

IN THE SUPREME COURT OF THE STATE OF NEVADA

STATE OF NEVADA EX REL.
DEPARTMENT OF TAXATION,
Appellant,
vs.
JOHN LOHSE, D.D.S., AND BRENT
CORBRIDGE, DMD,
Respondents.

No. 49001

FILED

JUL 24 2008

TRACIE LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment in an action to recover a sales tax refund. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

Appellant Nevada Department of Taxation (Tax Department) challenges the district court's finding that Nevada's sales and use tax exemption for "medicine" extends to orthodontic braces and related materials. Based on the plain language and meaning of Nevada's statutory "medicine" exemption, we agree with the district court's interpretation and therefore affirm its judgment in favor of respondent orthodontists. The parties are familiar with the facts and we do not recount them here except as necessary to our disposition.

Standard of review

Because this case requires us to interpret a statutory tax exemption, the proper standard of review is de novo.¹ In performing de

¹See State, Dep't Taxation v. McKesson Corp., 111 Nev. 810, 812, 896 P.2d 1145, 1146 (1995).

08-19109

novo review, however, we will not disturb the district court's purely factual findings if they are supported by substantial evidence.²

Additionally, because this appeal involves the interpretation of a tax exemption, we must strictly construe the applicable provisions in favor of finding taxability.³ Indeed, "any reasonable doubt about whether an exemption applies must be construed against the taxpayer."⁴ Nevertheless, "the court must always . . . avoid reading the exemption so narrowly [that] its application is defeated in cases rightly falling within its ambit."⁵

Discussion

Nevada's statutory sales and use tax exemption for "medicine" states in pertinent part that "[m]edicines . . . [s]old to a licensed . . . dentist . . . for the treatment of a human being" are exempt from Nevada sales and use tax liability.⁶ Under the exemption, "medicine" is defined as "any substance or preparation intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment or prevention of disease or affliction of the human body and

²Herup v. First Boston Financial, 123 Nev. ___, ___, 162 P.3d 870, 872 (2007).

³Shetakis Dist. v. State, Dep't Taxation, 108 Nev. 901, 907, 839 P.2d 1315, 1319 (1992); Sierra Pac. Power v. Department Taxation, 96 Nev. 295, 297, 607 P.2d 1147, 1148 (1980).

⁴Shetakis Dist., 108 Nev. at 907, 839 P.2d at 1319.

⁵Dawley, Inc. v. Indiana Dept. of State Revenue, 605 N.E.2d 1222, 1225 (Ind. Tax. 1992).

⁶NRS 372.283(1)(d)(4).

which is commonly recognized as a substance or preparation intended for such use.”⁷ In addition, the exemption specifically applies to “[b]races or supports” for human use that are “prescribed or applied by a licensed provider of health care, within his scope of practice.”⁸

As the Tax Department conceded at oral argument in this case, Nevada’s statutory “medicine” exemption is plain and unambiguous on its face. Thus, we may not go beyond that language in construing the exemption.⁹ Although a statute’s interpretation by the agency charged with its administration is persuasive and will be afforded “great deference” on appeal if it is within the statute’s plain language,¹⁰ the agency’s interpretation is not controlling—and this court has not hesitated to declare an agency’s interpretation invalid—where the interpretation exceeds the agency’s statutory authority, conflicts with existing statutory provisions, or is arbitrary and capricious.¹¹

Here, the parties dispute whether the medicine exemption’s plain language extends to orthodontic materials purchased by dentists. The specific materials at issue include “bands, wires, brackets, pins, springs and similar items commonly referred to collectively as orthodontic

⁷NRS 372.283(2)(a) (emphasis added).

⁸NRS 372.283(2)(b)(4).

⁹See Nevada Power Co. v. Public Serv. Comm’n, 102 Nev. 1, 4, 711 P.2d 867, 869 (1986).

¹⁰State, Tax Comm’n v. Nevada Cement Co., 117 Nev. 960, 968-69, 36 P.3d 418, 423 (2001); Nevada Power Co., 102 Nev. at 4, 711 P.2d at 869.

¹¹Meridian Gold v. State, Dep’t of Taxation, 119 Nev. 630, 81 P.3d 516 (2003).

braces, bonding materials, impression materials used to create models of a patient's mouth, the substances used to secure the brackets to the teeth, retainers and materials used to make retainers, and headgear worn in conjunction with orthodontic braces." While the Tax Department argues that these materials are not tax exempt because they are "just supplies and materials" and do not independently treat or prevent a "disease or affliction of the human body," the district court rejected this argument, following a bench trial. According to the district court, the orthodontic materials at issue plainly fall within the "medicine" exemption because they qualify as "braces or supports" that correct, treat, or prevent numerous afflictions, including misaligned or crowded teeth. For the reasons set forth below, we agree with the district court's reasoning.

In interpreting a statute's plain language, we will presume that the Legislature intended to use words in their usual and natural meaning.¹² Here, Nevada's "medicine" exemption states that prescribed "braces or supports" are tax exempt to the extent that they are commonly recognized as curing, mitigating, treating, or preventing diseases or afflictions of the human body.¹³ Although the exemption does not include language specifically defining the terms "braces or supports," we conclude that the orthodontic materials at issue in this case—including the materials used to make orthodontic braces, retainers, and headgear—fall within the plain meaning of those terms.

¹²McGrath v. State, Dep't of Pub. Safety, 123 Nev. ___, ___, 159 P.3d 239, 241 (2007).

¹³NRS 372.283.

The term “brace” is defined by Webster’s New International Dictionary as “[t]hat which connects or fastens, as a clamp or buckle.”¹⁴ More specifically, a “brace” is “[t]hat which holds anything tightly or supports it firmly, or gives rigidity or power of resistance; a bandage or prop.”¹⁵ In this sense, a “brace” is a specific type of “support,” which is defined as a device that “hold[s] [something else] up or in position . . . serve[s] as a foundation or prop . . . [or] bear[s] the weight or stress of [something else].”¹⁶

In our view, orthodontic braces (and their related treatment materials) clearly fall within the definition of “braces or supports” because they fasten and hold teeth tightly in an attempt to treat dental afflictions, such as misaligned or crowded teeth. Indeed, as recognized by one treatise on dental malpractice litigation, orthodontic dentistry “[t]reats all different modalities of movement of the teeth.”¹⁷ In treating these “modalities of movement,” the devices used by orthodontists (such as braces, retainers, and headgear) force teeth into proper alignment while “bracing” or “supporting” against future undesired teeth movement.¹⁸

¹⁴Webster’s at 322 (2d. ed. 1961).

¹⁵Id.

¹⁶Id. at 2534 (defining the verb “to support”).

¹⁷3 Norman L. Schafler, *Dental Malpractice: Legal and Medical Handbook* § 8.3 (3d. ed. 1996).

¹⁸See id.; see also 1 Schafler at § 1.28 (noting that orthodontics “has as its goal the proper alignment of the teeth in a physiological balance that allows the teeth to perform one of their most important functions, that of deflecting food away from the gums during chewing” and that

continued on next page . . .

Although the Tax Department suggests that the materials in question were taxable as mere “individual components” of braces, the district court specifically found that most of these materials—including wires, bands, brackets, pins, and springs—are collectively and commonly known as “orthodontic braces.” Since this factual finding is supported by respondent John Lohse’s trial testimony, we see no reason to disturb it on appeal. As a result, we affirm the district court’s determination that all of the materials in question fall within the “medicine” exemption’s reach.

Moreover, while the Tax Department asserts that orthodontic braces do not meet Nevada’s applicable definition of “medicine” because such braces are cosmetic and do not necessarily cure, treat, or prevent a disease or affliction, the testimony at trial does not support that conclusion. Even though the Tax Department cites certain trial testimony in support of its argument, this testimony, when taken in its entirety, actually establishes that every orthodontic case has both cosmetic and medical elements:

[I]n every case we treat there’s a cosmetic element to it. And that’s certainly undeniable. Any case that we treat, even though it has a cosmetic effect, also has a medical benefit in that the bite is corrected. And, you know, we prevent in the long term wear on the teeth, breakdown of the gums and the bone, and also mitigate future TM-joint problems in a lot of cases.

... continued

“[w]hen the teeth are in proper alignment and also in proper occlusion, the patient more efficiently masticates (chews) food, and there are no excessive stresses on any individual tooth”).

As a result, Lohse's testimony actually rebuts the Tax Department's claim that orthodontic braces are cosmetic (and not medical) in nature.¹⁹ Therefore, the district court properly treated the materials in question as "medicine."

Conclusion


For the reasons set forth above, we conclude that the district court properly determined that the orthodontic materials in question are

¹⁹Separately, the Tax Department points out that orthodontic braces are always "prescribed or applied by a licensed provider of health care," and thus, the qualifying language of the "medicine" exemption—which limits exempt "braces or supports" to those devices "prescribed or applied" by licensed health care providers—would be superfluous if the exemption applied to orthodontic braces. In making this argument, however, the Tax Department ignores the fact that the district court's interpretation of the exemption's "prescribed or applied" language still excludes numerous other devices—such as simple knee braces purchased at local drugstores, which would probably not be exempt.

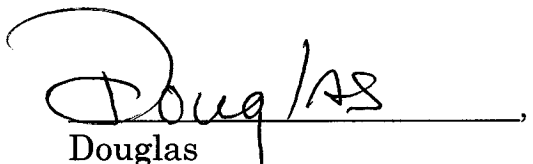
Similarly, the Tax Department suggests that a reference to "other supports and casts" in a different, unrelated subsection of the "medicine" exemption, limits the application of the "braces or supports" clause of the exemption. However, this argument fails because the "braces or supports" clause is part of the exemption's definition of "medicine," whereas the "other supports and casts" clause pertains to a separate exemption for prosthetic devices and ambulatory casts. See NRS 372.283(1)(a) (exempting "[p]rosthetic devices, orthotic appliances and ambulatory casts for human use, and other supports and casts if prescribed or applied by a licensed provider of health care, within his scope of practice, for human use") (emphasis added).

exempt under Nevada's statutory sales and use tax exemption for "medicine" beyond "any reasonable doubt."²⁰ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Gibbons, C. J.


Parraguirre, J.


Douglas, J.

cc: Hon. Steven R. Kosach, District Judge
Lester H. Berkson, Settlement Judge
Attorney General Catherine Cortez Masto/Carson City
Attorney General Catherine Cortez Masto/Las Vegas
John S. Bartlett
Washoe District Court Clerk

²⁰Shetakis Dist., 108 Nev. at 907, 839 P.2d at 1319.