IN THE COURT OF APPEALS OF IOWA

PALACE CLOTHIERS, INC.,	)	
Plaintiff-Appellant,	)	
vs.	)	Filed August 26, 1987
IOWA DEPARTMENT OF REVENUE,	)	7-125 / 86-967
Defendant-Appellee.	)	

Appeal from the Iowa District Court for Black Hawk County (No. 66951), Alan L. Pearson and Roger F. Peterson, Judges.

The appellant, a taxpayer, appeals from the district court's dismissal of its petition for judicial review. **AFFIRMED.**

Hugh M. Field of Beecher, Beecher, Holmes & Rathert, Waterloo, for plaintiff-appellant.

Thomas J. Miller, Attorney General, and Gerald A. Kuehn, Marcia Mason, and Harry M. Griger, Assistant Attorneys General, for the defendant-appellee.

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

OXBERGER, C.J.

In this appeal, plaintiff Palace Clothiers, Inc. (Palace), challenges the district court's order dismissing its petition for judicial review of an agency determination made by the Iowa Department of Revenue. The district court predicated its decision to dismiss the petition upon Palace's failure to comply with the mandates of Iowa Code section 17A.19(4) and Kohurst v. Iowa State Commerce Commission, 348 N.W.2d 619 (Iowa 1984). These authorities require that a petition for judicial review of an agency action must ". . . contain a concise statement of . . . the grounds on which relief is sought." Iowa Code § 17A.19(4)(1985). We conclude that the district court committed no error in dismissing the petition upon this basis, and affirm.

This proceeding is an outgrowth of the following facts. Palace is a retailer engaged in the sale of clothing. As an additional aspect of its business, Palace rents tuxedos and formal wear. From January 1, 1981, through June 30, 1984, Palace collected $8,847.40 from its customers as sales taxes associated with its rental business. Palace then remitted this amount to the Iowa Department of Revenue. In July of 1984, Palace filed a sales tax refund claim with the Department of Revenue, requesting a refund of the $8,847.40. This request was predicated upon the fact that during the period in question, the rental of tuxedos and formal wear was not subject to the Iowa Retail Sales Tax.[1] Although the department conceded this point, it refused to refund the money to Palace, and instead insisted that Palace promise to return the money to the customers who erroneously paid the tax. See 730 Iowa Admin. Code 12.9 (1986) ("Refunds of tax shall be made only to those who have actually paid the tax"). Palace refused to comply with this request and accordingly, the department withheld the refund.

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[1]The retail sales tax was expanded to include such items in July of 1984. See 1984 Iowa Acts, Ch. 1305, § 77.

Palace then filed the underlying petition for judicial review. In its petition, Palace did not concisely set forth the grounds upon which relief was sought, but rather merely provided the following vaguely-worded allegation:

> Relief is sought from the incorrect decision not granting the relief prayed for in the [protest] filed by the Plaintiff [with the department of revenue] . . . .

We think that the district court correctly concluded that Palace failed to comply with the dictates of the Iowa Administrative Procedure Act. In Kohurst v. Iowa State Commerce Commission, 348 N.W.2d 619 (Iowa 1984), the supreme court explicitly held that when a petition for judicial review is filed pursuant to Chapter 17A, each alleged error "must be separately and distinctly started . . . ." Id. at 621. Moreover, the court in Kohurst stated that the district court in that case "was correct in requiring the [petitioners] to particularize the grounds upon which they sought relief." Id.

In the present case, the district court ordered Palace to comply with this mandate and gave Palace an additional fifteen days to amend its pleadings. The court carefully explained the requirements set forth in Kohurst, and advised Palace of the need to set forth the particular bases upon which it sought relief. In this connection, the court referred Palace to section 17A.19(8)(a)-(g) of the Iowa Code, which sets forth the forms of relief allowable in an administrative proceeding. In response, Palace filed a "brief" which once again failed to disclose the grounds upon which relief was requested. Furthermore, the allegations contained in the brief were not specifically tied to the bases of relief delineated in section 17A.19(8)(a)-(g). Consequently, the district court entered a final judgment dismissing the petition because of Palace's failure "to allege a violation of any reasonably identifiable statutory ground under section 17A.19(8)(a)-(g) . . . and [the failure] . . . to even hint what statutory grounds [it] relies on." The juxtaposition of the supreme court's decision in Kohurst causes us to conclude that the district court committed no error in dismissing the petition.

Palace additionally argues that the district court acted improperly in refusing to allow Palace to amend its petition after the court's order of dismissal was entered. In advancing this argument, Palace asserts that pursuant to Iowa Rule of Civil Procedure 86, it was entitled to file additional pleadings within seven days following the court's order. Although we agree that Palace was permitted under rule 86 to replead, see Nesper Sign and Neon Co. v. Nugent, 168 N.W.2d 805, 806 (Iowa 1969), its failure to do so within the seven-day period caused the district court's order to become a final adjudication. Gradischnig v. Polk County, 164 N.W.2d 104, 105 (Iowa 1969). After this point, Palace's only remedy was to seek to have the district court's order set aside under rule 236. See Dvorak v. Dvorak, 244 Iowa 1113, 1116, 60 N.W.2d 88, 89-90 (1953); see also Kohurst v. Iowa State Commerce Comm'n, 348 N.W.2d at 620. Palace failed to pursue its proper remedy and consequently we find no error in district court's decision refusing to grant leave to amend.

AFFIRMED.