

SC93900

IN THE SUPREME COURT OF MISSOURI

**SOUTHWESTERN BELL TELEPHONE COMPANY AS SUCCESSOR
IN INTEREST TO SOUTHWESTERN BELL TEXAS HOLDINGS, INC.,**

Respondent,

v.

DIRECTOR OF REVENUE,

Appellant.

**Appeal from the Administrative Hearing Commission of Missouri
The Honorable Karen A. Winn, Commissioner**

REPLY BRIEF OF APPELLANT

**CHRIS KOSTER
Attorney General**

**JAMES R. LAYTON
Mo. Bar No. 45631
Solicitor General
P.O. Box 899
Jefferson City, MO 65102-0899
(573) 751-3321
(573) 751-0774 (Facsimile)
James.Layton@ago.mo.gov**

ATTORNEYS FOR APPELLANT

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ARGUMENT

1. Southwestern Bell belittles the Director's statement that "the AHC observed, [that] 'Missouri adheres to the common law 'aggregate theory of partnership'". Resp. Br. at 8. But the AHC did make that observation: "This is a common law rule, unchanged by Missouri's adoption of the Uniform Partnership Act." Appellant's Appendix (App. at A15. And the AHC is right, as the Court of Appeals has recently concluded: "Missouri adheres to the common-law 'aggregate theory of partnership.'" *Unifund CCR Partners v. Kinnamon*, 384 S.W.3d 703, 705 (Mo. App. W.D. 2012). *See also, N.E. & R. P'ship v. Stone*, 745 S.W.2d 266 (Mo. App. S.D. 1988) (Missouri follows the common law or aggregate theory of partnership). As a general rule, then partnership property in Missouri is treated as property—jointly—of the partners. And here, the only partner is, ultimately, Southwestern Bell.

2. To reinforce its argument that its partnerships' property is not Southwestern Bell's property, Southwestern Bell cites § 358.250.2 for the proposition that a partner, standing alone, has no right to possess particular partnership property. That statute says there is no right to possess "without the consent of his partners." *Id.* But that highlights the peculiar situation here: Southwestern Bell is really the only partner, so the consent that we are talking about is Southwestern Bell's own consent. That is always available. Nothing in § 358.250.2 suggests that the General Assembly meant for a

corporation to grant or withhold such consent from itself so as to avoid the franchise or any other tax.

* * *

Ultimately, there is no real dispute, to use the AHC’s language, that the “general assembly evidently intended to impose the franchise tax on foreign corporations employing their assets to do business in Missouri—which Petitioner [Southwestern Bell] in this case has done.” App. at A17. As discussed in the Director’s opening brief, that intent is vindicated only by barring a taxpayer like Southwestern Bell from using the legal fiction of wholly-owned, wholly-controlled partnerships as a method of avoiding the franchise tax while still operating the same property in the same way in the State of Missouri.

CONCLUSION

For the reasons stated in the Director's opening brief and supplemented here, the Administrative Hearing Commission's decision should be reversed and the Director's decision affirmed.

Respectfully submitted,
CHRIS KOSTER
Attorney General

By: /s/ James R. Layton
James R. Layton
Mo. Bar No. 45631
Solicitor General
P.O. Box 899
Jefferson City, MO 65102
(573) 751-3321
(573) 751-0774 (facsimile)
James.Layton@ago.mo.gov

ATTORNEYS FOR APPELLANT

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 August 5, 2014, to:

BRYAN CAVE LLP
Edward F. Downey
221 Bolivar Street, Suite 101
Jefferson City, Missouri 65101
efdowney@bryancave.com

B. Derek Rose
One Metropolitan Square
211 North Broadway, Suite 3600
St. Louis, Missouri 63102-2750
drose@bryancave.com

Attorneys for Respondent Southwestern Bell Telephone Company

and that a true and correct copy of the foregoing was mailed, inter-agency, to:

Administrative Hearing Commission
Truman State Office Building Room 640
P.O. Box 1557
Jefferson City, MO 65101

The undersigned further certifies that the foregoing brief complies with the limitations contained in Rule No. 84.06(b) and that the brief contains 673 words.

/s/ James R. Layton
Solicitor General