

Summary of SC92314, American Airlines Inc. v. Director of Revenue

Petition for review from the administrative hearing commission, Commissioner Sreenivasa Rao Dandamudi

Argued and submitted Oct. 30, 2012; opinion issued Jan. 8, 2013

Attorneys: American Airlines was represented by James W. Erwin and Janette M. Lohman of Thompson Coburn LLP in St. Louis, (314) 552-6000; and the director was represented by Deputy Solicitor General Jeremiah J. Morgan of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: An airline seeks review of the denial of a refund for the sales taxes it collected and remitted to the state department of revenue for the sale of fuel to two regional carriers with which it had a contract to provide regional flight services under the airline's name. In a 7-0 decision written by Judge Zel M. Fischer, the Supreme Court of Missouri affirms the commission's decision. The airline did not retain sufficient dominion and control over the fuel but rather transferred title and ownership of the fuel it sold to the regional carriers, making them sales at retail subject to taxation.

Judge Mark H. Neill, a circuit judge in the 22nd circuit (St. Louis city), sat in this case by special designation to fill the then-vacancy on the Court.

Facts: Through its parent company, American Airlines entered into air services agreements with two regional airlines operating out of St. Louis: Trans-States Airlines Inc. and Chautauqua Airlines Inc. Under the agreements, Trans-States and Chautauqua agreed to operate flights to and from St. Louis for American under the AmericanConnection brand name. Under the agreement, American limited the regional carriers' use of branding, ticketing, scheduling, aircraft selection and flight operation. In return, American compensated Chautauqua and Trans-States an agreed-upon fixed rate per "block hour" flown, defined as the time when an aircraft moves under its own power for the purpose of flight and ends when the aircraft comes to rest after landing. This compensation structure was based on a particular contemplated aviation jet fuel price per gallon. Pursuant to the agreements, American would reimburse the regional carriers for the price difference on a monthly basis. To the extent the price of fuel was less than the contemplated cost, then American would give the regional carriers a credit toward amounts due. The agreements did not require American to sell fuel to the regional carriers or require the regional carriers to buy their fuel from American. But from October 2004 through September 2007, pursuant to an oral contract, Chautauqua and Trans-State purchased fuel from American, which could provide it at a lower cost than other suppliers because American bought fuel at a bulk rate that was not available to the regional carriers. During that time period, American charged the regional carriers sales tax on their purchases of fuel and remitted the tax to the state department of revenue. Because the cost of the fuel during this period always exceeded the amounts contemplated in the agreements, American reimbursed the regional carriers for that excess amount, including the entire amount of state and local sales tax American collected and remitted from the regional

carriers. In February 2008, American sought nearly \$5.18 million in a sales tax refund from the director of revenue. The director denied the refund claim, and American filed a complaint with the administrative hearing commission. The commission ultimately determined that American was not entitled to a refund, finding the sales of fuel to the regional carriers were sales at retail under section 144.010.1(1), RSMo, and did not qualify for a sales tax exemption under section 144.805, RSMo. American seeks review in this Court.

AFFIRMED.

Court en banc holds: Based on the record as a whole, the evidence supports the commission's finding that American transferred title and ownership of the fuel to Chautauqua and Trans-States, making them sales at retail that were subject to taxation under section 144.020, RSMo. Section 144.020.1(1) levies a 4-percent sales tax on every retail sale of tangible personal property conducted in Missouri, with certain specified exemptions. The taxable event is the passage of title or ownership, which typically occurs upon delivery, unless otherwise agreed by the parties. Here, American – through its vendors – delivered fuel to Chautauqua and Trans-States and charged them for the fuel. The regional airlines, in turn, consumed the fuel in the operation of their business. American did not retain sufficient “dominion and control” over the fuel sold to Chautauqua and Trans-States as to maintain ownership of the fuel. The limitations in the agreements between American and the regional carriers regarding branding, ticketing, scheduling, aircraft selection and flight operation do not give American any dominion or control as to the use of fuel, and these limitations would have applied even had the regional carriers purchased their fuel from any other supplier. There also was nothing in the record or agreements indicating that American could have required the regional carriers to return the fuel if any remained. There was no explicit agreement that legal title to or ownership of the fuel would remain in American or would transfer back to American upon purchase by Chautauqua and Trans-States. Moreover, the agreements demonstrate that the parties intended for title and ownership of the fuel to transfer to the regional carriers. The agreements placed all responsibilities for fueling and fuel services on the regional carriers; did not require American to provide fuel for the AmericanConnection flights; did not require the regional carriers to buy fuel from American; put on the regional carriers the risk of financial loss resulting from the provision of AmericanConnection flights; and did not contemplate that American would maintain, receive or keep title to any fuel purchased for the AmericanConnection flights. The agreement stating that the regional carriers were to use the fuel in planes designated for AmericanConnection flights served only to limit how much fuel Chautauqua and Trans-States could purchase from American to the amount that directly would benefit American. The air services agreement required American to reimburse the regional carriers for the price of fuel above a certain cost per gallon. As a result, it was in American's best interest to reduce its own operating costs by selling fuel to the regional carriers at a lower rate than any other supplier.