

## **Summary of SC92446, *BASF Corporation v. Director of Revenue***

Appeal from the administrative hearing commission, Commissioner Karen A. Winn  
Argued and submitted Oct. 30, 2012; opinion issued Dec. 18, 2012

**Attorneys:** BASF was represented by William B. Pugh and Christopher S. Abrams of Polsinelli Shughart PC in Kansas City, (816) 753-1000; Joh R. Dedon and Mark A. Olthoff of Polsinelli Shughart PC in Kansas City, (816) 421-3355; Scott A. Browdy of the Ryan Law Firm LLP in Chicago, (312) 262-5889; and Drew McEwen of the Ryan Law Firm LLP in Austin, Texas, (512) 459-6600. The director was represented by Gary Gardner and Deputy Solicitor 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:** A manufacturer appeals the administrative hearing commission's decision that it is a "material recovery processing plant" and, therefore, that certain purchases for the plant were subject to sales and use taxes. In a 7-0 per curiam decision that cannot be attributed to any particular judge, the Supreme Court of Missouri affirms the commission's decision. The manufacturer is not entitled to sales and use tax exemptions or refunds because it failed to prove that certain materials it removes in its production processes constitute "recovered materials" under applicable statutes and, therefore, failed to prove it is a "material recovery processing plant" to which exemptions might apply.

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:** BASF Corporation operates a chemical manufacturing plant in Hannibal that uses four "process lines" to manufacture "finished molecules" used in herbicides and pesticides. At the conclusion of the plant's processes, portions of the component parts, ingredients and other chemicals used in the processes are recovered for use in subsequent production cycles. Each year, recovered materials – both materials recovered internally during the plant's processes and those purchased from third-party vendors – account for approximately 42 percent by weight of the total annual inputs used in the production processes of all "finished molecules" produced by the Hannibal plant. After a sales and use tax audit of BASF's Missouri operations, the director of revenue issued use tax assessments on BASF's chemical purchases for the Hannibal plant for the tax periods from July 2000 through December 2001. The director also issued partial audit billings for use tax on natural gas purchases BASF made related to the Hannibal plant for various tax periods from 1999 through 2004. BASF remitted payment for those billings and then sought a refund for those payments as well as for its payment of use tax it had remitted related to its purchases of coal used in its Hannibal operations for various tax periods from 2002 through September 2005. The director denied both refund claims. BASF appealed the denials of the refunds request as well as the assessments of use tax to the administrative hearing commission.

At issue was whether, during the various tax periods, BASF's Hannibal plant qualified for sales and use tax exemptions available under subdivisions (4) and (12) of section 144.030.2, RSMo

Supp. 2004. The commission determined that the materials recovered by BASF were not “recovered materials” for exemption purposes because they were not shown to be solids and, therefore, that BASF’s chemical plant did not qualify as a “material recovery processing plant” for purposes of applying the claimed tax exemptions. As a result, the commission concluded that BASF’s purchases for the plant were subject to taxation. BASF appeals.

**AFFIRMED.**

**Court en banc holds:** The commission did not err in finding that BASF failed to prove its Hannibal plant is a “material recovery processing plant” entitled to tax exemptions under subdivisions (4) and (12) of section 144.030. Subdivision (4) defines “material recovery processing plant” as “a facility which converts recovered materials into a new product, or a different form which is used in producing a new product,” but it does not reference a definition for “recovered materials.” In such a circumstance, it is appropriate to read the material recovery provisions of subdivision (4) in context with the other similar statutes referencing “material recovery.” Subdivision (12), for example, expressly references the definition of “recovered materials” provided by section 260.200(31) in the context of solid waste management. Both parties follow the commission’s decision to define “recovered materials” according to the definition provided in section 260.200(31) but dispute whether the commission rightly interpreted that section’s requirements in assessing whether BASF demonstrated its plant processes involved “recovered materials.” Section 260.200(31) defines “recovered materials” as “those materials diverted or removed from the solid waste stream.” The facts presented here, however, fail to show that BASF’s removal of materials in its production processes equates to the diversion of the materials from a solid waste stream. Recovering materials to maintain a loop of reuse in a manufacturing process is different from recovering materials to divert them from being discarded into a waste stream. Because this issue is dispositive, this Court need not reach BASF’s other points on appeal.

Prospective-only application of the decision in this case is not warranted. It does not overrule prior case law or invalidate a previous statute or regulation. Further, the application of the section 260.200(31) definition of “recovered materials” to determine whether the Hannibal plant was a “material recovery processing plant” cannot be said to be unexpected. A decision is not unexpected merely because a statute was construed less favorably to a taxpayer than the taxpayer may have liked. Nothing prevents an extension of a tax that is based on reasonable extension of the law or a reasonable application of the law to areas previously not addressed specifically.