

## **Summary of SC93061, *Loren Cook Co. v. Director of Revenue***

On review from the administrative hearing commission; Commissioner Nimrod T. Chapel  
Argued and submitted September 4, 2013; opinion issued November 12, 2013

**Attorneys:** The company was represented by Mark A. Olthoff, Scott Lindstrom and John R. Dodson of Polsinelli PC in Kansas City, (816) 735-1000; and the director was represented by Solicitor General 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 company seeks review of an administrative decision that its subsequent use of an intermediary to qualify it for a federal tax benefit does not qualify the company for a trade-in exemption from the state's use tax for transactions in which it bought one airplane and, two years later, sold another airplane. In a unanimous decision written by Chief Justice Mary R. Russell, the Supreme Court of Missouri affirms the administrative decision. The company engaged in two separate transactions rather than one mutual exchange, and aircraft are not among the types of property qualifying for the exemption in transactions made up to 180 days apart. Further, that the use of an intermediary qualifies the company for a federal tax benefit does not mean it qualifies for a similar state tax benefit, as the federal tax code does not govern Missouri's use tax and the state tax laws do not contain the same provision allowing for the use of an intermediary.

**Facts:** Loren Cook Co. bought a Cessna 525B airplane from Cessna Aircraft Company in 2005 and, two years later, sold a Cessna 525A airplane to C.B. Aviation. To capture a benefit under the federal tax code, Cook contracted with a registered aircraft dealer as an intermediary, assigning the intermediary its rights and obligations under both the 2005 purchase agreement and 2007 sales agreement and requiring the intermediary to transfer title of the airplanes to the appropriate parties. In one day, Cook issued a bill of sale for the 525A to the intermediary, which sold the aircraft to C.B. Aviation, and Cessna issued an invoice for the 525B to the intermediary, which then issued an invoice to Cook. The intermediary held the title to each aircraft for only minutes before transferring title to the respective parties. Cook reported more than \$2.5 million – the difference between the purchase price of the 525B and the sale price of the 525A – on its Missouri tax return. Cook claimed a \$4.725 million trade-in credit and, based on that credit, paid \$140,847 in use tax on the 525B. The director of revenue subsequently determined that Cook was not entitled to the trade-in credit and assessed \$264,600 in use tax plus more than \$45,000 in statutory interest. On review, the administrative hearing commission determined Cook did not meet the requirements of the statutory trade-in exemption. Cook seeks this Court's review.

**AFFIRMED.**

**Court en banc holds:** (1) Cook is not entitled to the exemption because it engaged in two separate transactions rather than one mutual exchange. Section 144.025, RSMo, exempts from use tax the amount for which already-owned property is traded in as a credit toward the purchase price of newly acquired property. Because the phrase "taken in trade" is not defined in the statute, courts apply the ordinary meaning of the term. In a recent examination of the same

exemption, this Court held that a company that bought one aircraft from one party and sold another aircraft to another party could not claim the trade-in exemption because the bank the company used as an intermediary never took the aircraft in question in trade for anything. As in that case, the reality here is that the intermediary did not take the 525A aircraft in exchange for the 525B aircraft but rather was acting merely as an agent to facilitate the different transactions that Cook initiated two years apart to help Cook receive a federal tax benefit.

(2) Cook also is not entitled to the exemption under the separate sale reduction provision. The plain language of this provision allows a taxpayer to claim the trade-in exemption for certain types of property even when the taxpayer sold the already-owned property up to 180 days before it purchases the new property. Aircraft, however, are not among the types of property included in this provision, and this Court may not insert terms the legislature did not.

(3) That the transactions here qualify as a tax-free exchange of property under the federal tax code does not mean Missouri likewise should treat the transactions as one mutually dependent exchange. The federal tax code does not govern application of Missouri's use tax laws. Additionally, the regulations to the federal tax code specifically allow for the use of a qualified intermediary, but there is no such allowance in either section 144.025 or its regulations.