

SC93331

IN THE SUPREME COURT OF MISSOURI

AAA LAUNDRY & LINEN SUPPLY CO.,

Respondent (Petitioner below),

vs.

DIRECTOR OF REVENUE,

Appellant (Respondent below).

**From the Administrative Hearing Commission of Missouri
The Honorable Sreenivasa Rao Dandamudi, Commissioner**

REPLY BRIEF OF APPELLANT

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ARGUMENT

As with any statutory provisions, “the primary rule of statutory interpretation is to give effect to legislative intent as reflected in the plain language of the statute.” *Akins v. Dir. of Revenue*, 303 S.W.3d 563, 565 (Mo. banc 2010) (citing *State ex rel. White Family Partnership v. Roldan*, 271 S.W.3d 569, 572 (Mo. banc 2008)). This is especially important for tax exemptions that are “strictly construed against the taxpayer.” *Branson Properties USA, L.P. v. Dir. of Revenue*, 110 S.W.3d 824, 825 (Mo. banc 2003).

Here, it is undisputed that the plain language of § 144.030.2(15) does not include “chemicals,” nor does the plain language of § 144.054.2 include “cleaning.” For all intents and purposes, the analysis could end at that point. But there is more evidence of the legislature’s intent bearing upon the issues in this case, and supporting the plain language. This evidence – which AAA Laundry complains is an attempt by the Director “to complicate the issue” – is both compelling and dispositive. Respondent’s Brief, p. 8.

I. Chemicals are Neither “Machinery” Nor “Equipment”

Under Missouri Law.

Common sense dictates that chemicals are simply not “machinery.” Nevertheless, AAA Laundry continues its attempts to argue that chemicals are machinery because they are “essential component parts of the machinery used in the process.” Respondent’s Brief, p. 8. AAA Laundry admits that this

is a “broad” interpretation of the statutory language, which is inconsistent with the required strict construction of this language. Such a broad interpretation would also have no end. Under the same broad interpretation, water, electricity, or even the gas used in the delivery truck to pick up or drop off the laundry, would be a supposed “component part” of the machinery used in the “process.”

The surrounding statutory provisions make the analysis much easier, and are entirely consistent with the plain language, not to mention common sense. After all, “[n]o portion of a statute is read in isolation, but rather is read in context to the entire statute, harmonizing all provisions.” *Utility Serv. Co., Inc. v. Dep’t of Labor and Indus. Relations*, 331 S.W.3d 654, 658 (Mo. banc 2011). “Ascertaining and implementing the policy of the General Assembly requires the court to harmonize all provisions of the statute.” *20th & Main Redevelopment Partnership v. Kelley*, 774 S.W.2d 139, 141 (Mo. banc 1989).

As pointed out in the Director’s opening brief, § 144.054.2 specifically provides for “chemicals” as distinct from “machinery,” and does so in the very same list as (and next in sequence to) “machinery” as well as “equipment.” Consistent with established rules of statutory construction, by specifically including “chemicals” in the list, the legislature understood “chemicals” to be distinct from “machinery” and “equipment.” Yet, AAA Laundry makes no

response to this argument other than to call it “engaging in convoluted statutory construction.” Respondent’s Brief, p. 8. This is hardly the case. Indeed, there are still more examples in Missouri law supporting this same conclusion.

Among the examples of the legislature’s intent and understanding of “chemicals” is one in the very statute at issue – § 144.030. In § 144.030.2(23), the legislature identifies “pesticides,” which are unquestionably chemicals. The terms “machinery and equipment” are also referenced in the same subdivision, but are completely distinct from pesticides or chemicals. § 144.030.2(23). Similarly, in § 144.047 the legislature specifically includes aircraft as “farm machinery,” but then makes farm machinery distinct from “agricultural chemicals.” Had the legislature intended machinery to include chemicals, it would not have made such a distinction.

Moreover, it would surely have been obvious to the legislature that treatment of wastewater included chemical treatment. If the legislature intended to include chemicals in the exemption for treating water pollution, it certainly could have included that term, particularly since chemicals are included in the list of terms in § 144.054.2. Beyond just chapter 144, the legislature repeatedly makes a distinction between machinery and chemicals. *See, e.g.*, § 301.029.4 (describing “machinery” as distinct from and used in the application of “agricultural chemicals”); § 304.170.13 (describing “machinery”

as distinct from and used in “the application of commercial plant food materials or agricultural chemicals, and not specifically designed or intended for transportation of such chemicals”). AAA Laundry has no response to this clear expression of legislative intent, other than to ignore and divert the issue.

And so, AAA Laundry argues that chemicals may instead be “equipment” if not “machinery.” Of course, this claim suffers from the same defects as the machinery claim. The term “chemicals” is included in the very same list with the term “equipment” in § 144.054.2, and therefore is distinct for purposes of legislative intent.

In an attempt to make the square peg of “chemicals” fit into the round hole of “equipment,” AAA Laundry uses increasingly useless dictionary definitions. First, AAA Laundry uses the definition of equipment, which is certainly appropriate. Respondent’s Brief, p. 9. Unsatisfied with the definition of equipment, however, AAA Laundry pounds harder on the square peg using the definition of “equip.” *Id.* Frustrated that the definition of “equip” still does not fit its needs, AAA Laundry pounds even harder using the definition of “provision,” which is used to define “equip.” *Id.* At last AAA Laundry is satisfied that the term “provision” – which is used to define “equip,” which is used to define “equipment” – “is broad enough to include Wastewater Treatment Chemicals.” *Id.* In the process, the term “equipment,”

not to mention “machinery,” has become unrecognizable and the rule of strict construction has been grossly violated.

II. Cleaning Laundry Over and Over Again is not Exempt as “Processing” Under § 144.054.2.

The stretching of Missouri law by AAA Laundry for purposes of a tax exemption continues in § 144.054.2. And while the cases cited by the Director generally concern the term “manufacturing” or § 144.030, even AAA Laundry must acknowledge that this Court has held that “there is little to no difference between the terms ‘processing’ and ‘manufacturing,’ as a practical matter,” and “the meaning of the term ‘processing’ is ordinarily included within the meaning of the more general and inclusive term ‘manufacturing.’” Respondent’s Brief, p. 27 (quoting *Hudson Foods, Inc. v. Dir. of Revenue*, 924 S.W.2d 277 (Mo. banc 1996)).

The cases are fairly straight forward: In *Unitog Rental Servs., Inc. v. Dir. of Revenue*, 779 S.W.2d 568 (Mo. banc 1989), another laundry case, this Court held that the change must be “‘more than a superficial change in the original substance; it causes a substantial transformation in quality and adaptability and creates an end product quite different from the original.’” *Id.* at 570 (quoting *Jackson Excavating Co. v. Admin. Hearing Comm’n*, 646 S.W.2d 48, 51 (Mo. 1983)); In *State ex rel. AMF, Inc. v. Spradling*, 518 S.W.2d 58 (Mo. 1974), “repair and restoration of the original article” was not enough.

And in *L & R Egg Co., Inc. v. Dir. of Revenue*, 796 S.W.2d 624 (Mo. banc 1990), this Court made clear that “[w]ashing is not manufacturing.” *Id.* at 676.

“The common thread running throughout all of the cases” in which the Court has considered these terms is “the production of an article with a new use different from its original use.” *Unitog*, 779 S.W.2d at 570. When there is merely the “repair and restoration of an old” article, particularly in a continual cycle as in this case, the statute is not satisfied, especially if it is to be strictly construed. *Id.*

In the Director’s opening brief, it was noted that the idea that simply recycling or reusing (or repeatedly recleaning) an item is “processing” is dispelled in the very same subsection of § 144.054. The next sentence to the one at issue deals with the processing of recovered materials. “Recovered materials” is then defined to include reused or recycled materials diverted or removed from the waste stream. § 144.054.1(2). Those same terms of reuse or recycling are not used, however, in the definition of “processing” applicable in this case.

AAA Laundry makes no attempt to address the provisions already covering reuse of items as compared to manufacturing and processing. Yet, the point is compelling. The terms “manufacturing, processing, compounding, mining, or producing of any product” are all linear in their general approach

to the creation of a product. The definition of “processing” in § 144.054 continues this same linear approach by providing that it means transforming or reducing the product “to a different state or thing,” not the restoration or return of the product to some previous state. § 144.054.1(1) The definition goes further to include not only the notion of linear creation, but also specifically “treatment necessary to maintain or preserve such processing.” *Id.* Thus, as long as the processing is on the same line, including preservation along that same line, it is processing. In contrast, recycling or reuse, as is done with the cleaning of laundry, is covered by another provision not applicable in this case.

This very definition and usage of “processing” was affirmed by the legislature in § 144.054, and is the controlling interpretation. *See Cook Tractor Co., Inc. v. Dir. of Revenue*, 187 S.W.3d 870, 873 (Mo. banc 2006) (“When the legislature enacts a statute referring to terms that have had other judicial or legislative meaning attached to them, the legislature is presumed to have acted with knowledge of that judicial or legislative action.”). The General Assembly intended to expand the range of items exempted in § 144.054, not the range of activities.

A conclusion that cleaning items is an exempt activity would lead – and in fact is already leading – to a substantial influx of litigation casting mundane cleaning activities, such as car washing (at a large car washing

facility) or housekeeping services (at a hotel), as “processing” under the expanded meaning of § 144.054.1 urged by AAA Laundry. The resulting exemption would extend tax-free status to all cleaning activities using any “electrical energy and gas . . . water, coal, and energy sources, chemicals, machinery, equipment, and materials.” § 144.054.2. An unprecedented result.

This Court has consistently followed a reasonable interpretation and rejected the notion that cleaning an item is “manufacturing” or “processing.” *See, e.g., L & R Egg Co., Inc. v. Dir. of Revenue*, 796 S.W.2d at 626 (“Washing is not manufacturing.”); *Unitog Rental Services, Inc. v. Dir. of Revenue*, 779 S.W.2d at 568 (“the processing found to constitute manufacturing produced a new and different product, dissimilar to any previous condition of the processed article.”). Consistent with a strict construction of the definition of “processing,” the Commission should be reversed.

CONCLUSION

For the foregoing reasons, as well as those set forth in the Director of Revenue’s opening brief, the decision of the Administrative Hearing Commission should be reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

I hereby certify that a true and correct copy of the foregoing was served electronically via Missouri CaseNet e-filing system on December 2, 2013, to:

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The undersigned further certifies that the foregoing brief complies with the limitations contained in Rule No. 84.06(b) and that the brief contains 1,951 words.

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