

**Summary of SC93900, *Southwestern Bell Telephone Company as Successor in Interest to Southwestern Bell Texas Holdings Inc. v. Director of Revenue***

Petition on review from the administrative hearing commission, Commissioner Karen A. Winn  
Argued and submitted September 24, 2014; opinion issued January 13, 2015

**Attorneys:** The director was represented by Solicitor General James R. Layton of the attorney general's office in Jefferson City, (573) 751-3321; and Southwestern Bell was represented by B. Derek Rose of Bryan Cave LLP in St. Louis, (314) 259-2529, and Edward F. Downey of Bryan Cave LLP in Jefferson City, (573) 556-6622.

*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 seeks review of the administrative hearing commission's decision that a telecommunications holdings company is not subject to paying franchise taxes in Missouri. In a unanimous decision written by Judge Paul C. Wilson, the Supreme Court of Missouri vacates the commission's decision and remands (sends back) the case. Because the holdings company engaged in business in Missouri, it is subject to the franchise tax under the plain language of the statute. It does not matter that the holdings company only employed its assets in Missouri through a limited partnership. The amount of that tax is calculated based on the portion of the corporation's property and assets employed in Missouri in relation to all its property and assets, wherever located. Alternatively, the tax can be calculated based on an apportionment of the corporation's outstanding shares and surplus.

**Facts:** The state public service commission in 2001 gave permission to Southwestern Bell Telephone Company and related entities to undergo a corporate restructuring. First, the main company created a holdings company registered in Delaware. Then the holdings company created a limited liability company (LLC). Finally, the main company converted to a Texas limited partnership (LP). The holdings company owns all of the LLC outright and all of the LP (99 percent directly and 1 percent indirectly through its ownership of the LLC). Following a 2007 audit, the Missouri director of revenue determined the holdings company was engaged in business in Missouri in 2003, 2004 and 2005 through its interest in the LP and assessed franchise tax against the holdings company for those years. The holdings company appealed to the administrative hearing commission, which determined the holdings company was not subject to Missouri franchise taxes for this period. The director seeks this Court's review.

**VACATED AND REMANDED.**

**Court en banc holds:** The commission erred in concluding the holdings company is not subject to Missouri franchise taxes for 2003 through 2005. Section 147.010.1, RSMo, provides that a foreign (outside Missouri) corporation engaged in business in Missouri shall be subject to pay an annual franchise tax. In its 1963 decision in *Household Finance Corporation v. Robertson*, this Court held that the language used in this statute imposes a corporate franchise tax on every corporation doing business in Missouri and that the amount of tax is calculated solely on that

portion of the corporation's property and assets employed in Missouri in relation to all its property and assets, wherever located.

Under the plain language of section 147.010.1, the only thing that matters is whether the holdings company was engaged in business in this state. This is the threshold question. The commission correctly concluded that section 147.010 reflects the legislature's evident intent to capture income earned in Missouri by out-of-state corporations. It also correctly concluded that the holdings company "clearly 'employs' considerable assets in this state." The holdings company is engaged in the same business in Missouri that the main company was engaged in prior to the 2001 restructuring, which did not alter the company's business or the locations in which it engaged in that business. The only substantial assets the holdings company owns are its interests in the LLC and the LP. No matter where those assets were located, the holdings company employed them as the means by which it engaged in business in Missouri and elsewhere during those years.

The commission's flaw was in conflating the threshold question with the question of calculating the amount of Missouri franchise taxes the holdings company owes and whether the LP's assets should be imputed to the holdings company for purposes of franchise tax liability. Under *Household Finance*, the amount of tax is calculated on the property and assets that the holdings company employs in Missouri even if they are located elsewhere. It does not matter whether the holdings company engaged in business by employing a wholly owned limited partnership or by employing the LP's assets directly. Because the commission did not make the findings necessary to calculate the amount of those taxes, including apportioning the holdings company's "outstanding shares and surplus" among Missouri and the other states in which the holdings company was engaged in business during those years, the matter is remanded to the commission.

To avoid confusion on remand, it may not be easy to apportion the holdings company's "outstanding shares and surplus" or "property and assets" to calculate the amount of its franchise taxes for 2003 through 2005. But this does not mean the holdings company can escape Missouri franchise tax entirely. Section 147.010.1 requires the taxes to be calculated, and the commission correctly noted that the holdings company bears the burden of proving the amount of the tax calculated in the director's assessment – and the apportionment on which that calculation was based – is incorrect.