IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

MUNICIPALITY OF ANCHORAGE D/B/A/ MUNICIPAL LIGHT & POWER DEPARTMENT,	)
Appellant,	)
v.	)
STATE OF ALASKA, DEPARTMENT OF REVENUE	)
Appellee.	)

Case No. 3AN-02-5667CI

DECISION ON APPEAL

The State of Alaska Department of Revenue levied a tax against the Municipality of Anchorage d/b/a Municipal Light & Power. The Municipality of Anchorage (MOA) had to pay taxes in 1997 to the State of Alaska on the gas produced by Municipal Light & Power (ML&P). The MOA now seeks a refund. This court rules that the MOA and its department, ML&P, may not be taxed.

Facts

The Municipality of Anchorage is a municipal corporation and unified home rule municipality organized under the laws of the state of Alaska. Anchorage Municipal Light and Power is a department of the Municipality of Anchorage.

In December 1996, the Municipality of Anchorage, d/b/a Municipal Light & Power (ML&P), purchased a one third interest in the Beluga Gas Field leases from Shell Oil Company. ML&P acquired Shell's one-third interest in eleven State of Alaska oil and gas leases and two federal leases. The Anchorage Assembly granted final approval to close the purchase of Shell's interest in the Beluga oil and gas leases in November 1996.

As a regulated public utility, ML&P also had to get approval from the Regulatory Commission of Alaska (RCA) to purchase Shell's interest in the Beluga leases. The RCA approved ML&P's purchase of Shell's Beluga field interest by orders issued in October and November 1996.

Because the Shell/ML&P transaction involved state leases, it required approval by the Department of Natural Resources (DNR). On May 8, 1997 DNR approved the transfer of the leases to ML&P, effective January 2, 1997.

DNR's approval purported to included certain conditions. DNR required, as a condition of approval, that ML&P pay AS 43.56 oil and gas property taxes and that ML&P pay AS 43.55 production taxes and AS 43.57 conservation taxes on the portion of its Beluga production that ML&P sold to third parties.

DNR's decision approving the transfer of oil and gas interest to ML&P left for future consideration the issue of whether ML&P would pay AS 43.55 production taxes and AS 43.57 conservation taxes on the gas ML&P used internally.

ML&P sold some of the gas to third parties and used some of the gas internally as fuel to generate electricity. During the 1996 to 1997 tax period, ML&P used approximately 18 to 25 percent of its monthly gas production to generate electricity and sold the rest. ML&P sells electricity to consumers and the Municipality of Anchorage.

Beginning with 1996 production, ML&P has consistently reported and paid production and conservation taxes on all production, including gas that ML&P used internally.

On December 15, 1999, ML&P filed a Claim for Refund for that portion of AS 43.55 and AS 43.57 taxes previously paid on the share of gas production used by ML&P to generate electricity at its Beluga power plant. The claim covered tax periods from November 1996 through December 1999. The basis for the refund claim was that ML&P is exempt from AS 43.55 and AS 43.57 taxes under the provisions of Alaska Constitution Article IX, §4 and AS 29.71.030.

Since filing the December 15, 1999 Claim for Refund, ML&P has paid each subsequent month's production taxes, but

has protested and claimed a refund for those taxes paid on production internally used and not sold to third parties.

On March 28, 2000 the Department of Revenue (DOR) denied ML&P's claim for a refund of $310,644.56 for the tax periods of November 1996 through December 1997 and advised that the refund claim for later periods would be held in abeyance pending audit. ML&P filed a Request for Informal Conference to contest the denial on April 24, 2000.

On December 13, 2000 DOR issued an Informal Conference Decision denying ML&P's refund claim for November 1996 through December 1997. ML&P filed a timely appeal to the Office of Tax Appeals. ML&P and the DOR filed cross motions for summary judgment. On February 14, 2002, Office of Tax Appeals Administrative Law Judge Shelly Higgins concluded that ML&P was subject to the natural gas production and conservation taxes. ML&P comes before this court to appeal that decision.

Standard of Review

Alaska Statute § 43.05.480(c) requires appeals from the Office of Tax Appeals to be reviewed under AS §§ 44.62.560 and 44.62.570. The factual determinations of the Office of Tax Appeals are not in dispute, and the resolution of this matter calls on this court to answer a question of law where no agency expertise is involved.

Therefore, this court applies the independent judgment standard. Jager v. State, 537 P.2d 1100, 1116 (Alaska 1975).

Discussion

This case involves a question of statutory interpretation. Alaska Statutes state that municipalities are exempt from taxation unless a law "expressly provides" the municipality is to be taxed.[1] The tax provision at issue in this case applies to "all gas producers."[2] The issue is whether reference to "all gas producers" "expressly" includes the municipality of Anchorage. It does not. The language "all gas producers" does include a municipality that produces gas. However, it does not expressly provide that the municipality must be taxed. Under AS 29.71.030, the legislature must expressly provide for the taxation of municipalities.

The DOR argues that the language in the gas tax statute that refers to "all gas producers" is a manifestation of the legislature's intent to tax the municipality. The DOR points out the gas tax statutes

[1] AS 29.71.030 provides: "A state law or regulation may not assess or tax, or be construed to assess or tax, a municipality unless the law or regulation expressly provides that the municipality is to be assessed or taxed by the particular law or regulation."

[2] AS 43.55.016 provides: "There is levied upon the producer of gas a tax for all gas produced from each lease or property in the state, less any gas the ownership or right to which is exempt from taxation. ..."

explicitly exempts state and federal government from the tax. See AS 43.55.900(13). The DOR reads this as being an exclusive list of exceptions. They argue that because the municipality is not included in the list of exceptions, they are expressly included. The DOR's argument asks this court to interpret the word "expressly" in AS 29.71.030 to mean what is implied from the construction of the statute.

The term "expressly" is not a term that has acquired a peculiar meaning through legislative or judicial definition. As a result, it is appropriate to use a common meaning of the word when interpreting the statute. Municipality of Anchorage v. Suzuki, 41 P.3d 147, 150 (Alaska 2002). Webster's Revised Unabridged Dictionary defines 'express' as; (1) exactly representing; exact, (2) directly and distinctly stated; declared in terms; not implied or left to inference; made unambiguous by intention and care; clear; not dubious. That same dictionary defines 'expressly' as; in an express manner; in direct terms; with distinct purpose; particularly. Alaska cases have consistently interpreted express provisions as those that are stated in legislation. State v. Arnariak, 893 P.2s 1273 (Alaska App. 1995); Chokwak v. Worley, 912 P.2d 1248 (Alaska 1996).

The legislature did not expressly refer to municipalities in the gas tax statutes. Therefore, the plain language of AS 43.55.016, when read in conjunction with AS 29.71.030, does not apply to the Municipality of Anchorage. The Alaska Supreme Court has adopted a sliding scale approach to statutory interpretation. See Alaska Housing Finance Corp. v. Salvucci, 950 P.2d 1116, 1121 (Alaska 2002). "Under the sliding scale approach the plainer the language of the statute, the more convincing contrary legislative history must be." Id. There is no legislative history in support of DOR's argument. Therefore, the plain meaning of the statutes controls.

The state asserted that public policy supports taxing the municipality for their gas production. This is the basis of the Hearing Officer's decision. There are clearly strong policy arguments that the MOA should pay taxes. These are arguments best addressed by the state legislature. From the perspective of this court, the most meaningful expression of the state's public policy are constitutionally enacted statutes.

Conclusion

Since the legislature did not expressly provide for the taxation of municipalities in the gas tax, the municipality is exempt from paying the tax. Therefore, the

DOR should refund amount of tax the municipality paid in 1997. The decision of the Office of Tax Appeals is reversed. Pursuant to AS 43.05.480(d), The Department of Revenue is ordered to pay ML&P a refund in the amount of $273,376.57.

DATED this 7 day of February, 2003.

[redacted]

SEN K. TAN
Superior Court Judge

I certify that on April 10, 2003 a copy of the above was mailed to each of the following at their addresses of record (List names if not an agency)

☐ CSED ☐ AG ☐ PD ☐ DA

SOA, Dept of Tax Appeals

[redacted]

Deputy Clerk / Secretary

I certify that on 2-10-03 a copy of the above was mailed to each of the following at their addresses of record:

Leman
Dugelet (AAG)

[redacted]

Administrative Assistant