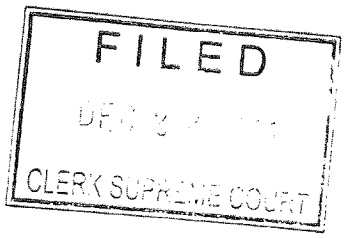
IN THE COURT OF APPEALS OF IOWA

No. 1-751 / 00-0691
Filed December 28, 2001



RONALD E. RUNGE and SOLVEIG RUNGE,
Petitioners-Appellees/Cross-Appellants,

vs.

IOWA DEPARTMENT OF REVENUE AND FINANCE,
Respondent-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Woodbury County, John D. Ackerman, Judge.

The Iowa Department of Revenue and Finance appeals from the district court's ruling on judicial review vacating the decision by the board of tax review which affirmed the department's assessment of additional Iowa income taxes for the 1988 tax year. **REVERSED AND REMANDED.**

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

Ronald E. Runge, Sioux City, pro se, for appellees.

Considered by Huitink, P.J., and Zimmer and Vaitheswaran, JJ.

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HUITINK, P.J.

The Iowa Department of Revenue and Finance appeals a district court order vacating the Iowa State Board of Tax Review's affirmance of the department of revenue and finance's assessment of income tax against Ronald and Solveig Runge. We reverse.

I. Background Facts and Proceedings.

The Internal Revenue Service conducted an audit of the Runges' federal income taxes, resulting in an upward adjustment. The Iowa Department of Revenue and Finance (IDR&F) thereafter issued a notice of assessment of additional state income taxes. The Runges' protest to the IDR&F's assessment was resolved against them by an administrative law judge on March 13, 1998. This decision was affirmed by the director of the IDR&F on July 17, 1998 and again by the Iowa State Board of Tax Review on April 30, 1999. The Runges' subsequent application for rehearing was deemed denied by operation of Iowa Code section 17A.16(2) (1999) on June 3, 1999, and later formally denied by the state board on November 5, 1999. Finally, in response to the Runges' December 21, 1999 petition for judicial review, the district court vacated the state board's order, finding that the IDR&F's assessment was barred by the statute of limitations. In so finding, the district court also overruled the department's motion to dismiss the Runges' petition as untimely, concluding that under Iowa Code section 422.29(1) the Runges had sixty days after the denial of their applicatior for rehearing to file their petition.

On appeal the IDR&F challenges the applicability of section 422.29(1), arguing that judicial review of agency decisions is controlled by Iowa Code section 17A.19(3), under which the Runges' petition for judicial review was untimely. In the alternative, IDR&F argues that even if section 422.29(1) is found to be applicable, the petition would still be untimely as calculated from the date the petition was "deemed denied" pursuant to section 17A.16(2). The IDR&F also argues that the district court erred in finding that the notice of assessment was barred by the statute of limitations under Iowa Code section 422.25(1)(a).

II. Motion to Dismiss.

We find the district court erred in concluding that the Runges' petition for judicial review was timely pursuant to section 422.29(1). Section 422.29(1) sets forth the procedure for obtaining judicial review of a final order of the director pursuant to section 422.28. Iowa Code § 422.29(1) ("petitions for judicial review may be filed . . . within sixty days after the petitioner shall have received notice of a determination by the director as provided for in section 422.28"); *see also* Iowa Code § 422.28 (taxpayer may appeal assessment of tax to director within sixty days of notice of said assessment). The Runges, conversely, sought judicial review of agency (the Iowa State Board of Tax Review) decisions affirming the final order of the director and denying the Runges' application for rehearing. Judicial review of agency action is controlled by Iowa Code section 17A.19(3). Iowa Code § 17A.1 (Iowa Administrative Procedure Act applies to "all suits for the judicial review of agency action that are not specifically excluded from this chapter . . . by its express terms or by the express terms of another chapter.").

Under this section, the Runges had thirty days from the date their application for rehearing was "denied or deemed denied" to file their petition for judicial review. Because their petition was filed more than thirty days from the date the Runges' petition was deemed denied, the petition should have been dismissed as untimely. *See Boedeker v. Employment Appeal Bd.*, 462 N.W.2d 728, 729 (Iowa Ct. App. 1990) (court is without authority to consider petition for judicial review more than thirty days after deemed denied pursuant to section 17A.16(2)). The district court decision is accordingly reversed and remanded for further proceedings in conformity with this opinion.

REVERSED AND REMANDED.

Zimmer, J., concurs; Vaitheswaran, J., concurs specially.

VAITHESWARAN, J. (concurring specially)

I specially concur. I agree with the majority's conclusion that the petition for judicial review was untimely, but write to clarify that it is untimely due to a quirky characteristic of the Iowa Department of Revenue's intra-agency review process. *See Pruss v. Iowa Dep't of Revenue*, 330 N.W.2d 300, 303 (Iowa 1983). As the court noted in *Pruss*, taxpayers seeking relief pursuant to Iowa Code chapter 422 have two ways to obtain judicial review of the department of revenue's action. *Id.* Under the first option, they could directly seek judicial review of the director of revenue's decision pursuant to Iowa Code section 422.29(1). Under the second option, they could file an intra-agency appeal of the director's decision with the state board of tax review pursuant to Iowa Code section 421.1(4) and then seek judicial review of the board's action. Under the first option, the taxpayer has sixty days from receipt of the director's decision to seek judicial review. Iowa Code § 422.29(1). Under the second option, the taxpayer only has thirty days from the state board's decision within which to seek judicial review because the judicial review process under this option is governed by Iowa Code section 17A.19(3), not Iowa Code section 422.29(1). The Runges chose to exercise the second option and, accordingly, filed an intra-agency appeal of the director's decision with the state board of tax review before filing a petition for judicial review. Therefore, their petition for judicial review was governed by a thirty rather than a sixty-day deadline. As the Runges did not file their petition within thirty days of the state board's decision, I agree with the author that their petition was untimely.