) (citation omitted). The trial court concluded there was "clearly substantial evidence to support the decision of the hearing officer and the Board that there was a settlement agreement." We agree. We are bound by the agency's decision because it is correct as a matter of law. Id. at 238.

The Board and the district court found General Electric and the Department entered into a settlement for years 1980-84 which would preclude a refund. A valid settlement or compromise agreement when accepted constitutes a binding contract. 15A Am. Jur. 2d Compromise and Settlement § 7, at 779-780 (1976). A settlement agreement is valid then if it possesses "the essential elements of any other contract." 15A C.J.S. Compromise & Settlement § 2, at 174 (1967).

The facts show all the elements of a valid settlement exist in this case. There was a meeting of the minds as to a resolution of the issues discussed, and there was a give and take on both sides which constituted consideration in reaching this resolution. The Department's last proposal was accepted by General Electric when it mailed the check for the amount due. Based upon the evidence of what transpired between these two parties, it is reasonable to conclude a valid, and therefore binding settlement was entered into and accepted by General Electric and the Department.

General Electric argues the settlement is not binding because the parties never discussed the statute of limitations issue. The evidence shows, and General Electric concedes, that General Electric had raised the statute of limitations issue in years prior to 1977 when General Electric was dealing with the Department. In this earlier protest General Electric had raised the statute of

limitations issue but later dropped its argument in belief the Department's position was correct. The parties were in agreement on the limitations question. The parties also agree that by 1986 the Department was granting no concessions to taxpayers raising the statute of limitations issues because of its belief the statute was inapplicable.

General Electric states the settlement agreement cannot be upheld where both parties acknowledge the statute of limitations issue was not discussed by the parties. We find the agreement can be upheld.

> While a valid compromise agreement is conclusive between the parties as to the matters included, the agreement is conclusive only as to those matters which the parties have fairly intended to include within its terms and the necessary consequences thereof. Obviously, it does not include matters expressly excepted, although a settlement which is final except as to certain matters is to be treated as final in its other particulars. Thus a settlement of a claim is conclusive of all elements of the claim except those specifically reserved by the parties.

15A C.J.S. Compromise & Settlement § 27, at 235-38 (1967). The hearing officer found as a matter of fact that General Electric could not have obtained the settlement agreement it did had it attempted to reserve specifically the limitations issue. Because there is no evidence of an express exception, we conclude there is substantial evidence in the record to support the officer's finding.

We find both parties believed there had been a settlement agreement resolving all issues between them. General Electric asserts that if there was in fact a

settlement agreement that covered all issues, then it should be set aside due to mutual mistake. A voluntary settlement agreement based upon a mutual mistake of law may not be set aside absent a showing of exceptional circumstances, where the mistake was procured by fraud or misrepresentation. Wright v. Scott, 410 N.W.2d 247, 249 (Iowa 1987) (citations omitted). We agree with both the administrative law judge and the district court that there is no such showing here.

We also find there is substantial evidence to support the agency decision that the tax paid by General Electric in 1986 was due at the time it was paid. We conclude there is substantial evidence to support the agency's findings of a binding settlement agreement such that General Electric may not pursue a claim for refund.

AFFIRMED.

Oxberger, C.J., concurs; Sackett, J., dissents.

SACKETT, J. (dissenting)

I dissent.

The issue is whether petitioner-appellant General Electric Company was precluded from claiming a refund of corporate income taxes paid for the years 1980, 1981, and 1982. The petitioner's corporate returns for these taxable years were timely filed:

Taxable Year	Date Return Filed
December 31, 1980	October 30, 1981
December 31, 1981	October 29, 1982
December 31, 1982	June 15, 1983

In December 1985 the department began an audit of petitioner's returns for these years and others. On October 28, 1986, petitioner paid substantial income tax for the years 1977-84. The payment included tax for the years involved in this claim. When the payment was made, no assessment had been made and no protest was filed.

In October 1987 the Iowa Supreme Court decided the case of Kelly-Springfield Tire Co. v. Iowa State Bd. of Tax Review, 414 N.W.2d 113 (Iowa 1987). Kelly-Springifleld was contrary to the prior position of the state with reference to the statute of limitations established by Iowa Code section 422.25(1).

Petitioner sought a refund of taxes paid. Petitioner has been denied the refund claim because the agency found petitioner was barred from doing so because it found the October 1986 payment was a settlement. The trial court affirmed.

The majority has agreed, finding substantial evidence to support a settlement. The majority applies contract law in reaching its decision. The issue must be resolved by following the dictates of statutory law and departmental rules.

Thus, where an audit has been completed, but no assessment made, a taxpayer may negotiate with the department, pay the tax, file a claim for refund, and contest the department's refusal to pay the refund. There is no restriction on the issues which the taxpayer may raise, and only when a protest has been filed and the issue raised in the protest is that issue conclusively resolved.

Iowa law thus permits the filing of a claim for refund in situations where: (1) the claim is timely, and (2) where the taxpayer has filed a tax return and overpaid the tax, or (3) where the taxpayer has been audited by the department, received a notice of adjustment, and paid the audit deficiency.

There was no specific waiver of the refund rights. There was no assessment or protest. The majority's decision produces a rule that removes a statute of limitation defense under section 422.25(1) for taxpayers who pay to stop the running of interest and sue for a refund.

I would reverse and order refund of the claim made for 1980, 1981, and 1982, together with statutory interest.