

**IN THE  
SUPREME COURT OF MISSOURI**

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**No. 83324**

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**THE MARY S. RIETHMANN TRUST AND LOUIS W. RIETHMANN, JR. AND  
JOHN D. SCHAPERKOTTER, TRUSTEES OF THE MARY S. RIETHMANN TRUST  
AND STATUTORY PERSONAL REPRESENTATIVES OF THE  
ESTATE OF MARY S. RIETHMANN, DECEASED,**

**APPELLANTS,**

**v.**

**DIRECTOR OF REVENUE,**

**RESPONDENT.**

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**On Petition for Review from the  
Missouri Administrative Hearing Commission  
Hon. Willard C. Reine, Commissioner**

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**BRIEF OF APPELLANT**

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**TABLE OF CONTENTS**

TABLE OF AUTHORITIES .....4

JURISDICTIONAL STATEMENT .....8

STATEMENT OF FACTS.....9

    Introduction.....9

    Schock Estate.....9

    Riethmann Estate.....9

    Missouri Examination of Riethmann Estate’s Return.....10

    Federal Examination of Riethmann Estate’s Return .....10

    Inheritance Tax Repealed.....10

    The Director’s Booklet.....11

    The Commission’s Decision.....12

STATEMENT OF ISSUES .....13

STANDARD OF REVIEW .....14

POINT RELIED ON .....15

ARGUMENT.....18

    Introduction.....18

    Construction of Tax Statutes .....18

    I. The Plain Language of Section 145.011 Demonstrates that No Missouri  
        Estate Tax is Imposed on Estates that Do Not Owe Federal Estate Tax .....20

        A. Code Section 2011 Allows a Credit only for State Taxes “Actually  
            Paid” .....21

B. The Estate Has No Credit for State Death Taxes <i>Allowable Against the Federal Estate Tax</i> .....	21
C. The Commission’s Interpretation Ignores the Words “ <i>Against the Federal Estate Tax</i> ” and is Contrary to the Plain Meaning of the Words in Section 145.011 .....	22
II. Assuming that the Language in Section 145.011 is Ambiguous, Section 145.011 Imposes No Missouri Estate Tax upon Estates That Do Not owe Federal Estate Tax .....	24
A. The Legislature’s Own Words Demonstrate that Section 145.011 Was Not Intended to Impose Missouri Estate Tax upon Estates that Do Not Owe Federal Estate Tax.....	25
B. The Director’s Contemporaneous and Practical Construction of Section 145.011 Demonstrates that Estates that Do Not Owe Federal Estate Tax are Not Subject to Missouri Estate Tax .....	26
C. The Commission’s Interpretation of Section 145.011 Ignores the Long-Standing Policy and Elemental Fairness of the Federal Estate Tax System that the Legislature Incorporated into the Missouri Estate Tax.....	29
D. The Director’s Estate Tax Return Forms Confirm the Original Intent to Assess Missouri Tax Only on Taxable Federal Estate .....	31

E. Decisions from Other States with Similar Statutes Indicate that the Legislative Intent of Section 145.011 was to Impose Missouri Estate Tax Only Upon Estates Owing Federal Estate Tax.....	32
CONCLUSION .....	35
CERTIFICATE OF SERVICE .....	36
CERTIFICATE REQUIRED BY SPECIAL RULE 1(C).....	36
APPENDIX .....	A-1

**TABLE OF AUTHORITIES**

**Missouri Cases**

*Bates v. Director of Revenue,*  
691 S.W.2d 273 (Mo. banc 1985)..... 32

*Brown Group, Inc. v. Administrative Hearing Commission,*  
649 S.W.2d 874 (Mo. banc 1983).....20, 24

*Commerce Trust Company v. Starling,*  
393 S.W.2d 489 (Mo. 1965)..... 25

*Concord Publishing House, Inc. v. Director of Revenue,*  
916 S.W.2d 186 (Mo. banc 1996)..... 14

*Gott v. Director of Revenue,*  
5 S.W.3d 155 (Mo. banc 1999) .....19, 25

*Hyde Park Housing Partnership v. Director of Revenue,*  
850 S.W.2d 82 (Mo. banc 1993).....22, 24

*L & R Distributing, Inc. v. Department of Revenue,*  
529 S.W.2d 375 (Mo. 1975).....19, 27

*Lemasters v. Willman,*  
281 S.W.2d 580 (Mo. App. E.D. 1955) .....19, 26

*Moore v. State Tax Commission,*  
862 S.W.2d 407 (Mo. App. E.D. 1993) ..... 20

*Person v. Scullin Steel Company,*  
523 S.W.2d 801 (Mo. banc 1975)..... 19

*Spradlin v. City of Fulton,*

982 S.W.2d 255.....19, 24

*Zip Mail Services, Inc. v. Director of Revenue,*

16 S.W.3d 588 (Mo. banc 2000)..... 14

**Missouri Statutes**

Section 144.020.1(2) (RSMo. 1969)..... 27

Section 145.011 (RSMo. 2000)..... 8-13, 15, 18-20, 22-32, 35

Section 145.020.1 (RSMo. Supp. 1978) (repealed) ..... 25

Section 145.070 (RSMo. Supp. 1978) (repealed) ..... 25

Section 621.189 (RSMo. 2000).....15, 18

Section 621.193 (RSMo. 2000)..... 14, 15, 18

**Other Missouri Authorities**

MO. CONST. art. V, § 3..... 8

S.B. 539, 8th Leg., 2nd Reg. Sess. (Mo. 1980)..... 10, 26, 29

**Federal Authorities**

26 U.S.C. § 2010 (1986)..... 29

26 U.S.C. § 2011 (1986).....20-22, 34

26 U.S.C. § 2011(a) (1986)..... 21

26 U.S.C. § 2011(b) (1986)..... 21

26 U.S.C. § 2013 (1986)..... 8-9, 18

26 U.S.C. § 2055 (1986)..... 29

26 U.S.C. § 2056 (1986)..... 8, 18, 29

1939-1 C.B. 102 (1918).....	30
Treas. Reg. § 20.2011-1(c)(2)(iii) .....	21

**Other States Authorities**

*Dickinson v. Maurer,*

229 So.2d 247 (Fla. 1969) .....	32
---------------------------------	----

*Estate of Kelly v. Commissioner of Revenue,*

Number 5705 (Minn. Tax Ct. 1991).....	34
---------------------------------------	----

*Estate of Turner v. Department of Revenue,*

724 P.2d 1013 (Wash. Banc 1986) .....	33
---------------------------------------	----

*Green v. State ex rel. Phipps,*

166 So.2d 585 (Fla. 1964) .....	32
---------------------------------	----

*In re Thalmann’s Estate,*

32 N.Y.S.2d 695 (N.Y. Surr. Ct. 1941) .....	33-34
---------------------------------------------	-------

*In re Zinn’s Estate,*

57 N.Y.S.2d 423 (N.Y. Surr. Ct. 1945) .....	33
---------------------------------------------	----

*Private Taxpayer Ruling* LR99-004,

(Az. Dept. Rev. 1999) .....	28
1999 N.Y. Laws 407 .....	34

**Other Authorities**

RICHARD B. STEPHENS, GUY B. MAXFIELD, STEPHEN A. LIND & DENNIS A. CALFEE, FEDERAL ESTATE AND GIFT TAXATION, ¶ 3.05 (7th ed. 1997) .....	30
AMERICAN LAW INSTITUTE, FEDERAL ESTATE AND GIFT TAXES, p. 23 (1969) .....	30

## JURISDICTIONAL STATEMENT

The issue before the Court in this case is one of first impression in Missouri and is a matter of pure statutory construction. The question is whether Section 145.011,<sup>1</sup> imposes Missouri estate tax against an estate that owes no federal estate tax. Specifically, the Administrative Hearing Commission erred in construing §145.011 in a way that imposes Missouri estate tax against The Mary S. Riethmann Trust (“Trust”) even though the Trust owed no federal estate tax by virtue of the federal estate tax marital deduction under Section 2056 of the Internal Revenue Code (“Code”)<sup>2</sup> and the prior transfer tax credit against federal estate tax under Code Section 2013.

Thus, the Court’s review of this case will necessarily involve the construction of Section 145.011, which is a revenue law of the State of Missouri. This Court has exclusive jurisdiction over these issues pursuant to Article V, Section 3 of the Missouri Constitution.

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<sup>1</sup> All statutory citations are to the Revised Statutes of Missouri of 2000, as amended, unless otherwise noted.

<sup>2</sup> All citations to the “Code” are to the Internal Revenue Code of 1986, as amended, and all citations to Treas. Reg. are to the Treasury Regulations promulgated thereunder.

## **STATEMENT OF FACTS**

### **Introduction**

The issue in this case is one of first impression in Missouri and is a matter of pure statutory construction. The relevant facts are not in dispute and were stipulated by the parties. The question is whether §145.011 imposes Missouri estate tax against an estate that owes no federal estate tax.

### **Schock Estate**

Mary S. Riethmann was the daughter of George A. Schock, a Missouri resident who died on November 19, 1995 (L.F. 644). Missouri and federal estate tax returns were timely filed by Mr. Schock's estate (L.F. 644). After Missouri and federal adjustments, the Missouri estate tax on that estate was \$7,939,012.17 (L.F. 644). Riethmann survived her father and was the primary beneficiary of his estate and revocable trust (L.F. 644). She inherited \$22,484,350, and was entitled to the benefit of a \$1,000,000 trust (L.F. 644).

### **Riethmann Estate**

Mrs. Riethmann, also a Missouri resident, died on November 9, 1997, less than two years after the death of her father (L.F. 644). Because she died within two years of her father's death and inherited property from his estate, Mrs. Riethmann's estate ("Estate") claimed a prior transfers tax credit under Code Section 2013 with respect to the property inherited from her father (L.F. 644). As a result of this credit and other deductions available to the Estate, no federal estate tax was due by reason of Mrs. Riethmann's death (L.F. 644-645). The Estate likewise reported no Missouri estate tax due on its Missouri

estate tax return (L.F. 645) or on its Arizona estate tax return with respect to the small amount of property located in Arizona (L.F. 15).

### **Missouri Examination of Riethmann Estate's Return**

On March 18, 1999, the Director issued a Missouri estate tax notice of deficiency for \$3,149,934.18, plus interest and penalties (L.F. 645). After the Estate protested that notice, the Director issued a Final Decision upholding the deficiency plus interest, but abated all penalties (L.F. 645).

### **Federal Examination of Riethmann Estate's Return**

On May 8, 2000, the Internal Revenue Service issued an "estate tax closing letter" stating that the Estate owed no federal estate tax and had a state death tax credit of zero (L.F. 645).

### **Inheritance Tax Repealed**

In 1980, the Missouri Legislature passed Senate Bill 539, which repealed the Missouri inheritance tax, and enacted the current Missouri estate tax, including Section 145.011. The fiscal note of Senate Bill 539 provided that the effect of the change in law would reduce Missouri general revenues by \$23,000,000 in the first three fiscal years (App. A). The note continued:

"This bill removes the current Missouri inheritance tax and replaces it with a new tax upon the transfer of every decedent's estate of property having a tax situs in Missouri. The amount of the estate tax is the maximum credit for state death taxes allowable to the estate of a decedent against the federal estate tax. Under this approach, Missouri

collects only those tax dollars from an estate that would go to the federal government anyway if Missouri does not collect them. This method lowers the state tax the most it is possible without the estate incurring additional federal taxes.

\* \* \*

Supporters say the administration of the Missouri tax would be simplified since it would be based on federal estate tax provisions.”

(App. A).

### **The Director’s Booklet**

In 1981, the Director published a booklet entitled, “State of Missouri Estate Tax Law” (the “Booklet”). In addition to informing the general public that the new estate tax would be administered by the Director and the location from which to obtain forms, the general preface of the Booklet states:

“New Section 145.011 imposes a Missouri estate tax that ‘picks up’ the federal credit for state death taxes. Thus, the Missouri estate tax is an amount that would otherwise be paid in federal estate tax.”

(L.F. 645).

### **The Commission's Decision**

The Administrative Hearing Commission (“Commission”) issued its Findings of Fact and Conclusions of Law on January 4, 2001 (L.F. 643-656). The Commission concluded that Section 145.011 allowed the imposition of Missouri estate tax on estates that did not otherwise owe any federal estate tax (L.F. 643-656).

## STATEMENT OF ISSUES

Section 145.011 imposes the Missouri estate tax upon the maximum credit for state death taxes *allowed* by the Internal Revenue Code *against the federal estate tax* but not less than the maximum state death tax credit *allowable against the federal estate tax*. The Internal Revenue Service agreed that the Estate owed no federal estate tax. Does Section 145.011 impose the Missouri estate tax upon the Estate even though no federal estate tax is due?

## **STANDARD OF REVIEW**

The decision of the Commission shall be upheld if it is: (1) authorized by law; (2) supported by competent and substantial evidence upon the whole record; (3) if no mandatory procedural safeguards are violated; and (4) where the Commission has discretion, it exercises discretion in a way that is not clearly contrary to the legislature's reasonable expectations. Section 621.193; *Concord Publishing House, Inc. v. Director of Revenue*, 916 S.W.2d 186 (Mo. banc 1996). The first two standards are at issue in this case. Furthermore, this Court's interpretation of Missouri's revenue laws is *de novo*. *Zip Mail Services, Inc. v. Director of Revenue*, 16 S.W.3d 588, 590 (Mo. banc 2000).

**POINT RELIED ON**

**THE ADMINISTRATIVE HEARING COMMISSION ERRED IN UPHOLDING THE NOTICE OF DEFICIENCY BECAUSE, UNDER SECTIONS 621.189 AND 621.193, THAT DECISION IS NOT AUTHORIZED BY LAW OR SUPPORTED BY COMPETENT AND SUBSTANTIAL EVIDENCE IN THAT SECTION 145.011 DOES NOT IMPOSE MISSOURI ESTATE TAX UPON ESTATES THAT DO NOT OTHERWISE OWE FEDERAL ESTATE TAX.**

*Hyde Park Housing Partnership v. Director of Revenue*, 850 S.W.2d 82 (Mo. banc 1993);

*Spradlin v. City of Fulton*, 982 S.W.2d 255 (Mo. banc 1998);

*L & R Distributing, Inc. v. Department of Revenue*, 529 S.W.2d 375 (Mo. 1975);

*Bates v. Director of Revenue*, 691 S.W.2d 273 (Mo. banc 1985);

*Brown Group, Inc. v. Administrative Hearing Commission*, 649 S.W.2d 874 (Mo. banc 1983);

*Commerce Trust Company v. Starling*, 393 S.W.2d 489 (Mo. 1965);

*Gott v. Director of Revenue*, 5 S.W.3d 155 (Mo. banc 1999);

*Lemasters v. Willman*, 281 S.W.2d 580 (Mo. App. E.D. 1955);

*Moore v. State Tax Commission*, 862 S.W.2d 407 (Mo. App. E.D. 1993);

*Person v. Scullin Steel Company*, 523 S.W.2d 801 (Mo. banc 1975);

Section 144.020.1(2) (RSMo. 1969);

Section 145.011 (RSMo. 2000);

Section 145.020.1 (RSMo. Supp. 1978) (repealed);

Section 145.070 (RSMo. Supp. 1978) (repealed);

Section 621.189 (RSMo. 2000);

Section 621.193 (RSMo. 2000);

S.B. 539, 8th Leg., 2nd Reg. Sess. (Mo. 1980);

26 U.S.C. § 2010 (1986);

26 U.S.C. § 2011 (1986);

26 U.S.C. § 2011(a) (1986);

26 U.S.C. § 2011(b) (1986);

26 U.S.C. § 2013 (1986);

26 U.S.C. § 2055 (1986);

26 U.S.C. § 2056 (1986);

1939-1 C.B. 102 (1918);

Treas. Reg. § 20.2011-1(c)(2)(iii);

*Dickinson v. Maurer*, 229 So.2d 247 (Fla. 1969);

*Estate of Kelly v. Commissioner of Revenue*, Number 5705 (Minn. Tax Ct. 1991);

*Estate of Turner v. Department of Revenue*, 724 P.2d 1013 (Wash. Banc 1986);

*Green v. State ex rel. Phipps*, 166 So.2d 585 (Fla. 1964);

*In re Thalmann's Estate*, 32 N.Y.S.2d 695 (N.Y. Surr. Ct. 1941);

*In re Zinn's Estate*, 57 N.Y.S.2d 423 (N.Y. Surr. Ct. 1945);

*Private Taxpayer Ruling* LR99-004, (Az. Dept. Rev. 1999);

1999 N.Y. Laws 407;

RICHARD B. STEPHENS, GUY B. MAXFIELD, STEPHEN A. LIND & DENNIS A. CALFEE,

FEDERAL ESTATE AND GIFT TAXATION, ¶ 3.05 (7th ed. 1997);

AMERICAN LAW INSTITUTE, FEDERAL ESTATE AND GIFT TAXES, p. 23 (1969).

## **ARGUMENT**

**THE ADMINISTRATIVE HEARING COMMISSION ERRED IN UPHOLDING THE NOTICE OF DEFICIENCY BECAUSE, UNDER SECTIONS 621.189 AND 621.193, THAT DECISION IS NOT AUTHORIZED BY LAW OR SUPPORTED BY COMPETENT AND SUBSTANTIAL EVIDENCE IN THAT SECTION 145.011 DOES NOT IMPOSE MISSOURI ESTATE TAX UPON ESTATES THAT DO NOT OTHERWISE OWE FEDERAL ESTATE TAX.**

### **Introduction**

The facts are undisputed in this case of first impression in Missouri. Mrs. Riethmann died within two years of her father, from whom she inherited substantially all of the property in her Estate. Because her father's estate filed federal and Missouri estate tax returns and paid estate tax on all of the property Riethmann inherited, her Estate owed no federal estate tax by reason of Code Section 2013, which provides for a federal estate tax credit for property transferred from a prior estate less than two years prior to the death of the decedent and by virtue of Code Section 2056, the federal estate tax marital deduction for property passing to a surviving spouse. By reason of these Code sections, the Estate owed no federal estate tax. The question before this Court is whether the Estate owes Missouri estate tax even though the Estate owed no federal estate tax.

### **Construction of Tax Statutes**

The Court is obligated to effectuate the legislature's intent as expressed in Section 145.011. If the statutory language is clear and unambiguous, the Court must determine the legislature's intent with the plain and ordinary meaning of the words in Section 145.011,

and need not resort to statutory construction. *Spradlin v. City of Fulton*, 982 S.W.2d 255, 258 (Mo. banc 1998).

If Section 145.011 is capable of being read differently by reasonably well-informed individuals such that the language is ambiguous or uncertain, resort to statutory construction is necessary. *Id.* The principal rule of statutory construction is to ascertain the intent of the legislature. *Gott v. Director of Revenue*, 5 S.W.3d 155, 159 (Mo. banc 1999). When construing a statute, this Court must consider the objective the legislature sought to accomplish with an eye toward resolving the problems addressed therein. *Id.*

Furthermore, when construing Section 145.011, it is appropriate to consider extrinsic matters including the statute's history, the presumption that the legislature had knowledge of the law, the surrounding circumstances of the statute's enactment and the purpose and object to be accomplished by the statute. *Person v. Scullin Steel Company*, 523 S.W.2d 801, 803 (Mo. banc 1975). Further, courts are encouraged to place great weight on *contemporaneous and practical constructions*<sup>3</sup> of statutes by the administrative agencies charged with their administration. *See L & R Distributing, Inc. v. Department of Revenue*, 529 S.W.2d 375 (Mo. 1975); *Lemasters v. Willman*, 281 S.W.2d 580 (Mo. App. E.D. 1955).

Finally, because Section 145.011 imposes the Missouri estate tax, it is to be construed strictly in favor of the Estate and against the Director. *Brown Group, Inc. v. Administrative Hearing Commission*, 649 S.W.2d 874, 881 (Mo. banc 1983). Any

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<sup>3</sup> Emphasis added here and throughout unless otherwise noted.

deference to the Director's interpretations of Section 145.011 is secondary to the requirement that taxing statutes be construed in favor of the taxpayer. *See Moore v. State Tax Commission*, 862 S.W.2d 407 (Mo. App. E.D. 1993).

**I. The Plain Language of Section 145.011 Demonstrates that No Missouri Estate Tax is Imposed on Estates that Do Not Owe Federal Estate Tax.**

Section 145.011 imposes the Missouri estate tax. As designated by the Director at the time of its enactment, Section 145.011 is a "pick-up" statute since it is clearly designed *only* to, and in fact does, divert estate tax revenues from the federal government to the State.

It provides:

"A tax is imposed on the transfer of every decedent's estate which consists in whole or in part of property having a tax situs within the State of Missouri. The Missouri estate tax shall be the maximum credit for state death taxes *allowed by the Internal Revenue Code Section 2011* but not less than the maximum credit for state death taxes *allowable to the estate of a decedent against the federal estate tax by Section 2011* or any other provision of the laws of the United States."

Thus, based upon the express language of the statute, the Estate is subject to the Missouri estate tax with respect to the greater of:

- (1) The maximum credit for state death taxes *allowed by Section 2011* to the Estate; or

(2) The maximum credit for state death taxes *allowable* to the Estate *against the federal estate tax*.

**A. Code Section 2011 Allows a Credit only for State taxes “Actually Paid.”**

Code Section 2011(a) provides that the federal estate tax “shall be credited with the amount of any estate, inheritance, legacy, or succession taxes *actually paid* to any State or the District of Columbia, in respect of any property in the gross estate.” Code Section 2011(b) provides that the credit *allowed* for state death taxes is limited to a numerical amount based upon the adjusted taxable estate. The requirement that State taxes be “*actually paid*” is strictly construed to require payment of the full amount for which the credit is claimed to be made in cash. Treas. Reg. § 20.2011-1(c)(2)(iii). Because there is no dispute that the Estate has no federal estate tax liability or that the Estate has not paid any death taxes to the State of Missouri, the credit allowed to the Estate under Code Section 2011 is zero.

**B. The Estate Has No Credit for State Death Taxes *Allowable Against the Federal Estate Tax*.**

Because the credit allowed to the Estate under Code Section 2011 is zero, the Estate’s Missouri estate tax liability will be equal to the maximum credit under Code Section 2011 *allowable against the federal estate tax*. There is no dispute that the Estate owes no federal estate tax. When taxpayers, such as the Estate, do not owe federal estate tax, there is no federal estate tax “against” which a credit is “allowable.” Because, with or without any state death tax credit, the Estate owed no federal estate tax, there was no

allowable state death tax credit that the Estate could use “*against*” federal estate tax liability.

**C. The Commission’s Interpretation Ignores the Words “*Against the Federal Estate Tax*” and is Contrary to the Plain Meaning of the Words in Section 145.011.**

In its attempt to provide an interpretation of the second clause of Section 145.011 that would permit the Director to impose Missouri estate tax on estates that owe no federal estate tax, the Commission focused entirely on the difference between the words *allowed* and *allowable* while completely ignoring the phrase *against the federal estate tax*. This conclusion is in direct contravention of the fundamental canon of construction that every word of a statute is presumed to have meaning because the legislature is not presumed to have inserted idle verbiage or superfluous language in a statute, and as a result, the Commission’s conclusion must be rejected. *See Hyde Park Housing Partnership v. Director of Revenue*, 850 S.W.2d 82, 84 (Mo. banc 1993). When all of the words of Section 145.011 are considered, it is clear that the plain meaning of the statute is that the Missouri estate tax is not imposed upon estates which do not otherwise owe federal estate tax.

The statute clearly imposes Missouri estate tax on estates equal to any amount such estate is *allowed* as a state death tax credit. The Commission, in its attempt to assign a different meaning to the second clause of the statute, interpreted the word “*allowable*”

to allow the State to impose Missouri estate tax by forcing an estate to claim a credit as allowable against a non-existent federal estate tax. If the Commission had interpreted *all* of the words of the second clause (*i.e.*, “*against the federal estate tax*”), it should have clearly determined that the purpose of the second clause was not to impose a tax where it would otherwise not exist, but rather to protect Missouri’s estate tax by insuring an estate cannot divert money from Missouri to the federal government by electing to pay *more* federal estate tax by not claiming the state death tax credit. For example, in the absence of the second clause of Section 145.011, an estate that was unhappy with the Missouri government for whatever reason could attempt to pay all of its estate tax to the federal government rather than claim a credit that would share the federal revenue with Missouri. The Estate respectfully submits that the plain and ordinary meaning of the second clause of Section 145.011 prohibits such a taxpayer from denying Missouri its share of the overall estate tax.

By contrast, in this case, because the Estate owes no federal estate tax, no tax revenue could be redirected from Missouri to the federal government as there was no federal revenue to be shared. Therefore, the Commission’s decision interpreting Section 145.011 to impose Missouri estate tax upon the Estate is inconsistent with the plain language of the statute, and should be reversed by this Court.

**II. Assuming that the Language in Section 145.011 is Ambiguous, Section 145.011 Imposes No Missouri Estate Tax upon Estates That Do Not Owe Federal Estate Tax.**

As stated above, the Commission incorrectly determined that Section 145.011 unambiguously imposes Missouri estate tax upon estates that do not owe federal estate tax. In making this decision, the Commission completely ignored the phrase “*against the federal estate tax*” and focused solely on the phrase “*allowable*.” Every word of a statute is presumed to have meaning, and the legislature is not presumed to have inserted idle verbiage or superfluous language in a statute. *Hyde Park Housing Partnership v. Director of Revenue*, 850 S.W.2d 82 (Mo. banc 1993). By ignoring the phrase, “*against the federal estate tax*” in Section 145.011, the Commission ignored this fundamental canon of construction, and its conclusion that the statute unambiguously imposes Missouri estate tax upon the Estate is erroneous.

Nevertheless, assuming *arguendo* that the Commission’s interpretation of Section 145.011 constitutes a *permissible* interpretation of Section 145.011, that is only one of a number of possible interpretations and evidences the existence of an ambiguity in the statute. *Spradlin v. City of Fulton*, 982 S.W.2d 255, 258 (Mo. banc 1998). Thus, assuming that the Commission’s interpretation of the statute, which ignores the express language thereof, is a reasonable interpretation of Section 145.011, the Court must construe the statute. Because Section 145.011 is a tax imposition statute, any ambiguity must be resolved strictly in favor of the taxpayer and against the taxing authority. *Brown Group, Inc. v. Administrative Hearing Commission*, 649 S.W.2d 874, 881 (Mo. banc 1983). Therefore, on this basis alone, the Court should reverse the Commission and determine that the Estate is not subject to Missouri estate tax because it did not owe federal

estate taxes. Moreover, as discussed below, other canons of statutory construction further demonstrate that this Court should reverse the Commission's decision.

**A. The Legislature's Own Words Demonstrate that Section 145.011 Was Not Intended to Impose Missouri Estate Tax upon Estates that Do Not Owe Federal Estate Tax.**

Because the goal of all statutory construction is to ascertain the legislature's intent, *see Gott v. Director of Revenue*, 5 S.W.3d 155, 159 (Mo. banc 1999), the legislature's own words should be the starting point in construing Section 145.011. Old Chapter 145 of the Revised Statutes of Missouri imposed an inheritance tax upon the transfer of any property or income therefrom in trust or otherwise, unless otherwise exempted. Section 145.020.1 (RSMo. Supp. 1978) (repealed). In addition to the Missouri inheritance tax, Section 145.070 (RSMo. Supp. 1978) (repealed) imposed an additional tax that was equal to the maximum allowable credit for state death taxes *if the original inheritance tax did not equal that amount*. This second tax was called the Missouri estate tax. *See Commerce Trust Company v. Starling*, 393 S.W.2d 489, 497 (Mo. 1965).

In 1980, the legislature decided that the existing scheme of Missouri death taxation was overly complex and burdensome, and therefore repealed Chapter 145, and enacted the current Missouri estate tax regime based upon the federal estate tax. The goal of the legislature's act was to simplify tax administration and collection. In the fiscal note of Senate Bill 539, the legislature stated that:

“Under this approach, Missouri collects *only* those tax dollars from an estate that *would go to the federal government anyway* if Missouri does not collect them.”

(App. A). The intent of the legislature could not be more clear. The Missouri estate tax was intended *only* to permit Missouri to share tax dollars that would otherwise go to the federal government as federal estate taxes if Missouri did not collect them. Thus, the Director’s contention that Section 145.011 was intended to impose Missouri estate tax upon estates that owe no federal estate tax is *directly refuted* by the legislature’s own words, and the Commission’s decision in favor of the Director should be reversed by this Court.

**B. The Director’s Contemporaneous and Practical Construction of Section 145.011 Demonstrates that Estates that Do Not Owe Federal Estate Tax are Not Subject to Missouri Estate Tax.**

When considering two alternate interpretations of an ambiguous statute, courts are encouraged to place great weight on contemporaneous and practical constructions of the statute by the administrative agencies charged with their administration. *See Lemasters v. Willman*, 281 S.W.2d 580 (Mo. App. E.D. 1955). There is no question that the Director is charged with the administration of the Missouri estate tax. Thus, the Director’s contemporaneous interpretation of Section 145.011, *an interpretation that an estate that does not owe federal estate tax is not subject to Missouri estate tax*, should be given great weight by this Court.

Indeed, this Court has given such weight to a similar interpretation by the Director in *L & R Distributing, Inc. v. Department of Revenue*, 529 S.W.2d 375 (Mo. 1975). In that case, the Director attempted to construe Section 144.020.1(2) to impose Missouri sales tax upon the gross receipts of coin-operated devices such as pinball machines on the theory that any place with such a device was a place of amusement. The taxpayer noted that the Director's position in the litigated case was contrary to the Director's long-standing position that coin-operated devices were only taxable in places that otherwise constituted places of amusement. This Court determined that the Director's earlier interpretation of the statute was a better indicator of the legislature's intent at the time of enactment of Section 144.020.1(2), and determined that the receipts were not subject to tax.

Likewise in this case, Section 145.011 was enacted in 1980. In January 1981, the Director published the Booklet describing the "new estate tax statute." The "general preface" of the Booklet acknowledged the purpose of the "new estate tax statute":

"New Section 145.011 imposes a Missouri estate tax that 'picks-up' the federal credit for state death taxes. ***Thus, the Missouri estate tax is an amount that would otherwise be paid in federal estate taxes.***"

This is the classic "pick-up" statute definition. The purpose of a "pick-up" statute was well stated by the Arizona Department of Revenue, which ruled on facts identical to this case, that a State should not again tax property previously subject to federal estate tax because

doing so creates or increases the tax instead of “picking up” what is otherwise payable in federal estate tax.<sup>4</sup>

“The Arizona estate tax is a form of state death tax commonly referred to as a ‘pick-up’ tax. *Such state tax statutes do not increase the amount of combined federal and state tax liability*, but merely authorize the state to share in the federal estate tax to the extent of the allowable federal credit for state death taxes. *The intent of the Arizona estate tax is to ‘pick up’ the maximum allowable federal credit for state death taxes without increasing the combined federal-state estate tax liability.*”

*Private Taxpayer Ruling* LR99-004, (Az. Dept. Rev. 1999).

As in *L & M Distributing*, the Director has taken a position contrary to her prior interpretation, contemporaneous with the enactment of Section 145.011. As in *L & M Distributing*, this Court should place far greater weight on the Director’s prior interpretation that Section 145.011 is a “pick up” statute rather than the position taken in

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<sup>4</sup> The Arizona Department of Revenue concluded that the Estate owed no Arizona estate tax under Arizona’s “pick-up” statute.

this case, and reverse the Commission’s decision that the Estate is subject to the Missouri estate tax.<sup>5</sup>

**C. The Commission’s Interpretation of Section 145.011 ignores the Long-Standing Policy and Elemental Fairness of the Federal Estate Tax System that the Legislature Incorporated into the Missouri Estate Tax.**

In the fiscal note to Senate Bill 539, the legislature stated that the administration of the Missouri estate tax would be simplified by the bill’s passage “since [the Missouri estate tax] *would be based on federal estate tax provisions*” (App. A). The Commission’s decision effectively states that the Missouri estate tax conforms to federal estate tax law, in every aspect, *except with respect to estates which owe no federal estate tax*. The Missouri estate tax law conforms its provisions so that no Missouri estate tax is due if no federal estate tax is due by reason that a property passes to a charitable organization (Code Section 2055), to or for a surviving spouse (Code Section 2056), or by reason of a tax credit to shelter smaller estates from taxation (Code Section 2010).

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<sup>5</sup> The Commission stated in its decision that “we do not necessarily believe that the booklet is contrary to the Director’s position” (L.F. 653). With all due respect to the Commission, the Estate is at a loss to understand how the Booklet’s statement can be reconciled with the Director’s position that the Missouri estate tax applies even if the an estate otherwise owes no federal estate tax.

Nonetheless, the Commission concluded that the Missouri estate tax is due upon property already taxed by Missouri within the previous two years, even though such property is not subsequently taxed for federal estate tax purposes based solely upon the Commission's strained interpretation of the word "*allowable*" outside the context of the rest of the words in Section 145.011. The purpose of the federal credit on prior transfers "is to alleviate a hardship that could otherwise result from the death in quick succession of two or more persons." RICHARD B. STEPHENS, GUY B. MAXFIELD, STEPHEN A. LIND & DENNIS A. CALFEE, FEDERAL ESTATE AND GIFT TAXATION, ¶ 3.05 (7th ed. 1997). As stated in another context, "[w]hen property is subjected to transfer taxation, it is only fair that it not be pushed through the transfer tax mill again for some reasonable period of time by the death of the recipient, an event over which the recipient has no control." AMERICAN LAW INSTITUTE, FEDERAL ESTATE AND GIFT TAXES, p. 23 (1969). Indeed, in enacting the federal credit in The Revenue Act of 1918, Congress stated the purpose of the credit:

"It has come to the attention of the committee that persons closely related have died within such a short space of time that the same estate passing within a short period of time has been subjected to the state tax and *thereby diminished unreasonably because of the short period within which the two levies have been made.*"

1939-1 C.B. 102.

Thus, the federal estate tax credit for prior transfers constitutes federal recognition that families entitled to the credit have suffered enough as a result of multiple deaths in a short

period of time. Indeed, at the time the predecessor to the current credit for tax on prior transfers was enacted, the interval between deaths was five years.

Notwithstanding the foregoing, which clearly evidences the intent of the federal credit that would only subject the Estate to tax once, the Director argues that Section 145.011 imposes Missouri estate tax on the same property multiple times in the event of deaths within relatively short periods of time. While the legislature maintains the prerogative to subject property to tax on multiple occasions, such a result should not be presumed by the Director or the Commission, especially in light of the legislature's express desire to conform the Missouri estate tax with federal law and to decrease "the state tax the most it is possible without the estate incurring additional federal taxes" (App. A). Thus, the Commission's decision, ascribing this intention to the legislature is in direct contrast to the words in the statute, the legislature's language in the fiscal note, and the Director's contemporaneous interpretation of the statute, and must be rejected.

**D. The Director's Estate Tax Return Forms Confirm the Original Intent to Assess Missouri Tax Only on Taxable Federal Estate.**

In addition to the Booklet, the Missouri estate tax return forms created by the Director in 1981 reflect the legislature's intent to exclude estates that do not owe federal estate tax from the Missouri estate tax. Line 1 of the Missouri estate tax return provides that the Missouri estate tax is determined exclusively by reference to Line 13 of the federal estate tax return with respect to Missouri property in the estate (L.F. 619). Likewise, Line 13 of the federal estate tax returns provides that credits for state death taxes may only be claimed for amounts that had been or would be *actually paid* (L.F. 557, 590). Thus, the

Director's return forms further reflect the legislature's intent that no Missouri estate tax be due if no federal estate tax is due, and demonstrate that this Court should reverse the Commission's decision to the contrary.

**E. Decisions from Other States with Similar Statutes Indicate that the Legislative Intent of Section 145.011 was to Impose Missouri Estate Tax Only Upon Estates Owing Federal Estate Tax.**

Because this case is one of first impression in Missouri, decisions from other states can be instructive. *Bates v. Director of Revenue*, 691 S.W.2d 273, 276 (Mo. banc 1985).

For example, in *Dickinson v. Maurer*, 229 So.2d 247 (Fla. 1969), the Florida Supreme Court determined that a constitutional provision permitted the Florida legislature to impose an estate tax only in the amounts "which *may ... be allowed* to be credited against" the federal estate tax. In light of the ambiguity in the constitution, the Florida court resorted to construction of the provision, and determined that the overriding intent of the Florida voters was that the legislature was authorized only to "impose such taxes but only such taxes upon estates of decedents as could be paid to Florida and deducted from the federal taxes without increasing by one jot or one tittle the total tax burden upon such estates." *Id.* at 249, quoting *Green v. State ex rel. Phipps*, 166 So.2d 585, 589 (Fla. 1964). Therefore, the Florida court held that its estate tax was not imposed upon estates that did not owe federal estate tax.

Likewise, in *Estate of Turner v. Department of Revenue*, 724 P.2d 1013 (Wash. banc 1986), the Washington Supreme Court construed a statute imposing Washington estate tax in an amount equal to the federal credit for state death taxes allowed against the

decedent's net estate. There, the court determined that no Washington estate tax was due when the estate owed no federal estate tax. In construing its statute, the Washington court used statements from the official explanation of the voter initiative to determine the voter's intent including the statement that "Washington estate tax would be due only if and when an estate tax was payable to the United States." *Id.* at 1015.

In its decision, the Commission stated that two New York cases, *In re Thalmann's Estate*, 32 N.Y.S.2d 695 (N.Y. Surr. Ct. 1941) and *In re Zinn's Estate*, 57 N.Y.S.2d 423 (N.Y. Surr. Ct. 1945), were particularly helpful in making its erroneous determination that the Estate is subject to Missouri estate tax. In fact, these cases further demonstrate the Commission's error. Both cases addressed a New York statute that imposed an additional estate tax (similar to the prior Missouri estate tax before 1980) in the amount of the "maximum credit *allowable to the estate of such decedent against the United States estate tax.*" In both cases, the estates *owed federal estate taxes* but did not claim the maximum possible credit against the federal estate tax owed. The estates argued that the statutes imposed additional taxes only when credits were *actually allowed*. But the New York courts rejected this argument, stating that "The argument that the tax can be defeated by the inaction or negligence of the executors is without merit." *Thalmann's Estate*, 32 N.Y.S.2d at 698.

Unlike the New York cases, in this case the Estate does not owe any federal estate taxes. Therefore, the "maximum credit *allowable ... against the United States estate tax*" is zero. Thus, the Commission's reliance on the New York cases in support of its decision

that the Estate is subject to Missouri estate tax even though it does not owe any federal estate tax is misplaced.

Further, comparing New York law in these cases that are more than fifty years old to the Missouri statute is worse than comparing apples to oranges. New York has long imposed estate tax independently of the federal system and in excess of the credit for state death taxes, only adopting a “pick-up” statute in 1999. *See* Chapter 407 New York Laws of 1999.

The other sister state authority relied upon by the Commission, *Estate of Kelly v. Commissioner of Revenue*, Number 5705 (Minn. Tax Ct. 1991), is equally unavailing. In the first place, this decision is not a decision of a state court of last resort, but rather an unappealed state tax court decision. Second, the Minnesota statute imposes the Minnesota estate tax upon:

“the maximum credit allowable under section 2011 of the Internal Revenue Code for state death taxes *as the Minnesota gross estate bears to the value of the federal gross estate.*”

The Minnesota court, after noting that its statute was different from that of many other States imposing “pick up” statutes, noted that the Minnesota Legislature’s “declaration of intent” clearly determined that it intended to tax the maximum credit allowable “*under the federal estate tax law*” rather than the maximum credit allowable *against the federal estate tax* as set forth by Section 145.011. Therefore, the Minnesota

court's conclusion that the Minnesota estate tax could apply to an estate that owes no federal tax is inapposite to the Missouri statute.

**CONCLUSION**

Based on the foregoing, the Estate respectfully requests this Court to reverse the decision of the Commission and remand with instructions to enter an Order holding that the Director's Final Decision was erroneous and that the Estate does not owe Missouri estate tax.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that two true and accurate copies of the foregoing, as well as a labeled disk containing the same, were mailed first class, postage prepaid or hand-delivered this \_\_\_ day of April 2001 to Erwin O. Switzer, III, Special Chief Counsel, Wainwright State Office Building, 111 North 7<sup>th</sup> Street, Suite 204, St. Louis, Missouri 63101.

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**CERTIFICATE REQUIRED BY SPECIAL RULE 1(C)**

I hereby certify that the foregoing brief includes the information required by Supreme Court Rule 55.03 and complies with the limitations contained in Supreme Court Special Rule 1(b). The foregoing brief contains 6,753 words.

The undersigned further certifies that the disk simultaneously filed with the briefs with this Court under Supreme Court Rule 84.05(a) has been scanned for viruses and is virus-free.

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