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Lakeside Industries, Inc. v. Washington State Department of Revenue

Supreme Court of Washington, En Banc - February 23, 2023 - P.3d - 2023 WL 2172112

Asphalt manufacturer petitioned for judicial review of Department of Revenue's (DOR) specific written instructions that manufacturer was required to utilize comparable sales instead of a "cost basis" method to calculate the amount of asphalt use-tax owed.

The Superior Court dismissed the petition for lack of subject matter jurisdiction and failure to state a claim, and manufacturer appealed. The Court of Appeals affirmed, and manufacturer petitioned for review.

The Supreme Court held that:

- Administrative Procedure Act's (APA) general review provisions did not apply to nonconstitutional tax challenge brought by asphalt manufacturer;
- Manufacturer was expressly authorized to seek de novo review of DOR's tax reporting instructions; and
- Manufacturer was entitled to seek judicial review of DOR specific written instructions, but manufacturer had to follow DOR's instructions, pay the disputed tax, and then seek de novo review.

Administrative Procedure Act's (APA) general review provisions did not apply to nonconstitutional tax challenge brought by asphalt manufacturer, challenging Department of Revenue's (DOR's) instructions requiring manufacturer to utilize comparable sales instead of a "cost basis" method to calculate the amount of asphalt use-tax owed.

Asphalt manufacturer was expressly authorized to seek de novo review of Department of Revenue's (DOR) tax reporting instructions, requiring manufacturer to utilize comparable sales instead of a "cost basis" method to calculate the amount of asphalt use-tax owed; asphalt manufacturer was a "person" and a "taxpayer," as those terms were used in statute providing that any person having paid any tax as required and feeling aggrieved by the amount of the tax could appeal to the superior court, and if manufacturer was aggrieved by DOR's instructions, then manufacturer was necessarily aggrieved by the amount of the tax that it would be required to pay pursuant to those instructions.

Asphalt manufacturer was required to follow Department of Revenue's (DOR) reporting instructions and pay its taxes before seeking judicial review, and although manufacturer alleged that it could not follow DOR's instructions to calculate its use tax by using the comparable sales method, based on its asphalt sales to third parties, because it disagreed that these third-party sales were comparable, this disagreement did not excuse manufacturer from complying with DOR's instructions that manufacturer utilize comparable sales instead of a "cost basis" method to calculate the amount of asphalt use-tax owed.

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