

Summary of SC92663, *PF Golf LLC v. Director of Revenue*

Appeal from the administrative hearing commission, Commissioner Sreenivasa Rao Dandamudi
Argued and submitted March 6, 2013; opinion issued July 16, 2013

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 PF Golf was represented by Edward F. Downey and Carol L. Iles of Bryan Cave LLP in Jefferson City, (573) 556-6622.

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: The director of revenue appeals the administrative hearing commission's decision that the owner of a golf course is not subject to sales taxes for its rental of golf carts. In a 5-2 decision written by Judge Richard B. Teitelman, the Supreme Court of Missouri affirms the commission's decision. Because the course owner already paid sales tax when it acquired the golf carts, it is not required to charge sales tax on rentals of those carts. Judge Laura Denvir Stith dissents. She would hold that the course owner does not qualify for the tax exemption at issue and, therefore, would reverse the commission's decision and remand (send back) the case.

Facts: PF Golf LLC paid sales tax on its acquisition of golf carts for use at its Pevely Farms course. With only two categories of exceptions, PF Golf requires its customers to use and pay for a golf cart. Although golf fees and cart rentals are priced together, the customers' receipts separately itemize greens fees and cart rentals. PF Golf collected and remitted sales tax for the greens fees but not for the golf rentals. The director assessed about \$121,925 in unpaid sales taxes against PF Golf after determining its cart rentals were mandatory and, therefore, subject to sales tax regardless of the fact that PF Golf had paid sales tax when it purchased the carts. PF Golf sought review from the administrative hearing commission, which determined that the company is not subject to sales tax for its rental of golf carts. The director appeals.

AFFIRMED.

Court en banc holds: Because PF Golf paid sales tax when it acquired the golf carts it rents to its customers, it was not required to charge sales tax on the golf cart rentals under section 144.020.1(8), RSMo. Although subdivision (2) of the statute levies a tax on fees paid in any place of amusement – which includes a golf course – the relevant subdivision is (8), which imposes a tax on fees charged for the rental of personal property unless the sales tax already has been paid on the property at issue. Substantial evidence in the record supports the commission's decision that PF Golf rented golf carts and did not just sell rounds of golf that included the use of a golf cart.

Dissenting opinion by Judge Stith: The author would hold that PF Golf does not qualify for the tax exemption in section 144.020.1(8), which provides that a company that rents out personal property to another must pay a 4-percent tax on the rental charge *unless* the renter previously had paid taxes when, initially, it either had: purchased the property under the conditions of "sale at retail," or leased or rented the property. PF Golf's purchase of the golf carts did not qualify as a

“sale at retail” because PF Golf rented the carts, which constitutes a “resale” under the statute. Further, the rental is taxable under subdivision (2) as a fee paid in or to a place of amusement, and so tax should be imposed for that independent reason regardless of whether it is taxable under subdivision (8).