Summary of SC91784, *Aquila Foreign Qualifications Corporation v. Director of Revenue*
On review from the administrative hearing commission, Commissioner Karen A. Winn
Argued and submitted Jan. 4, 2012; opinion issued March 6, 2012

Attorneys: The director was represented by Deputy Solicitor General Jeremiah J. Morgan of the attorney general's office in Jefferson City, (573) 751-3321, and Aquila was represented by Bruce Farmer of Oliver Walker Wilson LLC in Columbia, (573) 443-3134.

Overview: The administrative hearing commission determined that a portion of the electricity a convenience store purchased from an electrical utility is exempt from state sales and use tax, holding that food-processing operations are "processing" within the meaning of the statute. In a 5-2 decision written by Judge Mary R. Russell, the Supreme Court of Missouri reverses the commission's decision. Although "processing" is defined in the statute, the definition itself is ambiguous because it does not define what it means "to transform or reduce materials." Considering the industrial connotation of other words listed in the statutory exemption, prior holdings of this Court that "processing" essentially is the same as "manufacturing," and another prior holding of this Court that restaurants do not engage in "manufacturing," the Court concludes that preparing food for retail consumption is not "processing" within the meaning of the statute and, therefore, the convenience store is not entitled to a refund of sales and use taxes on the electricity it purchased to power its food-preparation operations.

Judge William Ray Price Jr. dissents. He would find that, although the statutory definition of "processing" is broad, it is not ambiguous. As such, he would not resort to other mechanisms to construe the words of the statute beyond their plain, ordinary and usual meaning. He also would not apply this Court's holding in a previous case because that case interpreted a different term appearing in a different statute.

Facts: Casey's Marketing Company, doing business as Casey's General Stores, sought from the director of revenue a refund for one month's tax it paid for part of the electricity it purchased from Aquila Foreign Qualifications Company for food-preparation operations at two Casey's locations in Grain Valley and Greenwood. These operations range from frying breaded meat patties for sandwiches, adding hot water to coffee and cappuccino mixes, and making and bagging ice cubes to making pizza and doughnuts from scratch. The director denied the refund claim, and, at Casey's request, Aquila filed a complaint challenging the director's decision. The administrative hearing commission reversed the director's decision, deciding that a portion of the electricity Casey's purchased is exempt from state sales and use tax under section 144.054.2, RSMo Supp. 2010. It held that the language of this section was intended to exempt a broad range of activities and that Casey's food-processing operations are "processing" within the meaning of the statute. The director appeals.

REVERSED.

Court en banc holds: Because the preparation of food for retail consumption is not "processing" within the meaning of section 144.054.2, Casey's is not entitled to a sales and use tax exemption on the electricity it purchased to power its food-preparation operations. Although section 144.054.1(1), RSMo Supp. 2010, provides a statutory definition of "processing," the definition itself is ambiguous. The statute defines "processing" as "any mode of treatment, act, or series of acts performed upon materials to transform or reduce them to a different state or thing …" but offers no further guidance as to what it means "to transform or reduce materials." In a case interpreting a related exemption under similar facts, this Court found that restaurants are not "plants" exempt from taxation under other portions of chapter 144, RSMo, because restaurants do not "fabricate," "manufacture" or "mine" products to be sold ultimately for final use and consumption but rather "prepare," "furnish" or "serve" food to the public at retail. *Brinker Missouri, Inc. v. Director of Revenue*, 319 S.W.3d 433, 436, 438 (Mo. banc 2010). Although neither the term "processing" nor its definition appear in the statutes at issue in *Brinker*, that case still is instructive. As noted in *Brinker*, if the legislature intended to make a particular exemption from taxation, it would have included language in the statute to indicate that intent. Further, this Court's interpretation of "processing" is guided by the statutory maxim that a word is known by the company it keeps. Here, "processing" is used along with "manufacturing," "compounding," "mining" and "producing." The industrial connotation of those terms indicate the legislature did not include "processing" to include food preparation for retail consumption. Further, before the statute was adopted, this Court interpreted "processing" as being essentially the same as "manufacturing." 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. Further, the code of state regulations expressly states that "a restaurant preparing food for immediate consumption is not exempt [under section 144.054]. Therefore, all state and local taxes apply." 12 CSR 10-110.621(5)(A).

Dissenting opinion by Judge Price: The author would affirm the commission's decision. Although the term "processing" as used in the exemption of section 144.054.2, RSMo Supp. 2010, is broad, it is not ambiguous, and, therefore, this Court simply must read the words in their plain, ordinary and usual sense and not resort to other methods of construing statutes. Further, *Brinker Missouri, Inc. v. Director of Revenue*, 319 S.W.3d 433 (Mo. banc 2010), is not controlling here because it interpreted a different term appearing in a different statute.