

Summary of SC95205, *Bartlett International Inc. and Bartlett Grain Co. LP v. Director of Revenue*

Appeal from the administrative hearing commission, Commissioner Sreenivasa Rao Dandamudi
Argued and submitted March 8, 2016; opinion issued May 3, 2016

Attorneys: The director was represented by Deputy Solicitor General Jeremiah J. Morgan of the attorney general’s office in Jefferson City, (573) 751-3321. Bartlett was represented by Derek T. Teeter, Jason A. Reschly and Michael T. Raupp of Husch Blackwell LLP in Kansas City, (816) 983-8000.

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 determination that the director improperly assessed use tax on disputed charges between a grain company and a conveying contractor. In a unanimous decision written by Judge Mary R. Russell, the Supreme Court of Missouri reverses the commission’s decision and remands (sends back) the case. The disputed charges are subject to use tax under the relevant statute as “any services” that are part of the sale of tangible personal property, and the grain company did not prove the disputed charges were subject to any statutory exemption or exclusion.

Facts: Bartlett International Inc. and Bartlett Grain Co. LP (collectively, Bartlett) purchased a grain dryer and grain conveyor for Bartlett’s grain elevator in St. Joseph. Due to time constraints, Bartlett entered into five transactions to hire outside help to install the dryer and conveyor and to fabricate any additional structures necessary to complete the grain elevator. Only the third of these transactions is at issue here. In this transaction, Bartlett hired CR Conveying Inc. (CRC) to fabricate a support structure and to install the conveyor. The contract – worth approximately \$590,000 – stated it was for “labor, materials and rentals” to install the conveyor, delineating the transaction into five interconnected items with quoted prices necessary to accomplish each. Bartlett properly paid use tax on all materials and rentals charged under the contract as well as on fabrication listed under the first item in the contract, reflecting the cost to create an extensive support structure for the conveyor. Bartlett did not pay use tax for any other service charges, which totaled approximately \$330,000. The director of revenue conducted an audit of Bartlett and assessed use tax on the engineering and labor charges of Bartlett’s contract with CRC. Bartlett sought review from the administrative hearing commission, which determined the director improperly assessed tax on the disputed charges. The director seeks this Court’s review.

REVERSED AND REMANDED.

Court en banc holds: The disputed transactions are subject to use tax.

(1) The disputed charges in the transaction (1) were part of the sale of tangible personal property. The meaning of “sales price” in section 144.605(8), RSMo, is clear and unambiguous. Because charges for “any services that are a part of the sale” of tangible personal property are included in the statutory definition of “sales price,” they are subject to use tax under section 144.610.1,

RSMo. The transaction between Bartlett and CRC was complicated and extensive. Separately stating the charges for different materials and services was merely a consequence of the size and complexity of the transaction. The terms of their contract indicated Bartlett and CRC conceptualized the contract as a single sale including labor, materials and rents to install the grain elevator Bartlett previously had purchased from another vendor.

(2) Bartlett failed to show the disputed charges of the transaction were subject to a statutory exemption or exclusion. Section 144.605(8) states that the cost of “any services” included as part of the sale of tangible personal property is included in the sales prices. There is no *de minimis* exemption or exclusion for sales of tangible personal property when services constitute a much larger percentage of the total sales price than tangible materials. Further, the record shows the materials Bartlett purchased in this transaction were not negligible or ancillary to the services purchased. Costs that Bartlett agreed are taxable make up more than \$250,000, which is more than 40 percent of the total contract price.

(3) The “true object” test of the use tax regulations does not apply. This test determines whether to treat a transaction as a taxable transfer of tangible personal property or the nontaxable performance of a service. This Court has applied this test only in cases in which the intangible element of the transaction is accompanied by or transferred through an item of tangible personal property that has relatively little value on its own. Under its contract with CRC, Bartlett bought tens of thousands of dollars of raw materials, paid CRC to fabricate those materials to make permanent items of tangible personal property, and then paid CRC to assemble the grain conveyor and install it on the newly fabricated supporting structures. The dispute in this case is resolved by the plain language of section 144.605(8), which clearly and unambiguously states that “any services” that are part of the sale of tangible personal property are taxable unless the taxpayer shows that an exclusion or exemption applies.