

## **Summary of SC91371, *Craig A. Street v. Director of Revenue***

On review from the administrative hearing commission, Commissioner Karen A. Winn  
Argued and submitted Sept. 15, 2011; opinion issued Jan. 31, 2012

**Attorneys:** Street, an attorney from Springfield, (417) 988-0211, represented himself. The director was represented by State Solicitor James R. Layton 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 man who purchased a boat, outboard motor and trailer out of state seeks review of an administrative hearing commission decision requiring him to pay local sales taxes on his purchase. In a 7-0 decision written by Judge Patricia Breckenridge, the Supreme Court of Missouri reverses the commission's decision and remands (sends back) the case for determination of the amount of refund and interest to which the man is entitled. Although a county is authorized to impose a local use tax, the county here has not. As such, it may impose only local sales taxes "to the extent and in the manner" as state sales taxes. Because state sales taxes apply only to purchases made in state, however, the county here may not impose a local sales tax because the man's purchase was made out of state.

Judge Joel May, a circuit judge in the 16th Judicial Circuit (Jackson County), sat in this case by special designation to fill a then-vacancy on the Court (from before the appointment of Judge George W. Draper III).

**Facts:** Craig Street bought a boat, outboard motor and trailer in May 2009 in Maryland and then transported it home to Greene County, where he registered all three and paid – under protest – local sales taxes on all three pursuant to section 144.070, RSMo. He subsequently asked the state director of revenue for a refund of the local sales taxes he paid during the registration because he purchased the items outside Missouri. The director denied the request, and Street sought review in the administrative hearing commission, which upheld the director's denial of the refund. In its decision, the commission found that the legislature intended that in-state and out-of-state purchases of motor vehicles be taxed equally, that local sales taxes apply "in the same scope and manner" as the state sales tax law, that Street's purchase was subject to state use tax and that his out-of-state transaction was deemed to have occurred in Greene County pursuant to sections 144.069 and 32.087.12(12), RSMo. Street seeks this Court's review.

### **REVERSED AND REMANDED.**

**Court en banc holds:** (1) The commission's decision upholding the director's collection of local sales taxes on Street's out-of-state purchases was unauthorized by law. Because Greene County has not adopted a local use tax or undertaken the steps necessary to impose such a tax, section 32.087 permits the county only to impose local sales taxes "to the extent and in the manner" provided in the state sales tax law. Based on the plain and ordinary language of the phrase "in this state" used in sections 144.020 and 144.021, RSMo, the scope of the sales tax is limited to

sales made in Missouri. Use taxes, on the other hand, are imposed on out-of-state purchases of tangible personal property by Missouri residents using the property within the state. Missouri's tax scheme includes provisions expressly governing the imposition of sales and use taxes on transactions involving motor vehicles, boats, outboard motors and trailers (collectively, "motor vehicle" taxes). Section 144.020.1(1), RSMo, imposes a 4-percent sales tax on such purchases, while section 144.069 provides that all sales of motor vehicles, trailers, boards and outboard motors shall be deemed consummated at the owner's address and that the director of revenue shall collect the applicable sales taxes on that basis. Section 144.440, RSMo, on the other hand, imposes a 4-percent use tax on motor vehicles, trailers, boats and outboard motors purchased for use on Missouri's roads or waters.

(2) The commission erred in concluding that there is no authority for a political subdivision to impose a local motor vehicle use tax. Although section 144.757.3, RSMo, restricts the rate of local taxes imposed pursuant to the provisions of the state use tax law in sections 144.600 to 144.745, RSMo, it does not limit the authority of political subdivisions to impose a local use tax on motor vehicles pursuant to other sections. For example, such authority can be found in section 144.757.1, which allows imposition of a local use tax if authorized by a voter referendum. Accordingly, if a municipality conforms to the requirements of section 144.757.1, it has authority to impose a local use tax within the scope of the state use tax authorized by section 144.440.

(3) The commission's error in concluding there is no authority to impose a local motor vehicle use tax led to an improper interpretation of other statutory sections. Interpreting section 32.087.5 to authorize a local sales tax on out-of-state transactions not only would contravene the limitation that sales taxes be imposed only on sales within this state but also would frustrate the voter referendum requirement for imposing a local use tax.

(4) The commission also erred in interpreting sections 144.069 and 32.087.12(2) to deem Street's transaction to have occurred at his residence in Greene County, thereby subjecting it to local sales tax. The language in these sections does not expressly limit application of the provisions to in-state sales but reasonably can be interpreted as determining which local sales tax is imposed on an in-state sale involving multiple political subdivisions. When a tax statute is ambiguous because of duplicity, indistinctness or uncertainty in the meaning of its language, it must be construed strictly in favor of the taxpayer and against the taxing authority. Had the legislature intended for sections 144.069 and 32.087.12(2) to impose a sales tax on out-of-state purchases of motor vehicles, it would have provided clear language to that effect. However, there is no such language in either section. As such, the sections must be construed as applying only to in-state sales. Street's purchase, therefore, is not subject to local sales tax. He is entitled to a full refund of the local sales taxes he paid. On remand, the commission should determine the amount of refund and interest to which Street is entitled.

(5) The motor vehicle sales tax that Greene County imposed on Street is, in fact, a sales tax and not a special tax imposed as a prerequisite to the license registration of a motor vehicle that merely is collected to the same extent as sales taxes. Even though the motor vehicle sales tax under section 144.020 is collected from the purchaser, it is merely a sales tax with a different method of collection. By directly collecting taxes from the purchaser instead of through the

seller, 144.070 does not create a separate tax for motor vehicles and trailers but instead eliminates the middle man for collection purposes.