IN THE COURT OF APPEALS OF IOWA

No. 0-172 / 89-1212

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CLERK SUPREME COURT

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SCIENTIFIC APPLICATIONS, INC.,

Appellee,

vs.

IOWA STATE BOARD OF TAX REVIEW,

Appellant.

Appeal from the Iowa District Court for Polk County, Michael J. Streit, Judge.

Appellant appeals the decision of the district court upon judicial review of a retail sales tax assessment. **REVERSED.**

Thomas J. Miller, Attorney General; Harry M. Griger, Special Assistant Attorney General; and James D. Miller, Assistant Attorney General, for respondent-appellant.

F. L. Burnette II and Joseph A. Quinn of Nyemaster, Goode, McLaughlin, Voights, West, Hansell & O'Brien, Des Moines, for petitioner-appellee.

Heard by Donielson, P.J., and Hayden and Sackett, JJ.

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Appellant Iowa State Board of Tax Review (Board) appeals the decision of the Iowa District Court upon judicial review of a retail sales tax assessment. The district court reversed the Board's decision finding the notice of assessment was not timely. We reverse.

On April 21, 1980, the Department of Revenue and Finance (Department) conducted a retail sales tax field audit of appellee Scientific Applications, Inc. (SAI) at SAI's accountant's office in Iowa City. SAI is a manufacturer, wholesaler, and retailer of insulation materials, equipment, and tools located in Mount Pleasant, Iowa. Subsequent to the initial examination, the Department's field auditor, Arthur Hagemeier, and representatives of SAI met at SAI's accountant's office in Iowa City in order to review SAI's audit. At this meeting, SAI's treasurer, Greg Bontrager, indicated that certain resale certificates were at SAI's Mount Pleasant office. The existence of such certificates would exempt the sale for resale transactions from sales tax. See Iowa Code § 422.47(3)(a). Bontrager was given a copy of a letter to be used as an example in obtaining customer statements regarding usage or disposal of the purchased product.

Also discussed at the May 29th meeting was the possible interstate nature of certain sales. Such sales, too, would be exempt from taxation. See Iowa Code § 422.45(1).

Bontrager informed Hagemeier that documentation proving the interstate character of the sales existed at SAI's Mount Pleasant office. Bontrager further informed Hagemeier these records would be made available to the auditor in August of 1980. When contacted by Hagemeier on August 13, 1980, Bontrager told Hagemeier that he had not yet been able to obtain the necessary documentation and needed until February 1981 in order to review the audit listings and garner the requisite records.

On March 20, 1981, Hagemeier again attempted to contact Bontrager, only to be told that Bontrager had transferred to Atlanta, Georgia. When contacted in Atlanta, Bontrager again told Hagemeier he had not yet reviewed the audit listings. Hagemeier contacted Bontrager in April of 1981 in order to inform him that the audit would be submitted in its present state for further action by the Department. The audit was submitted on April 22, 1981, and the Department issued a notice of adjustment on May 12, 1981, to SAI for $98,978.44 for retail sales tax.

On the heels of receipt of the notice of adjustment, the secretary of SAI, Ted Roth, contacted the Department on May 26, 1981, to request additional time, until July 10, 1981, in which to respond to the notice. Roth also indicated the aforementioned records and documentation would be made available for review by August 10, 1981. On September 21, 1981, Hagemeier contacted Roth in order to

review the records. The only records made available by SAI, however, were exemption certificates which did not satisfy departmental standards. Other previously-promised records were not made available by SAI. On September 22, 1981, Hagemeier sent SAI another copy of a letter to be used as a guide in obtaining customer statements regarding usage of the purchased product.

Hagemeier made four further attempts to review the records and documentation in November and December of 1981. On December 14, 1981, Roth told Hagemeier that still further time was needed in order to obtain valid exemption certificates and Hagemeier should contact him again during the first of 1982. Hagemeier made no further attempt to secure the documentation, and the notice of assessment was issued on May 25, 1982, for $105,290.28.

SAI challenged the assessment on the ground that it was not made within one year from the date of the completion of the examination, as required by Iowa Code section 442.54. After a hearing, the hearing officer found that the audit was not complete as of May 29, 1980, because of SAI's request of additional time to produce and garnish further documentation. As a result, the statute of limitations had never begun to run. The director of the Department adopted the decision of the hearing officer. SAI then appealed to appellant, which affirmed the director. Appellant held that so long as additional information was being requested

by the Department and furnished by appellee, the statute of limitations did not commence running.

SAI subsequently sought judicial review of the Board's decision. The district court reversed the decision of the Board and held the notice of assessment to be untimely. The court ruled that the Department's examination of SAI's books and record was completed as of May 29, 1980. Appellant appeals the decision of the district court.

This appeal results from a contested case state agency proceeding. See Iowa Code § 17A.2(2) (1987). In "contested case" proceedings, the agency, rather than the district court, is empowered to hear evidence and make findings of fact. Iowa Code § 17A.19(7) (1987). The district court, when exercising the power of judicial review over agency action, is functioning in an appellate capacity to correct errors at law. Iowa Code § 17A.19(8) (1987). Kohorst v. Iowa State Commerce Comm'n, 348 N.W.2d 619, 621 (Iowa 1984). Our review of the district court's decision is limited to correction of errors law. Roberts v. Iowa Dep't of Job Serv., 356 N.W.2d 218, 221 (Iowa 1984). We, like the district court, are bound by the agency's fact findings if those findings are supported by substantial evidence. Evidence is substantial if a reasonable person would find it adequate for reaching a decision. Peoples Memorial Hosp. v. Iowa Civil Rights Comm'n, 322 N.W.2d 87, 91 (Iowa 1982).

Iowa Code section 422.54(1) provides:

> 1. As soon as practicable after a return is filed and in any vent within five years after the return is filed the department shall examine it, assess and determine the tax due if the return is found to be incorrect and give notice to the taxpayer of such assessment and determination as provided in subsection 2 hereof. If the determination that a return is incorrect is the result of an audit of the books and records of the taxpayer, the tax, or additional tax, if any is found due, shall be assessed and determined and the aforesaid notice to the taxpayer shall be given by the department within one year after the completion of the examination of said books and records.

(Emphasis added.) The sole issue before us in this case is whether the Department's examination of SAI's books and records was completed and, if it was, when did completion of the examination occur. The issue before the court therefore involves a construction and application of section 422.54(1) to the facts of record.

Completion has been defined as "[t]he finishing or accomplishing in full of something theretofore begun . . . ." Black's Law Dictionary 357 (4th ed. 1968). The district court concluded that the statute of limitations commences after examination of the books and records in one location. The district court's conclusions were based in large part upon the following example found in 701 Iowa Administrative Code 11.2 pertaining to the running of the one-year limitation period:

> Example: An employee of the department examines a taxpayer's books and records located in Davenport for the returns filed on April 30, 1974 to April 30, 1977. The examination is completed on February 2, 1978. However, taxpayer's books and

> records for the same period located in Des Moines have not been examined. The one-year limitation period with reference to the Davenport books and records commences on February 2, 1978. However, the one-year period concerning the Des Moines books and records has not commenced.

(Emphasis added). The district court's analysis begs the question because in the example the examination of the taxpayer's books and records located in Davenport is actually completed. The issue, however, is when does an examination of a taxpayer's books and records become completed.

Our goal in construing and interpreting statutes is to ascertain and give effect to the legislature's intent. Iowa Fed'n of Labor v. Iowa Dep't of Job Serv., 427 N.W.2d 443, 445 (Iowa 1988). We conclude that where, as here, the taxpayer requests the Department to refrain from concluding its examination of certain books and records so as to permit the taxpayer to supplement the documentation already provided to the Department, the examination of the books and records is not complete until the supplemental documentation has been examined, or the Department chooses to forego an examination of the additional documentation. This conclusion is especially appropriate where the taxpayer seeks additional time in which to obtain exemption certificates or other documentation from customers. Under such circumstances, the requisite documentation does not

exist at the time of the initial examination, thereby precluding the Department's examination of the aforementioned documents at that time.

Under the facts presented here, the Department showed extreme patience in waiting for the promised documentation from SAI. It was not until December 14, 1981, when Roth informed Hagemeier that still further time was needed in order to obtain valid exemption certificates, did the Department's tolerance come to an end. We conclude that the Department's examination of SAI's records was completed on that date, and the one-year statute of limitations began to run. The Department's assessment was subsequently issued on May 25, 1982, well within the one-year period. We, therefore, reverse the decision of the district court and reinstate the decision of the Board.

REVERSED.

Hayden, J., concurs; Sackett, J., dissents.

SACKETT, J. (dissenting)

I dissent. I would affirm the trial court.