

**Summary of SC94897, *New Garden Restaurant Inc. v. Director of Revenue***

Appeal from the administrative hearing commission, Commissioner Karen A. Winn  
Submitted on briefs Thursday, September 10, 2015; opinion issued October 13, 2015

**Attorneys:** The restaurant was represented by Liyue Huang-Sigle, an attorney in Overland Park, Kansas, (913) 244-2212. The director was represented by Solicitor General James R. Layton and Rochelle L. Reeves of the attorney general’s office in Jefferson City, (573) 751-3321; and Stephen Patrick Sullivan of the department of revenue in Jefferson City, (573) 751-0961.

*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 restaurant appeals the administrative hearing commission’s decision dismissing its appeal of the department of revenue’s assessment of more than \$43,700 in unpaid sales tax against the restaurant. In a unanimous decision written by Judge Zel M. Fischer, the Supreme Court of Missouri affirms the commission’s decision. Neither the statutes governing the deadlines for appeals of tax decisions by the commission nor their application in this case violate due process. Equitable estoppel (to bar the department from seeking to dismiss the restaurant’s appeal) does not apply, as the restaurant raises no claims of affirmative government misconduct by the department. The commission did not err in its findings about when the notice was sent and when the appeal was filed.

**Facts:** The department of revenue in July 2014 sent “estimated audit assessments” notifying New Garden Restaurant Inc. that it owed more than \$43,700 in unpaid sales tax and that final assessment notices would be delivered via certified mail after the department’s audit was reviewed and processed. The record shows the department sent the final assessment notices by certified mail in September 2014. Each notice advised that the restaurant could appeal to the administrative hearing commission within 60 days or could request the director of revenue to conduct an informal review of the assessment but that such a request would not extend the appeals deadline. The restaurant claims it never received the final assessment notices. In October 2014, in response to an electronic mail from the restaurant’s counsel, a department auditor sent counsel the “Missouri Taxpayer Bill of Rights,” which contained the same information as the final assessment notices with regard to appeals, informal reviews and time limitations. After further communication, in which the restaurant alleges department employees provided incorrect information, New Garden ultimately filed its appeal with the commission two weeks past the deadline. The commission subsequently granted the director’s motion to dismiss the appeal. New Garden appeals.

**AFFIRMED.**

**Court en banc holds:** (1) The statutes governing the deadline for appeals from the administrative hearing commission and of tax assessments do not violate due process. Sections 621.050.1 and 144.261, RSMo, unambiguously provide that the respective time limitations begin to run either after mailing or delivery of the director’s decision, whichever is earlier. Neither section contains any provision that the taxpayer actually must receive the decision or have actual knowledge of the right to appeal. The commission simply applied the statutes’ plain, unambiguous terms in calculating the deadline. There was no due process violation – due process does not require actual notice before the government takes action, and the final assessment notices were sent via certified mail to the restaurant’s last known address (the same to which the estimated assessments had been sent and

received two months earlier), the notices were not returned and there is no evidence the notices were sent to the wrong address.

(2) New Garden's arguments that equitable estoppel should apply are without merit. Equitable estoppel is rarely applied in cases involving a governmental entity and then only if the government conduct amounts to affirmative misconduct. Even if a department employee erroneously told the restaurant's counsel that the 60-day period for appeal did not begin until New Garden received the final assessment notices, this would constitute simply bad advice based on a government agent's misunderstanding of the law, not affirmative misconduct. Further, the taxpayer bill of rights the department sent in response to the restaurant's electronic mail inquiry correctly stated the law regarding the right of appeal and time limitations – which also are stated clearly and unambiguously in the statute. Such knowledge is imputed to New Garden.

(3) The commission did not err in its findings. It made no findings of whether the restaurant received the notices. Rather, it found that the final notices were mailed to New Garden's address of record on September 5, which was sufficient to support the commission's decision under section 144.261. And it found the restaurant filed its appeal with the commission on November 19. Whatever filing New Garden may have sent in October, it indisputably was not an appeal to the commission as it was addressed to and intended for the department.