

Summary of SC94109, *Fred Weber Inc. v. Director of Revenue*

On review from the administrative hearing commission, Commissioner Sreenivasa Rau
Dandamudi

Argued and submitted November 5, 2014; opinion issued January 13, 2015

Attorneys: The director was represented by Deputy Solicitor General Jeremiah J. Morgan of the attorney general's office in Jefferson City, (573) 751-3321; and Weber was represented by Aarnardian "Apollo" D. Carey, Anthony J. Soukenik and Jesse B. Rochman of Sandberg Phoenix & von Gontard PC in St. Louis, (314) 231-3332.

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 this Court's review of an administrative hearing commission finding a tax exemption for materials sold for use in constructing and resurfacing roads and parking lots. In a unanimous decision written by Judge Zel M. Fischer, the Supreme Court of Missouri reverses the commission's decision. The plain and ordinary language of the statute governing the exemption sought, as well as the language of other exemptions specifically relating to construction, demonstrate the legislature did not intend to exempt the construction and resurfacing of roads and parking lots from sales tax.

Facts: From October 2008 to September 2009, Fred Weber Inc. sold two paving companies approximately \$2.6 million worth of rock base and asphalt from its quarries and asphalt plants to be used to construct and resurface roads and parking lots. In 2011, Weber petitioned the director of revenue for a sales tax refund of more than \$139,650 from those sales, claiming the resurfacing "process" qualified for a tax exemption. The director denied the refund, and Weber sought review from the administrative hearing commission. The commission reversed the director's decision, concluding Weber qualified for the sales tax exemption under section 144.054.2, RSMo. The director seeks this Court's review.

REVERSED.

Court en banc holds: The commission erred in determining the paving companies' construction activities qualified as "manufacturing," "processing," "compounding" or "producing" so as to qualify for the sales tax exemption under section 144.054.2. This result is also clearly contrary to the legislature's expectations for tax exemption under this statutory section. The commission analyzed this case using the statutory definition of "processing," which this Court previously has held is ambiguous. By considering the word in context of other words in the statute, the Court has concluded that "processing" describes industrial activities commensurate with other language of section 144.054.2, such as "manufacturing," "compounding," "mining" and "producing." The paving companies, however, were involved in construction activities, not industrial activities. Neither the word "construction" nor any words associated with construction activities appear in section 144.054 – although the legislature has created several other sales tax exemptions with specific reference to construction activities, including those construction activities related to building and maintaining roads. Had the legislature intended the exemption in section 144.054.2 to apply to construction activities, it would have included construction terminology.