

Summary of SC93687, *Circuit City Stores Inc. v. Director of Revenue*, consolidated with SC93711, *Dillard's Inc. v. Director of Revenue*

Cases on review from the administrative hearing commission, Commissioner Sreenivasa Rao Dandamudi

Argued and submitted April 23, 2014; opinion issued July 29, 2014

Attorneys: In both cases, the director was represented by Solicitor General James R. Layton of the attorney general's office in Jefferson City, (573) 751-3321. Circuit City and Dillard's both were represented by Brian R. Harris of Akerman LLP in Tampa, Florida, (813) 209-5011, and Charles W. Hatfield and Khristine A. Heisinger of Stinson Leonard Street LLP in Jefferson City, (573) 636-6263.

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: The director of revenue petitions for review of the administrative hearing commission's decision granting two retailers sales tax refunds of amounts written off as bad debts by banks under contract with the retailers to operate private label credit cards. In a unanimous decision written by Judge Laura Denvir Stith, the Supreme Court of Missouri reverses the commission's decision and remands (sends back) the case. Because the retailers and banks are separate corporate entities under the relevant statute and because the retailers were reimbursed fully by the banks for the sales taxes they remitted to the state, they cannot claim a refund under the statute or the regulation promulgated to give effect to the statute.

Facts: Circuit City entered into an agreement with a bank for the bank to issue a private label credit card in Circuit City's name. The bank immediately paid Circuit City the purchase price plus sales tax for customers who charged purchases to the card. The customers' payments then were used to reimburse the bank. Any amounts that went unpaid were written off by the bank as a bad debt, without loss to Circuit City. Dillard's had a similar agreement with a separate bank. While the terms of each agreement varied somewhat as to whether they would share in any profits and other matters, in both cases the retailer took no risk of loss. Nonetheless, in 2010, Circuit City and Dillard's each filed a tax refund request claiming that, under, section 144.190.2, RSMo, and 12 CSR 10-102.100, they qualified for a refund of sales tax paid on purchases made with their private label credit card even though the losses were written off by the issuing banks and not by them. The director of revenue denied the requests, but the administrative hearing commission disagreed, finding both retailers were eligible for refunds. The director seeks review of the commission's decisions.

REVERSED AND REMANDED.

Court en banc holds: (1) The retailers cannot claim a refund on the basis of the banks' bad debts because they do not constitute a single "person" under section 144.190.2. Section 144.010(7), RSMo, defines "person" to include "any other group or combination acting as a unit." The dictionary definition of "unit" and the principal of statutory construction that requires a court to look at statutory terms in context do not support the retailers' argument that, under the

statute, they and the banks constitute single organizational entities for the purpose of obtaining state sales tax refunds, but for no other purpose. The banks and retailers are simply independent corporations that formed contractual relationships to operate private label credit cards.

(2) The retailers argue that the language of 12 CSR 101-102.100(1) expands the statute by authorizing a refund claim for sales tax amounts “written off” as bad debt without specifying who must write off that debt. This argument fails for two reasons. First, regulations cannot expand or modify statutes. Second, this subsection of the regulation is written in the passive voice. When read as a whole, the regulation clearly applies only to sellers who experience a “timing difference” between remission of sales tax to the state and receipt of full payment from the buyer. Both retailers were compensated fully by the banks at the time of sale for the purchase price and for the sales tax amounts they remitted to the state. As such, there was no timing difference, and the regulation does not apply to these retailers.