

Summary of SC93448, *Commercial Barge Line Co. and American Commercial Barge Line LLC, n/k/a American Commercial Lines LLC v. Director of Revenue*

On review from the administrative hearing commission, Commissioner Karen A. Winn
Argued and submitted January 7, 2014; opinion issued April 29, 2014

Attorneys: The barge lines were represented by James W. Erwin and Janette M. Lohman of Thompson Coburn LLP in St. Louis, (314) 552-6000; and the director was represented by Deputy Solicitor General 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: Barge companies appeal the administrative hearing commission's decision that they are liable for sales taxes for purchases of food and other supplies from a related company as well as for use taxes for purchases from third-party vendors. In a unanimous decision written by Chief Justice Mary R. Russell, the Supreme Court of Missouri affirms the commission's decision. The sales and use taxes assessed against the barge companies were "fairly related" to the services Missouri provides and did not violate the federal commerce cause. Because the taxes are assessed against the barge companies for buying or using supplies in Missouri and not against their vessels, the taxes do not violate the federal maritime security act. Further, because the barge companies did not file any tax returns or otherwise disclose their activities to the department of revenue, no statute of limitations bars the director from assessing taxes against the companies.

Facts: Commercial Barge Line Co. is the single member of two limited liability companies: American Commercial Barge Line LLC and Louisiana Dock Company. Of these, only Louisiana Dock is registered to do business in Missouri or has offices or employees in Missouri. American Commercial transports cargo by towboat along the Mississippi River from Minneapolis to New Orleans. Louisiana Dock provides various goods and services to American Commercial, including selling and delivering supplies to American Commercial's towboats and storing supplies purchased from third-party vendors until they are ready to be delivered. Missouri's department of revenue audited all three companies in 2007 to determine their liability for sales taxes for American Commercial's purchase of food and other supplies from Louisiana Dock as well as for use taxes for American Commercial's purchases from third-party vendors who either delivered the supplies directly to American Commercial towboats or used Louisiana Dock to deliver the supplies. For each type of transaction, American Commercial used the supplies exclusively on its towboats, which did not dock while in Missouri. For the first category of transactions, neither Louisiana Dock nor American Commercial paid sales tax, each claiming an exemption; American Commercial also issued a certificate noting the purchases were not delivered or used in Missouri. For the second category of transactions, American Commercial did not pay use taxes, instead providing "exemption certificates" stating that delivery to the towboats always occurs outside Missouri. Ultimately, the director of revenue found the barge companies were liable for nearly \$12,900 in sales tax and related interest and penalties and were liable for \$107,775 in use tax and related interest and penalties. The barge companies sought review from the administrative hearing commission, which found the barge companies indeed

were liable for the taxes but found the proper amounts of the assessments were about \$53,600 for use tax and about \$4,900 in sales tax. This reflected the tax owed on approximately half of all of American Commercial's transactions, representing the times its towboats traveled southbound on the Mississippi River and, therefore, were in Missouri. The commission also upheld the assessment of interest and a 5-percent addition as a penalty. The barge companies appeal.

AFFIRMED.

Court en banc holds: (1) The sales and use taxes assessed against the barge companies were fairly related to the services Missouri provides and did not violate the federal commerce clause. To survive a challenge under the commerce clause, a tax must satisfy the four criteria outlined in the United States Supreme Court's 1977 decision in *Complete Auto Transit Inc. v. Brady*, only one of which the barge companies suggest does not apply. Specifically, they argue the taxes are not "fairly related" to the services Missouri provided because their boats did not receive any direct services from the state. The relevant inquiry is not whether the taxpayers have received any direct benefits from the state but rather whether the state has given anything for which it can ask return. Because the state line is in the middle of the Mississippi River, deliveries of supplies made to the towboats when they are on the western part of the river necessarily are deliveries made in Missouri. As such, the barge companies receive the benefit of the Missouri roads and docks that facilitated the deliveries of the taxed supplies and of Missouri's law enforcement and judicial systems while in this state. By virtue of the barge companies' presence in the state, they also enjoyed these benefits when they stored supplies at Louisiana Dock's Missouri facility. Further, the commission's decision upheld sales and use tax assessments on deliveries in Missouri, so the taxes were tied to the earnings Missouri made possible.

(2) The sales and use taxes assessed against the barge companies did not violate the federal maritime transportation security act. This act prohibits a state from levying "taxes ... upon or collected from any vessel or other water craft ... operating on any navigable waters" subject to federal authority. But Missouri is not taxing the barges, towboats or their crews. Rather, Missouri is assessing the taxes against the barge companies for buying or using supplies in Missouri.

(3) Because the barge companies did not file any tax returns or disclose their activities to the department of revenue in any other manner, there is no statute of limitations barring the director from assessing the taxes against the barge companies. Although Louisiana Dock filed tax returns for the audit period, these returns did not give an accurate reflection of the transactions of Commercial Barge (its parent company) or American Commercial (its affiliate) because both Louisiana Dock and American Commercial provided inaccurate exemption certificates to vendors. Further, neither Commercial Barge nor American Commercial filed tax returns in Missouri, and their tax liability stems not from Louisiana Dock's activities in Missouri but rather from American Commercial's purchase and use of supplies in Missouri.