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KAAPA ETHANOL, L.L.C., APPELLEE, V. THE BOARD OF SUPERVISORS OF KEARNEY COUNTY, NEBRASKA, AND THE COUNTY OF KEARNEY, NEBRASKA, APPELLANTS.

825 N.W.2d 761

Filed January 25, 2013. No. S-12-035.

1. **Administrative Law: Appeal and Error.** In reviewing an administrative agency decision on a petition in error, both the district court and the appellate court review the decision to determine whether the agency acted within its jurisdiction and whether sufficient, relevant evidence supports the decision of the agency.
2. **Statutes: Appeal and Error.** Statutory interpretation is a question of law, which an appellate court resolves independently of the trial court.
3. **Taxation.** The general common-law rule is that taxes voluntarily paid cannot be recovered.
4. **Taxation: Words and Phrases.** Taxes paid under a mistake of fact are considered involuntary and thus recoverable under the common-law rule that taxes voluntarily paid cannot be recovered. A mistake of fact is an error or want of knowledge as to a fact, past or present, or such belief in the past or present existence as a fact of that which never existed, or such real and honest forgetfulness of a fact once known, as that the true recollection or knowledge of the fact, or of its existence or nonexistence, would have caused the taxpayer to refrain from making the payment.
5. **Taxation: Legislature: Statutes: Words and Phrases.** Taxes paid under a mistake of law are considered voluntary at common law and cannot be recovered unless the Legislature has enacted a statute authorizing recovery. A mistake of law is a mistake as to the legal consequences of an assumed state of facts, which occurs where a person is truly acquainted with the existence or nonexistence of the facts but is ignorant of or comes to an erroneous conclusion as to their legal effect.
6. **Statutes.** Statutes which effect a change in the common law are to be strictly construed.
7. **Statutes: Intent.** Generally, a statutory construction which changes an express common-law rule should not be adopted unless the plain words of the statute compel it.

Appeal from the District Court for Kearney County: STEPHEN R. ILLINGWORTH, Judge. Reversed and remanded with directions.

Charles W. Campbell, of Angle, Murphy & Campbell, P.C., L.L.O., for appellants.

Justin R. Herrmann and Daniel L. Lindstrom, of Jacobsen, Orr, Lindstrom & Holbrook, P.C., L.L.O., and William E. Peters, of Peters & Chunka, P.C., L.L.O., for appellee.

HEAVICAN, C.J., WRIGHT, CONNOLLY, STEPHAN, MCCORMACK, MILLER-LERMAN, and CASSEL, JJ.

STEPHAN, J.

Kaapa Ethanol, L.L.C. (Kaapa), sought a refund from Kearney County, Nebraska, of a portion of its 2006 personal property taxes, alleging the taxes were paid as the result of an "honest mistake or misunderstanding."[1] The Board of Supervisors of Kearney County (Board) denied the refund, and Kappa filed a petition in error with the district court for Kearney County. That court sustained the petition in error and ordered Kearney County to refund $480,411.50. The Board and Kearney County filed this timely appeal, and we granted their petition to bypass the Nebraska Court of Appeals. We reverse.

BACKGROUND

NEBRASKA PROPERTY TAX LAW

In Nebraska, real property is taxed based upon its value as of January 1 of each year, as determined by each county assessor.[2] The assessor then submits a real property tax bill to each taxpayer.[3] Taxation of personal property also involves the county assessor, but only indirectly. Nebraska requires the owner of personal property to compile a list of all its tangible personal property having a tax situs in Nebraska.[4] The list must be on a form prescribed by Nebraska's Tax Commissioner and must be filed as a personal property tax return by the owner of the personal property on or before May 1 of each year.[5] The county assessor then reviews all personal property tax returns and changes the reported valuation of any item of personal property to conform to net book value.[6] The assessor also adds any omitted personal property and assigns

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[1] Neb. Rev. Stat. § 77-1734.01(2) (Reissue 2009).

[2] See, generally, Neb. Rev. Stat. § 77-1301 (Reissue 2009).

[3] *Id.*

[4] Neb. Rev. Stat. § 77-1201 (Reissue 2009).

[5] Neb. Rev. Stat. § 77-1229(1) (Reissue 2009).

[6] Neb. Rev. Stat. § 77-1233.04 (Reissue 2009).

net book value to it.[7] Any valuation added to a personal property tax return or added through the filing of a personal property tax return after May 1 but on or before July 31 is subject to a penalty of 10 percent of the tax due on the value added.[8] Any valuation added to a personal property tax return or added through the filing of a personal property return on or after August 1 is subject to a penalty of 25 percent of the tax due on the value added.[9]

FACTS

Kaapa owns and operates an ethanol plant located in Kearney County. On April 28, 2006, Kaapa filed its 2006 personal property tax return, reporting a total taxable value of approximately $24.5 million. Several items listed on the return were used by the plant in processing grain into ethanol; these items are generally referred to in the record as "processing equipment."

Kaapa's 2006 return was prepared by Shana Dahlgren, Kappa's chief financial officer. Dahlgren testified that prior to filing the return, she consulted with several sources to help her determine whether the processing equipment was real or personal property. Specifically, Dahlgren consulted with the Property Tax Administrator for Nebraska's Department of Property Assessment and Taxation and two licensed real estate appraisers with experience appraising ethanol plants in Nebraska. These sources advised Dahlgren that the processing equipment was personal property. Dahlgren also reviewed the personal property tax returns of other Nebraska ethanol plants and concluded that those plants categorized similar equipment as personal property. Based on this information, Dahlgren included the processing equipment as personal property on Kaapa's 2006 property tax return.

Dahlgren also filed Kaapa's personal property tax returns in 2003, 2004, 2005, and 2007. She testified that she treated the processing equipment as personal property in each of those

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[7] *Id.*

[8] *Id.*

[9] *Id.*

years as well. The county assessor, however, treated the processing equipment as real property from 2003 forward.

The differing treatment of the processing equipment by Kaapa and the county assessor in tax years 2003, 2004, and 2005 was resolved by settlement between Kaapa and Kearney County. In 2006 and 2007, no settlement was reached. But in 2007, Kaapa protested both its personal property return and the assessor's real property valuation.[10] After Kearney County denied both of the 2007 protests, Kaapa appealed to Nebraska's Tax Equalization and Review Commission (TERC).[11] On June 25, 2009, TERC held that the processing equipment was properly classified as real property in 2007, and ordered Kearney County to refund Kaapa the 2007 personal property taxes it paid on the processing equipment. We affirmed in a memorandum opinion filed on March 10, 2010, in cases Nos. S-09-707 and S-09-717.

In 2006, the year at issue in this case, Kaapa did not settle with Kearney County and did not protest its personal property return. It did, however, protest the 2006 real property assessment. Dahlgren explained that Kaapa did not protest the 2006 personal property tax return, because it received the county assessor's valuation of its real property for 2006 after the May 1 deadline to protest the personal property tax return. According to Dahlgren, she therefore did not know until after May 1 that the assessor's 2006 real property valuation included the processing equipment. The assessor testified that she reviewed Kaapa's 2006 personal property tax return before finalizing Kaapa's 2006 real property valuation. According to the assessor, she could not determine from the face of the 2006 personal property tax return whether items of processing equipment she categorized as real property were also being valued by Kaapa as personal property. The assessor requested and received additional information from Kaapa on this issue, but was still unable to determine that any items of processing equipment were listed on both tax assessments.

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[10] See Neb. Rev. Stat. § 77-1502 (Reissue 2009).

[11] See Neb. Rev. Stat. § 77-1510 (Reissue 2009).

The assessor therefore included the processing equipment in the real property valuation.

Kaapa did not amend its 2006 personal property return after receiving the assessor's 2006 real property assessment.[12] But as noted, it did timely protest the 2006 real property assessment. The Board denied the protest, and on September 18, 2007, TERC affirmed. In doing so, TERC determined that the processing equipment was properly taxed as real property in 2006. TERC's opinion did not address or resolve any double taxation issues related to Kaapa's 2006 personal property return. Kaapa appealed from TERC's decision but later dismissed the appeal.

In December 2008, Kaapa filed a claim for a tax refund with the Kearney County treasurer pursuant to § 77-1734.01, arguing it paid taxes on the processing equipment in 2006 twice because it was taxed as both real and personal property. Kaapa contended that because TERC, in addressing Kaapa's 2006 real property protest, found the processing equipment was properly classified as real property, Kaapa's listing of the equipment as personal property and payment of personal property taxes on it in 2006 was the result of an "honest mistake or misunderstanding," and that thus, it was entitled to a refund of the personal property taxes so paid. The Kearney County treasurer found no refund was due. Kaapa asked the Board to review the treasurer's finding, and the Board conducted an evidentiary hearing. The Board ultimately determined that because no "agreeable solution" could be reached, Kaapa was not entitled to the refund.

Kaapa then filed a petition in error in the district court.[13] After reviewing the evidence, that court reversed the decision of the Board. The court found that Kaapa had paid the 2006 personal property taxes on the processing equipment as the result of an "honest mistake or misunderstanding" and was entitled to a refund under § 77-1734.01. The Board and Kearney County timely appealed, and we granted their petition to bypass the Court of Appeals.

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[12] See Neb. Rev. Stat. § 77-1230 (Reissue 2009).

[13] See Neb. Rev. Stat. § 25-1901 (Reissue 2008).

ASSIGNMENT OF ERROR

The Board and Kearney County assign, restated and consolidated, that the district court erred in finding Kaapa was entitled to a refund of the 2006 personal property taxes it paid on the processing equipment.

STANDARD OF REVIEW

[1] In reviewing an administrative agency decision on a petition in error, both the district court and the appellate court review the decision to determine whether the agency acted within its jurisdiction and whether sufficient, relevant evidence supports the decision of the agency.[14]

[2] Statutory interpretation is a question of law, which an appellate court resolves independently of the trial court.[15]

ANALYSIS

Kaapa's refund claim is based on the premise that Kaapa paid 2006 taxes on the processing equipment twice because the equipment was classified as personal property by Kaapa and as real property by the county assessor. Kaapa asserts that because TERC ultimately held that the equipment was properly classified as real property, Kaapa committed an "honest mistake or misunderstanding" when it listed the same property as personal property, and thus should receive a refund under § 77-1734.01. That statute provides in pertinent part:

> In case of payment made of any property taxes or any payments in lieu of taxes with respect to property as a result of a clerical error or honest mistake or misunderstanding, on the part of a county or other political subdivision of the state or any taxpayer, the county treasurer to whom the tax was paid shall refund that portion of the tax paid as a result of the clerical error or honest mistake or misunderstanding. A claim for a refund pursuant to this section shall be made in writing to the county treasurer to

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[14] *Banks v. Housing Auth. of City of Omaha*, 281 Neb. 67, 795 N.W.2d 632 (2011); *Fleming v. Civil Serv. Comm. of Douglas Cty.*, 280 Neb. 1014, 792 N.W.2d 871 (2011).

[15] *Connelly v. City of Omaha*, 284 Neb. 131, 816 N.W.2d 742 (2012); *Engler v. State*, 283 Neb. 985, 814 N.W.2d 387 (2012).

> whom the tax was paid within three years after the date the tax was due . . . .
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> . . . This section may not be used to challenge the valuation of property, the equalization of property, or the constitutionality of a tax.

[3-5] The general common-law rule is that taxes voluntarily paid cannot be recovered.[16] The rule's purpose is to discourage litigation and give stability to taxing authorities in conducting their affairs.[17] Taxes paid under a mistake of fact are considered involuntary and thus recoverable under the common-law rule.[18] A mistake of fact is

> an error or want of knowledge as to a fact, past or present, or such belief in the past or present existence as a fact of that which never existed, or such real and honest forgetfulness of a fact once known, as that the true recollection or knowledge of the fact, or of its existence or nonexistence, would have caused the taxpayer to refrain from making the payment.[19]

Taxes paid under a mistake of law are considered voluntary at common law[20] and cannot be recovered unless the Legislature has enacted a statute authorizing recovery.[21] A mistake of law is "a mistake as to the legal consequences of an assumed state of facts, which occurs where a person is truly acquainted with the existence or nonexistence of the facts but is ignorant of or comes to an erroneous conclusion as to their legal effect."[22]

The mistake which Kaapa claims to have made with respect to its 2006 taxes is clearly one of law, because the error was with respect to whether the processing equipment legally was real or personal property. Thus, the threshold question in this

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[16] *Satterfield v. Britton*, 163 Neb. 161, 78 N.W.2d 817 (1956).

[17] See *Texas Nat. Bank of Baytown v. Harris Cty.*, 765 S.W.2d 823 (Tex. App. 1988).

[18] 85 C.J.S. *Taxation* § 1058 (2010).

[19] *Id.* at 115.

[20] 72 Am. Jur. 2d *State and Local Taxation* § 972 (2012).

[21] *Satterfield v. Britton, supra* note 16.

[22] 85 C.J.S., *supra* note 18, § 1057 at 114-15.

appeal is whether § 77-1734.01 is merely a codification of the common-law rule or whether it alters the common-law rule and authorizes recovery of taxes paid pursuant to an error of law.[23] Specifically, does the statutory phrase "clerical error or honest mistake or misunderstanding" constitute the Legislature's expression that a taxpayer can recover in Nebraska for taxes paid based on an error of law?

[6,7] In resolving this issue, we are mindful that statutes which effect a change in the common law are to be strictly construed.[24] Generally, a construction which changes an express common-law rule should not be adopted unless the plain words of the statute compel it.[25] Here, the phrase "clerical error or honest mistake" clearly refers to errors of fact. The term "misunderstanding" is less clear; it could perhaps include a misapprehension or misapplication of law. But because the language of the statute does not plainly reveal that the Legislature intended to expand the common-law rule, we must conclude that it did not.

Additionally, we note that § 77-1734.01 is included in chapter 77, article 17, of the Nebraska Revised Statutes, which bears the title "Collection of Taxes." Also contained in article 17, immediately following § 77-1734.01, is Neb. Rev. Stat. § 77-1735 (Reissue 2009), which provides a procedure whereby a taxpayer may obtain a refund of property tax payment based upon a claim that a tax "is illegal for any reason other than the valuation or equalization of the property." The existence of this separate statute governing refunds of certain taxes paid based on mistakes of law further supports the conclusion that the Legislature intended § 77-1734.01 to apply only to refunds resulting from errors of fact. Accordingly, we conclude that § 77-1734.01 is merely a codification of the common-law rule. Because Kaapa paid the 2006 personal property taxes based upon a mistake of law, § 77-1734.01 affords it no relief.

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[23] See, generally, *Satterfield v. Britton, supra* note 16.

[24] *Alisha C. v. Jeremy C.*, 283 Neb. 340, 808 N.W.2d 875 (2012).

[25] See *In re 2007 Appropriations of Niobrara River Waters*, 283 Neb. 629, 820 N.W.2d 44 (2012).

The district court erred in ordering Kearney County to refund the $480,411.50.

We acknowledge that this construction of § 77-1734.01 leads to the harsh result of double taxation in this case. But a contrary construction would have led to the harsh result of Kearney County's being required to refund tax receipts which it collected and has long since paid over to other taxing authorities within its jurisdiction. In the end, we can only interpret the existing statute under our established principles, as we have done here. If the Legislature wishes to provide broader relief to taxpayers under similar circumstances in the future, it has the power to enact a statute or statutes specifically providing such relief.

CONCLUSION

For the reasons discussed, we reverse the judgment of the district court and remand the cause with directions to reinstate the order of the Board denying Kaapa's claim for a refund.

REVERSED AND REMANDED WITH DIRECTIONS.

JQH LA VISTA CONFERENCE CENTER DEVELOPMENT LLC, APPELLANT, V. SARPY COUNTY BOARD OF EQUALIZATION, APPELLEE.

825 N.W.2d 447

Filed January 25, 2013. Nos. S-12-054, S-12-055.

1. **Taxation: Judgments: Appeal and Error.** Appellate courts review decisions rendered by the Tax Equalization and Review Commission for errors appearing on the record.
2. **Judgments: Appeal and Error.** When reviewing a judgment for errors appearing on the record, an appellate court's inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable.
3. **Taxation: Valuation: Presumptions: Evidence.** A presumption exists that a board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action. That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of