

No. SC 89568

IN THE SUPREME COURT OF MISSOURI

**JAY WOLFE IMPORTS MISSOURI, INC.
Petitioner/Appellant,**

v.

**DIRECTOR OF REVENUE
Respondent/Appellee.**

**Appeal from the State of Missouri Administrative Hearing Commission
Commissioner John J. Kopp**

APPELLANT'S BRIEF

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JURISDICTIONAL STATEMENT

On August 7, 2008, the State of Missouri Administrative Hearing Commission, Commissioner John J. Kopp, entered a decision that Jay Wolfe Imports Missouri, Inc. (“Jay Wolfe”) is liable for Missouri corporate income tax assessed by the Director of Revenue (the “Director”) for Jay Wolfe’s 2002, 2003 and 2004 tax years, plus interest. On September 4, 2008, Appellant Jay Wolfe filed a timely Petition for Judicial Review in this Court. Section 621.189 RSMo 2006 and Rule 100.02.

Jurisdiction is proper in the Supreme Court of Missouri pursuant to Article V, Section 3 of the Missouri Constitution and Section 621.189 RSMo 2006 because this case involves the construction of the revenue laws of the state of Missouri.

STATEMENT OF FACTS

The facts are undisputed. Jay Wolfe operates as a car dealership, primarily selling new and used Acura vehicles, from its facility in Kansas City, Missouri. (Legal File 23, hereinafter “LF”). Jay Wolfe operates solely from this facility and does not conduct any operations or maintain any facilities in any other state. (LF 23). Jay Wolfe conducts and completes all aspects of its vehicle sales, including transfer of title and possession to its customers, at this Kansas City, Missouri facility. (LF 23).

Jay Wolfe’s customers primarily reside in either Missouri or Kansas. (LF 23). Jay Wolfe obtains and verifies its customers’ addresses. (LF 23). For security purposes, Jay Wolfe requires each customer who wants to test drive a vehicle to show a driver’s license. (LF 23). When a vehicle is purchased, Jay Wolfe completes a Financial Services Purchaser Information checklist containing the address provided by the customer. (LF

23). The majority of Jay Wolfe's customers finance the purchase of their vehicles and, in connection with this financing, Jay Wolfe obtains a credit report which also verifies a customer's address. (LF 23). Finally, Jay Wolfe prepares title, registration and lien perfection documents based on the address provided by the customer. (LF 23). Jay Wolfe has significant business reasons, separate from determining its Missouri income tax liability, for obtaining and verifying a customer's address. (LF 23).

Jay Wolfe prepares an invoice that shows the sales price of the car and the address of the customer. (LF 23). Jay Wolfe's accounting department utilizes the address contained on the invoice for a particular vehicle sale to determine whether the sale should be classified as a sale to a Missouri customer or a sale to a non-Missouri customer. (Transcript of Hearing at 11:20-12:2, 13:24-15:2).

Jay Wolfe's customers take possession of their vehicles at Jay Wolfe's dealership in Kansas City, Missouri and drive their newly purchased vehicles to their respective addresses. (LF 23).

Jay Wolfe filed Form MO-1120 Missouri Corporate Income Tax Returns for tax years 2002, 2003 and 2004 (the "2002-2004 Missouri Income Tax Returns"). (LF 24). Pursuant to Section 143.451.2(2)(b) RSMo 2006, Jay Wolfe elected the single-factor apportionment method to compute the portion of its income taxable in Missouri for its 2002-2004 Missouri Income Tax Returns. (LF 24). Applying the single-factor apportionment method on its 2002-2004 Missouri Income Tax Returns, Jay Wolfe classified its receipts from the sale of vehicles to customers providing out-of-state addresses as sales partly within Missouri and partly without Missouri. (LF 24). Jay

Wolfe classified the remainder of its receipts from vehicle sales as sales wholly within Missouri. (LF 24). Jay Wolfe did not file income tax returns in any other states because it determined it is not subject to corporate taxation in any state other than Missouri. (LF 24).

The Director conducted an audit of Jay Wolfe's 2002-2004 Missouri Income Tax Returns. (LF 24). The Director's auditor determined that all vehicle sales should have been classified as wholly within Missouri under the single-factor apportionment method. (LF 24). The Director issued notices of deficiency on September 11, 2006, and September 13, 2006, assessing Jay Wolfe Missouri corporate income tax as well as penalties and interest for tax years ending December 31, 2002; December 31, 2003 and December 31, 2004. (LF 24). The assessments were as follows, plus interest:

<u>Year</u>	<u>Tax</u>	<u>Additions (Penalties)</u>
2002	\$31,221	\$1,561
2003	\$20,929	\$1,046
2004	\$26,113	\$1,306

(LF 24).

Jay Wolfe protested the notices of deficiency by filing a written protest on November 10, 2006. (LF 2, 13 and 24). On December 5, 2006, the Director issued a final decision upholding the notices of deficiency in part and reversing in part. (LF 2, 13 and 24). The Director upheld the notices of deficiency as to the amount of corporate income tax owed and the interest assessed on such underpayments. (LF 2, 13 and 24).

The Director abated the penalties and accordingly reversed the notices of deficiency as to the penalties assessed on such underpayments. (LF 2, 13, and 24).

Jay Wolfe protested the Director's final decision by filing a Petition with the Administrative Hearing Commission (the "Commission") on January 4, 2007. (LF 22). On August 7, 2008, the Commission upheld the Director's decision on the basis that Jay Wolfe is not entitled to apportion its income for purposes of the Missouri income tax and is not entitled to use the single-factor apportionment method to compute its Missouri income tax. (LF 22-34).

Jay Wolfe protested the Commission's decision by filing a Petition for Judicial Review with this Court on September 4, 2008.

POINTS RELIED ON

I. The Administrative Hearing Commission erred in ruling that Jay Wolfe is not entitled to apportion its income because the Commission incorrectly determined that a taxpayer must establish, as a precondition to apportioning income, that it is a multi-state business either having employees or facilities outside of Missouri or employing capital outside Missouri (factors in the source of income test) and, in so determining, disregarded the effect of the Missouri legislature's enactment of Section 144.010.1(7) RSMo 1986 and its successor, Section 143.451.2(3) RSMo 2006.

Dick Proctor Imports, Inc. v. Director of Revenue, 746 S.W.2d 216 (Mo. banc 1988)

Goldberg v. State Tax Commission, 639 S.W.2d 796 (Mo. 1982).

Langley v. Administrative Hearing Commission,

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Wolff Shoe Co. v. Director of Revenue, 762 S.W.2d 29 (Mo. 1988)

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Section 143.451.2(2) RSMo 2006

Section 143.451.2(3) RSMo 2006

Section 144.010.1(7) RSMo 1986 (repealed in 1988)

II. The Administrative Hearing Commission erred in ruling that Jay Wolfe is liable for Missouri income tax because the Commission failed to apply the plain meaning doctrine of statutory interpretation to Section 143.451.2 RSMo 2006 and, in so failing, did not properly apply the single-factor apportionment method set forth in Section 143.451.2 RSMo 2006 to the facts of this case.

Helzberg Diamond Shops, Inc. v. Director of Revenue, Nos. RI 83-2659, RI 83-2678 and RI 83-2679, 1986 Mo. Tax LEXIS 69 (Mo. Admin Hrg. Comm'n 1998)

The Rival Company v. Director of Revenue, No. RI 97-001155, 1998 Mo. Tax LEXIS 230 (Mo. Admin. Hrg. Comm'n 1998)

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Section 143.451.2(3) RSMo 2006

Section 143.451.2(3)(d) RSMo 2006

ARGUMENT

I. The Administrative Hearing Commission erred in ruling that Jay Wolfe is not entitled to apportion its income because the Commission incorrectly determined that a taxpayer must establish, as a precondition to apportioning income, that it is a multi-state business either having employees or facilities outside of Missouri or employing capital outside Missouri (factors in the source of income test) and, in so determining, disregarded the effect of the Missouri legislature's enactment of Section 144.010.1(7) RSMo 1986 and its successor, Section 143.451.2(3) RSMo 2006.

The standard of review applicable to a decision of the Commission requires this Court to uphold the decision of the Commission if it is authorized by law and supported by competent and substantial evidence upon the whole record, unless the result is clearly contrary to the reasonable expectations of the Missouri legislature. *See Wolff Shoe Co. v. Director of Revenue*, 762 S.W.2d 29, 31 (Mo. 1988).

The Commission erred in ruling that Jay Wolfe is liable for Missouri corporate income tax as assessed by the Director for tax years 2002, 2003 and 2004, plus interest, because the Commission incorrectly determined that Jay Wolfe is not entitled to apportion its income for purposes of the Missouri corporate income tax and is not entitled to elect the single-factor apportionment method provided for in Section 143.451.2 RSMo. 2006. In making this determination, the Commission ignored the effect of the Missouri legislature's enactment of Section 144.010.1(7) RSMo 1986 and its successor, Section 143.451.2(3) RSMo 2006.

Section 143.451.1 RSMo 2006 provides that a corporation's Missouri taxable income "shall include all income derived from sources within this state." Section 143.451.2 RSMo 2006 provides that any corporation organized, authorized or existing under the laws of Missouri, or doing business in Missouri shall include in its Missouri taxable income all income from sources within Missouri, including income from the transaction of business in Missouri and from the transaction of business partly done in Missouri and partly done in another state. *See* Section 143.441 RSMo 2006.

Section 143.451.2(2) RSMo 2006 provides that a Missouri corporation transacting business partly within Missouri and partly without Missouri may elect to compute its Missouri taxable income using the single-factor apportionment method, an apportionment method based entirely on sales. Specifically, Section 143.451.2(2)(b) RSMo 2006 provides that a corporation electing the single-factor apportionment method computes its Missouri taxable income as follows:

The amount of sales which are transactions wholly in this state shall be added to one-half of the amount of sales which are transactions partly within this state and partly without this state, and the amount thus obtained shall be multiplied by the total sales . . . and the net income shall be multiplied by the fraction thus obtained, to determine the proportion of income to be used to arrive at the amount of Missouri taxable income.

Section 143.451.2(2) RSMo 2006 requires that a Missouri corporation establish that it transacts business partly within Missouri and partly without Missouri in order to elect the single-factor apportionment method. For transactions involving the sale of tangible property, such as vehicles, Section 143.451.2(3) RSMo 2006 defines “partly within [Missouri] and partly without [Missouri]” to mean that the seller’s shipping point is in Missouri and the purchaser’s destination point is outside Missouri.

Prior to 1980, “partly within [Missouri] and partly without [Missouri]” was not defined in the statutes. However, in 1980, the Missouri legislature adopted the above definition in Section 144.010.1(7) RSMo 1986 for Chapter 143 RSMo, Income Tax. Then, effective January 1, 1989, the Missouri legislature deleted this definition from Section 144.010.1(7) RSMo 1986 and added this definition to Section 143.451.2 RSMo 2006 as subdivision (3).

As authority for its ruling that a taxpayer must first establish it is entitled to apportion before it can elect an apportionment method, the Commission cites certain cases for the proposition that the determination of whether a taxpayer may elect to apportion income must be based on the source of income test. See *Goldberg v. State Tax Commission*, 639 S.W.2d 796, 803 (Mo. 1982); *Langley v. Administrative Hearing Commission*, 649 S.W.2d 216, 217-28 (Mo. banc 1983); *Dick Proctor Imports, Inc. v. Director of Revenue*, 746 S.W.2d 571, 573 (Mo. banc 1988); and *Bass Pro Shops, Inc. v. Director of Revenue*, 746 S.W.2d 97, 98 (Mo. banc 1988). Source of income has been defined as the place where the taxpayer’s income was produced and, under the source of income test, income from a transaction must be regarded as produced from a source

solely within Missouri unless the taxpayer employs capital or labor outside the state of Missouri. *Langley*, 649 S.W.2d at 217-18; and *In re: Kansas City Star Company*, 142 S.W.2d 1029, 1038 (Mo. banc 1940).

In its decision, the Commission observes that *Goldberg*, *Langley*, *Dick Proctor* and *Bass Pro* all involve tax years occurring prior to the effective date of the statutory definitions governing single-factor apportionment, definitions contained in Section 144.010.1(7) RSMo 1986 and its successor, Section 143.451.2(3) RSMo 2006. However, the Commission concluded that a threshold determination must be made as to whether a taxpayer is entitled to apportion income. In so concluding, the Commission ignores that, in each of these cases it cites as support, this Court takes care to note that each case involved tax years occurring prior to the adoption of the statutory definitions governing eligibility for single-factor apportionment (specifically, the definition of “partly within [Missouri] and partly without [Missouri]”) contained in Section 144.010.1(7) RSMo 1986 and its successor Section 143.451.2(3) RSMo 2006. See *Goldberg*, 639 S.W.2d at 803, n.7; *Langley*, 649 S.W.2d at 219-20; *Dick Proctor*, 746 S.W.2d at 574, n.1; and *Bass Pro*, 746 S.W.2d at 98, n.1.

In *Goldberg*, a case in which the 1972 through 1975 tax years were at issue, this Court acknowledged that, effective 1980, the Missouri legislature had changed the state of the law. Further, this Court stated that, had the statutory definitions contained in Section 144.010.1(7) RSMo 1986 for “partly within [Missouri] and partly without [Missouri]” applied, the taxpayer in *Goldberg* would have had the right to apportion its income because “there would be no question that the transactions involved [in *Goldberg*]

are partially within [Missouri] and partially without [Missouri].” *Goldberg*, 639 S.W.2d at 803, n.7.

In *Langley*, the tax years at issue were 1970, 1971 and 1972, and, thus, the transactions at issue were sales completed prior to the enactment of the statutory definitions of “partly within [Missouri] and partly without [Missouri].” *Langley*, 649 S.W. 2d at 216-17. Consequently, this Court did not apply, analyze or interpret the statutory definition of “partly within [Missouri] and partly without [Missouri]” as set forth in Section 143.451.2(3) RSMo 2006 and its predecessors. *Id.* However, Judge Welliver, in the *Langley* dissent, correctly observed that the enactment of the statutory definitions set forth set forth in Section 143.451.2(3) RSMo 2006 and its predecessors legislatively overrules the source of income test as it applies to sales of tangible property. *Id.* at 219-20.

In both *Dick Proctor* and *Bass Pro*, the tax years at issue preceded the effective date of the enactment of Section 143.451.2(3) RSMo 2006 and its predecessors, and this Court correctly applied the source of income test to determine whether the taxpayer had the right to apportion business income pursuant to the single-factor apportionment method. *Dick Proctor*, 746 S.W.2d at 574-75; and *Bass Pro*, 746 S.W.2d at 97-98. However, as previously stated in this Brief, this Court took care to state in the footnotes of both *Dick Proctor* and *Bass Pro* that the sales of tangible property in the tax years at issue occurred prior to the enactment of the statutory definitions contained in Section 143.451.2(3) RSMo 2006 and its predecessor Section 144.010.1(7) RSMo 1986. *Dick Proctor*, 746 S.W.2d at 574, n.1; and *Bass Pro*, 746 S.W.2d at 98, n.1.

Additionally, in *Wolff Shoe Co. v. Director of Revenue*, a case in which the 1980, 1981, 1982 and 1983 fiscal tax years were at issue, this Court reversed the Commission's ruling that was based on the application of the source of income test. *Wolff Shoe Co. v. Director of Revenue*, 762 S.W.2d 29, 31-32 (Mo. 1988). This Court held that the source of income test has no place in the analysis of transactions involving the sale of tangible property. *Id.*

Unlike *Goldberg*, *Langley*, *Dick Proctor* and *Bass Pro*, and like *Wolff Shoe*, this case involves tax years subsequent to the effective date of Section 143.451.2(3) RSMo 2006 and its predecessor Section 144.010.1(7) RSMo 1986. The source of income test has no bearing on Jay Wolfe's right to elect the single-factor apportionment method for apportioning its business income from sales of tangible property. Jay Wolfe's right to apportion its business income is dependent only upon having sales of tangible property that occur "partly within [Missouri] and partly without [Missouri]. Missouri's income tax laws impose no other preconditions or limitations to apportionment.

The Missouri legislature enacted a simple rule for determining whether a corporate taxpayer has the right to apportion its business income using the single-factor apportionment method. The right to apportion is based only upon the taxpayer's showing that its sales occur partly within Missouri and partly without Missouri. The Missouri legislature eliminated the inherent complexity and uncertainty of the source of income test. The Missouri legislature substituted the clear, easily administrable rule, the "partly within [Missouri] and partly without [Missouri]" rule set forth in Section 143.451.2 RSMo 2006.

In summary, the Commission erred in ruling that Jay Wolfe is not entitled to apportion its income using the single-factor apportionment method because Jay Wolfe does not do business in any state other than Missouri and does not produce income in any state other than Missouri. Neither of these factors is a precondition to apportionment under Section 143.451.2(2) RSMo 2006. Jay Wolfe may apportion its income using the single-factor apportionment method because it can show its sales for the tax years at issue were sales of tangible property that occurred “partly within [Missouri] and partly without [Missouri].”

II. The Administrative Hearing Commission erred in ruling that Jay Wolfe is liable for Missouri income tax because the Commission failed to apply the plain meaning doctrine of statutory interpretation to Section 143.451.2 RSMo 2006 and, in so failing, did not properly apply the single-factor apportionment method set forth in Section 143.451.2 RSMo 2006 to the facts of this case.

The standard of review applicable to a decision of the Commission requires this Court to uphold the decision of the Commission if it is authorized by law and supported by competent and substantial evidence upon the whole record, unless the result is clearly contrary to the reasonable expectations of the Missouri legislature. *See Wolff Shoe Co. v. Director of Revenue*, 762 S.W.2d 29, 31 (Mo. 1988).

The Commission erred in ruling that Jay Wolfe is liable for Missouri corporate income tax as assessed by the Director for tax years 2002, 2003 and 2004 because the Commission failed to apply the plain meaning doctrine of statutory interpretation to Section 143.451.2, RSMo 2006. In failing to apply this doctrine, the Commission did not

properly apply the single-factor apportionment method set forth in Section 143.451.2 RSMo 2006 to the facts of this case.

As more fully discussed above in Part I, Section 143.451.2(2) RSMo 2006 provides that a Missouri corporation transacting business partly within Missouri and partly without Missouri may elect the single-factor apportionment method. A Missouri corporation electing the single factor apportionment method computes its Missouri taxable income as follows:

The amount of sales which are transactions wholly in this state shall be added to one-half of the amount of sales which are transactions partly within this state and partly without this state, and the amount thus obtained shall be multiplied by the total sales . . . and the net income shall be multiplied by the fraction thus obtained, to determine the proportion of income to be used to arrive at the amount of Missouri taxable income. Section 143.451.2(2)(b) RSMo 2006.

For transactions involving the sale of tangible property, Section 143.451.2(3) RSMo 2006 defines “partly within [Missouri] and partly without [Missouri]” to mean that the seller’s shipping point is in Missouri and the purchaser’s destination point is outside Missouri. The purchaser’s destination point is determined without regard to the F.O.B. point or other conditions of sale. Section 143.451.2(3)(d) RSMo 2006.

The Missouri legislature has enacted a single, simple rule for determining whether a sale of tangible property is partly within Missouri and partly without Missouri. The determination is based upon the seller's shipping point and the purchaser's destination point. This single rule applies to all sales of tangible property regardless of the conditions of sale. This single rule applies regardless of the place of transfer of title, or the means of transfer, delivery or shipping of the tangible property. This single rule applies regardless of any factor other than the seller's shipping point and the purchaser's destination point. Accordingly, every sale of tangible property must have a seller's shipping point and a purchaser's destination point, and the seller's shipping point and the purchaser's destination point control whether the sale is partly within Missouri and partly without Missouri.

In *Helzberg Diamond Shops, Inc. v. Director of Revenue*, the Commission ruled that the "seller's shipping point" is the point from which tangible property is shipped or delivered to the purchaser upon sale. *Helzberg*, Nos. RI-83-2659, RI 83-2768 and RI 83-2679, 1986 Mo. Tax LEXIS 69 (Mo. Admin. Hrg. Comm'n 1986). Upon sale, Jay Wolfe delivers its vehicles to its customers at its Kansas City, Missouri facility. Jay Wolfe's Kansas City, Missouri facility is the shipping point for its vehicle sales.

Other than providing that a purchaser's destination point shall be determined without regard to conditions of sale, no Missouri income tax statute, regulation or precedential case defines "purchaser's destination point." Therefore, to determine the meaning of "purchaser's destination point" as used in Section 143.451.2(3) RSMo 2006,

the plain meaning method of statutory interpretation must be applied. *See Delta Air Lines, Inc. v. Director of Revenue*, 908 S.W.2d 353, 356 (Mo. banc 1995).

Under the plain meaning doctrine of statutory interpretation, a court or other decision-making body must consider the words used in the statute in their plain and ordinary meaning. *Id.* at 356 (Mo. banc 1995) citing *Farmers' & Laborers' v. Director of Revenue*, 742 S.W.2d 141, 145 (Mo. banc 1987). The plain and ordinary meaning is found in the dictionary. *Id.* at 356 citing *Asbury v. Lombardi*, 846 S.W.2d 196 (Mo. banc 1993). When interpreting tax statutes, the Court must construe such statutes “in favor of the taxpayer and against the taxing authority.” *Delta*, 908 S.W.2d at 356 citing *Brown Group, Inc. v. Administrative Hearing Commission*, 649 S.W. 2d 874, 881 (Mo. banc 1983).

Webster’s Third New International Dictionary, published in 1986, defines a destination as “a place which is set for the end of a journey or to which something is sent: place or point aimed at[.]” *The Rival Company v. Director of Revenue*, No. RI 97-001155, 1998 Mo. Tax LEXIS 230 at *10 (Mo. Admin. Hrg. Comm’n 1998) citing Webster’s Third New International Dictionary 614 (unabr 1986). *Rival* is a nonbinding case in which the Commission interpreted “purchaser’s destination point” in Section 143.451.2 RSMo 2006 using the plain meaning doctrine of statutory interpretation. The Commission applied this definition of “destination” to a transaction in which a purchaser took possession of and title to goods at the seller’s loading dock in Missouri for transport to a state other than Missouri and concluded that, if a seller delivers possession to a purchaser who picks up the purchased goods in Missouri for delivery to points outside of

Missouri, the purchaser's destination point is outside Missouri. *Rival*, No. RI 97-001155, 1998 Mo. Tax LEXIS 230 at *10. The Commission then concluded that the transaction was "partly within [Missouri] and partly without [Missouri]." We cite *Rival* not as binding precedent, but rather for the strength and clarity of its analysis.

Jay Wolfe's out-of-state customers pick up their vehicles at Jay Wolfe's Kansas City, Missouri dealership location and drive their vehicles to their out-of-state addresses. Accordingly, Jay Wolfe's out-of-state customers have a destination point outside of Missouri.

In determining a customer's destination, a seller such as Jay Wolfe may rely on the address provided by each customer when determining the customer's destination point. *Rival*, No. RI 97-001155, 1998 Mo. Tax LEXIS 230 at *11. Jay Wolfe has at least the same assurance about its customer's destination point as the seller in *Rival*, or as any seller which ships tangible property to an out-of-state address. Jay Wolfe's out-of-state customers may return the vehicle to Missouri, but a shipper's out-of-state customer may change the shipping destination during or after transit, or reship the tangible property to Missouri.

Jay Wolfe's sales to out-of-state customers are transactions involving the sale of tangible property occurring partly within Missouri and partly without Missouri. Thus, pursuant to Section 143.451.2 RSMo 2006, Jay Wolfe has the right to elect the single-factor apportionment method. Further, Jay Wolfe properly classified the sales to out-of-state customers as sales occurring "partly within [Missouri] and partly without [Missouri]."

The Missouri legislature has enacted a simple rule for the apportionment of income arising from the sale of tangible property. The rule is based only upon the seller's shipping point and the purchaser's destination point. No separate rules apply to tangible property sales under different conditions of sale. The only relevant factors are the seller's shipping point and the purchaser's destination point.

In summary, the Commission erred in ruling that Jay Wolfe is liable for Missouri corporate income tax as assessed by the Director for tax years 2002, 2003 and 2004 because the Commission failed to apply the plain meaning doctrine of statutory interpretation to Section 143.451.2 RSMo 2006. In failing to apply this doctrine, the Commission did not properly apply the single-factor apportionment method set forth in Section 143.451.2 RSMo 2006 to the facts of this case.

Jay Wolfe's shipping point for its vehicle sales is at its Kansas City, Missouri facility. A proper application of the plain meaning doctrine to the interpretation of Section 143.451.2 RSMo 2006 establishes that Jay Wolfe's out-of-state customers have destination points outside of Missouri. Thus, Jay Wolfe's sales are "partly within [Missouri] and partly without [Missouri]." Jay Wolfe properly computed its Missouri corporate income tax liability for its 2002, 2003 and 2004 tax years. Jay Wolfe is not liable for the Missouri corporate income tax or applicable interest assessed by the Director for tax years ending December 31, 2002, December 31, 2003 and December 31, 2004.

CONCLUSION

Wherefore, for the reasons set forth herein, Jay Wolfe prays that this Court enter an Order:

(a) Finding that Jay Wolfe is entitled to apportion its income for purposes of the Missouri corporate income tax;

(b) Finding that Jay Wolfe may elect the single-factor apportionment method set forth in Section 143.451.2 RSMo 2006;

(c) Finding that Jay Wolfe properly applied the partly within and partly without definitions contained in Section 143.451.2(3) RSMo 2006;

(d) Finding that Jay Wolfe properly computed its Missouri corporate income tax liability for its 2002, 2003 and 2004 tax years;

(e) Reversing the Administrative Decision of August 7, 2008;

(f) Holding that Jay Wolfe is not liable for the Missouri corporate income tax or interest assessed by the Director for tax years ending December 31, 2002, December 31, 2003 and December 31, 2004; and

(g) Providing such other and further relief as this Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of this brief and a copy of a disc containing it were mailed via Federal Express on December 31, 2008, to:

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that the foregoing brief includes the information required by Rule 55.03, and complies with the limitations contained in Rule 84.06. I further certify that this brief contains 5,069 words and that Microsoft Word for Windows version 2002 was used to prepare this brief.

The undersigned further certifies that I have provided the clerk of the Court and Appellee's counsel with a CD diskette containing the full text of this Brief, labeled with the case number and name. I further certify that the CD was scanned and is virus-free.

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