

Summary of SC89431, *MFA Petroleum Company v. Director of Revenue*

Review of an administrative hearing commission decision, Commissioner Douglas M. Ommen

Attorneys: MFA was represented by Edward F. Downey of Bryan Cave LLP in Jefferson City, (573) 556-6622, and Brenda L. Talent of Bryan Cave LLP in St. Louis, (314) 259-2777; and the director was represented by Gary L. Gardner 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: A retailer sought to use sales taxes it over-collected on cigarette sales as a credit toward taxes it under-collected on other taxable transactions. In a unanimous decision written by Judge Richard B. Teitelman, the Supreme Court of Missouri affirms the administrative hearing commission's decision that the retailer is not entitled to the credit. A statute specific to the excise tax on cigarette sales prohibits refunds to the retailer and provides only two remedies for erroneously collected taxes: a refund to the consumer or payment to the director of revenue. Here, the retailer did not refund the over-collected taxes to its customers, and there is no provision for a credit from the director.

Facts: MFA Petroleum Company owns and operates convenience stores that sell cigarettes. The full price of cigarettes charged to MFA's customers includes the state excise tax. This portion of the sales price is not subject to sales tax. Following an audit, the director of revenue determined that, from January 2001 through April 2002, MFA erroneously collected from its customers sales taxes on the excise tax and did not attempt to refund this sales tax to the customers who paid it. The director also determined that MFA had failed to collect sales taxes on other taxable transactions. The director issued a final decision requiring MFA to remit the unpaid sales tax, with interest. MFA sought review of the director's decision in the administrative hearing commission. It did not contest its liability for the unpaid taxes but instead sought a credit for the taxes erroneously collected on the cigarette excise tax. The commission concluded MFA is not entitled to a credit and ordered MFA to pay the full amount of the uncollected taxes, plus interest. MFA seeks review in this Court.

AFFIRMED.

Court en banc holds: The commission properly found that MFA is not entitled to credit taxes it erroneously collected from its customers to offset its liability for other taxes it was obligated to collect. Section 144.190.2, RSMo Supp. 2007, applies to sales taxes and generally requires that an erroneously collected tax be credited toward any taxes due. Section 149.015.4, RSMo Supp. 2007, is specific to the state excise tax on cigarette sales and specifically prohibits the refund of any tax collected and remitted by a retailer on gross receipts from the sale of cigarettes. It also prohibits the possibility of a credit to a retailer – which otherwise would be available under the general provisions of section 144.190.2 – because section 149.015.4 specifically provides that “any such tax shall either be refunded to the person who paid such tax or paid to the director.” Because there is no dispute that MFA did not provide a refund to its customers who paid the taxes, section 149.015.4 provides that the overpayment is paid to the director with no provision for a credit.