

Summary of SC88943, *Great Southern Bank v. Director of Revenue*

Petition for review of a decision by the Administrative Hearing Commission.

Attorneys: Great Southern was represented by Carol L. Iles, Scott Riley and John P. Barrie. The director of revenue was represented by James R. Layton.

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 has been neither reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A bank that used an intermediary in a transaction to sell one airplane and buy another appeals the administrative hearing commission's determination that the transaction was not a trade and, therefore, was not eligible for a statutory use-tax exemption for items "taken in trade." In a 7-0 decision written by Judge Richard B. Teitelman, the Supreme Court of Missouri affirms the commission's decision. Although there was an intermediary used to facilitate a transaction under the federal tax code, there was not a "trade" exempting the bank from paying Missouri use taxes.

Facts: Great Southern Bank agreed to sell a Beechcraft airplane to Jet 1 Inc. for \$1.025 million and, nine days later, agreed to buy a 1993 Cessna airplane from Scag Engineering LLC for \$1.925 million. To facilitate the transaction, Great Southern entered into an "exchange agreement" with Wachovia Bank N.A. outlining a transaction – in which Great Southern would acquire the Cessna from Wachovia and then relinquish the Beechcraft to Wachovia – structured to meet the requirements for a certain tax deferral under the federal tax code. Subsequently, both Jet 1 and Great Southern directed their payments to a title insurer, which forwarded the funds to Wachovia, which then sent Great Southern's payment to Scag. Great Southern paid use taxes on \$900,000 – the difference between the Beechcraft's sale price and the Cessna's purchase price. The director of revenue concluded that Great Southern owed use tax on the full price of the Cessna. Great Southern filed a complaint with the administrative hearing commission, arguing it acquired the Cessna in a trade and, thereby, was eligible for the "taken in trade" exemption in section 144.025, RSMo 2000. The commission determined there was no trade, and so the exemption did not apply. Great Southern appeals.

AFFIRMED.

Court en banc holds: The transaction in which Great Southern engaged was a sale and a purchase, not a trade. Because section 144.025 is a tax exemption statute, Great Southern bears the burden of showing it is entitled to the exemption. Exemptions from taxation are construed strictly against the taxpayer, and any doubt is resolved in favor of applying the tax. The statute does not define the term "taken in trade," but using dictionary definitions, a "trade" requires that both parties have title to or ownership of their respective items and

then exchange them. No Missouri cases interpret the "taken in trade" exemption. In interpreting revenue cases, however, it is important to look beyond legal fictions to discover the realities of the case. Here, although Wachovia acted as an intermediary – essentially as Great Southern's agent – to facilitate a transaction under the federal tax code, it does not follow that there was a "trade" exempting Great Southern from paying Missouri use taxes. Wachovia could not keep the Beechcraft or Cessna or sell the Beechcraft to someone other than Jet 1, and it never took the Beechcraft in trade for anything. Further, the purchase agreement between Great Southern and Scag Engineering left blank the section for a trade-in, confirming that the transaction was not a trade.