

Summary of SC95102, *Miss Dianna's School of Dance Inc. v. Director of Revenue*

On review from the administrative hearing commission, Commissioner Karen A. Winn
Argued and submitted December 9, 2015; opinion issued January 12, 2016

Attorneys: Miss Dianna's was represented by Anthony L. Gosserand and Elizabeth E. Patterson of Van Osdol PC in Kansas City, (816) 421-0644; and the director was represented by Evan J. Buchheim of the attorney general's office in Jefferson City, (573) 751-3321, and Thomas A. Houdek 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 dance school seeks review of the administrative hearing commission's decision that the fees it charges for dance classes are taxable. In a 4-3 decision written by Judge Zel M. Fischer, the Supreme Court of Missouri affirms the commission's decision. Because amusement or recreational activities comprise more than a *de minimus* portion of the school's business activities, it is considered a place of amusement or recreation, with its fees subject to sales tax under state law.

Judge George W. Draper III dissents. He would find the dance school's activities do not comprise more than a *de minimus* portion of its activities and, therefore, is not a place of recreation under the sales tax law. As such, he would reverse the commission's decision.

Facts: Miss Dianna's School of Dance Inc. charges fees for dance classes. Prior to being audited, Miss Dianna's did not file any sales tax returns, relying on a 2008 department of revenue letter ruling, addressed to a different business, stating that fees charged by that other business for dance lessons were not subject to sales tax. In 2012, the director of revenue audited Miss Dianna's for the tax period January 2007 through December 2011. Ultimately, the director assessed Miss Dianna's with unpaid taxes, plus interest. Miss Dianna's sought review from the administrative hearing commission. Following a hearing, the commission determined Miss Dianna's was liable for nearly \$24,000 in unpaid tax, more than \$18,200 of which the commission attributed to unpaid sales tax on dance lesson fees, ruling these fees were taxable as fees to a place of amusement, entertainment or recreation. Miss Dianna's seeks this Court's review of that portion of the commission's decision.

AFFIRMED.

Court en banc holds: It does not matter if Miss Dianna's primary purpose is teaching dance; because amusement or recreational activities comprise more than a *de minimus* portion of its business activities, it is a place of amusement or recreation with its fees taxable under state law. The statute imposing a sales tax on fees paid to or in a place of "amusement, entertainment, or recreation" does not define these terms, so this Court uses their plain and ordinary meaning as derived from the dictionary. The common thread in all three definitions is diversion – something that turns the mind from serious concerns or ordinary matters and relaxes or amuses. Under the *de minimus* test, this Court considers the manner in which the place holds itself out to the public, the amount of revenue generated by amusement or recreational activities at the place, and the pervasiveness of the amusement or recreational activities at the place. As to the first factor, Miss Dianna's website and promotional materials consistently emphasize the fun and enjoyment participants experience when taking dance classes. As to the second factor, Miss Dianna's concedes that participants get exercise, recreation and enjoyment from the dance classes and self-identifies as a place to learn and have fun.

As such, its dance classes intertwine amusement and recreation with education. As to the third factor, fees for dance classes accounted for nearly two-thirds of Miss Dianna's combined gross income for the relevant years, and dance classes were the most pervasive of Miss Dianna's business activities.

Dissenting opinion by Judge Draper: The author would find Miss Dianna's activities do not comprise more than a *de minimus* part of its business activities and, therefore, is not a place of recreation under the sales tax law. As such, he would reverse the commission's decision. The three factors in the *de minimus* test are not exhaustive; other factors can be used depending on a particular case's circumstances. Miss Dianna's holds itself out as a school, instructing its patrons in techniques of dance; participants continue their dancing careers on dance teams, on cheerleading squads or as professional dancers; and, unlike fitness clubs this Court has held to be places of amusement or recreation, there is no indication Miss Dianna's allows its patrons to engage in self-directed dancing.