

Summary of SC95029, *Office Depot Inc. v. Director of Revenue*

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

Argued and submitted January 12, 2016; opinion issued April 5, 2016

Attorneys: The director was represented by Solicitor General James R. Layton of the attorney general's office in Jefferson City, (573) 751-3321; and Office Depot was represented by Marc H. Ellinger of Blitz, Bardgett & Deutsch LC in Jefferson City, (573) 634-2500.

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 company is entitled to a refund of use taxes it paid on catalogs that it printed and mailed from outside Missouri to customers in Missouri. In a unanimous decision written by Judge Laura Denvir Stith, the Supreme Court of Missouri affirms the commission's decision. Mailing a product from another state into Missouri does not qualify as "using" the product *in Missouri*, which is what the use tax statute requires.

Facts: Under section 144.605.1, RSMo, a tax is imposed for the "privilege of storing, using or consuming" within Missouri any article of tangible personal property. "Use" is defined by section 144.605(13) as "the exercise of any right or power over tangible personal property incident to the ownership or control of that property" Office Depot Inc. has Illinois and Indiana printers print and ship its catalogs by mail from post offices outside Missouri to its customers in Missouri. Office Depot sought a refund of use tax it had paid, arguing it did not "use" the catalogs in Missouri as required by section 144.604.1. The director denied Office Depot's refund request. The commission reversed, holding that Office Depot did not use the catalogs in Missouri. The director appeals.

AFFIRMED.

Court en banc holds: Office Depot did not "use" the catalogs in Missouri. Once the catalogs entered Missouri from out-of-state via the postal service, Office Depot did not exercise any right or power over the catalogs incident to its ownership or control over them. Office Depot exercised that power outside Missouri when it caused the catalogs to be printed and mailed to particular customers in Missouri. But once the catalogs entered Missouri, Office Depot did not take any action with regard to its ownership or control of the catalogs.