

*In the*  
*Supreme Court of Missouri*

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No. SC91371

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CRAIG A. STREET,

*Appellant,*

v.

DIRECTOR OF REVENUE,

*Respondent.*

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ON PETITION FOR REVIEW  
FROM THE MISSOURI ADMINISTRATIVE HEARING COMMISSION  
The Honorable Karen A. Winn, Commissioner

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**APPELLANT'S BRIEF**

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## **JURISDICTIONAL STATEMENT**

This case presents a question of whether §§ 32.087.12(2)<sup>1</sup> and 144.069<sup>2</sup> authorize the assessment and collection of local sales tax (as levied by a local government or political subdivision of Missouri) on the out-of-state purchase of a boat, outboard motor, and trailer from an out-of-state seller. Resolution of this question requires construction of §§ 32.087.12(2) and 144.069 in conjunction with other revenue laws of Missouri. Because the case involves the construction of the revenue laws of Missouri, it falls within the exclusive jurisdiction of the Supreme Court of Missouri. Mo. Const. art. V, § 3.

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<sup>1</sup> References to § 32.087 are to RSMo Cum. Supp. 2010.

<sup>2</sup> References to § 144.069 are to RSMo 2000.

## **STATEMENT OF FACTS**

Appellant seeks review of a decision of the Administrative Hearing Commission (AHC) issued November 10, 2010, in which the AHC found appellant is not entitled to a refund of local taxes paid in connection with appellant's out-of-state purchase of a boat, outboard motor, and trailer from an out-of-state seller. (LF 129-150)<sup>3</sup> The facts are not in dispute.

In May 2009, appellant (a resident of Greene County, Missouri) purchased a boat, outboard motor, and trailer from a boat dealer (seller) in the state of Maryland. (LF 1, 23, 30-31, 35, 109, 130) At the time of the purchase, appellant was personally present at the seller's place of business in the state of Maryland. (LF 1, 23, 31, 109) The purchase physically occurred in Maryland, including appellant's payment of the final purchase price to the seller; the seller's execution of the certificates of title; and the seller's delivery of the boat, outboard motor, trailer, and certificates of title to appellant. (LF 1-2, 23, 31, 35-36, 109) After completing the purchase, appellant personally transported the boat, outboard motor, and trailer from Maryland to his residence in Greene County, Missouri. (LF 2, 23, 31, 109)

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<sup>3</sup> References to "LF [page number(s)]" are to the pages of the legal file, consisting of the certified record of proceedings before the AHC, filed in the Supreme Court on March 9, 2011.

On or about May 18, 2009, appellant presented applications for title and registration for the boat, outboard motor, and trailer to the Missouri Department of Revenue (Department). (LF 2, 23, 31, 109, 130) At the time appellant presented the applications for title and registration, the Department calculated, and appellant paid, title and registration fees for the boat, outboard motor, and trailer, as well as Missouri use tax at a rate of 4.225%. (LF 2, 23, 31-32, 109) In addition, the Department calculated, and appellant paid, a total of \$191.19 in local taxes. (LF 2-3, 10-12, 23, 32, 110, 130) The Department calculated the local taxes as follows:

- ☐ On the boat, the Department applied a local tax rate of 1.25%, resulting in a calculated local tax of \$100.00. (LF 2, 10, 23, 32, 110, 130)
- ☐ On the outboard motor, the Department applied a local tax rate of 2.625%, resulting in a calculated local tax of \$78.75. (LF 3, 11, 23, 32, 110, 130)
- ☐ On the trailer, the Department applied a local tax rate of 1.25%, resulting in a calculated local tax of \$12.44. (LF 3, 12, 23, 32, 110, 130)

At all relevant times, the local sales tax rate in effect in Greene County, Missouri, was 1.25%. (LF 3, 23, 32, 110) At all relevant times, Greene County, Missouri, had no local use tax in effect. (LF 3, 23, 33, 110, 130)



On or about May 19, 2009, appellant filed a Form 426 Motor Vehicle Refund Request Application (Form 426) with the Department pursuant to § 144.190<sup>4</sup> claiming a refund of all local taxes paid on the boat, outboard motor, and trailer. (LF 3, 7-19, 23, 33, 110, 130) In the Form 426, appellant asserted that the purchase in this case was not subject to local sales tax in Missouri because appellant bought the boat, outboard motor, and trailer from a retail seller in the state of Maryland, not in Missouri. (LF 7-19, 20) Further, appellant argued that the purchase was not subject to local use tax because Greene County, Missouri, had no local use tax in effect. (LF 9) Finally, appellant claimed that even if the purchase were subject to local sales tax, the tax rate applied by the Department on the outboard motor exceeded the effective local sales tax rate for Greene County, Missouri. (LF 9) On July 10, 2009, the Director of Revenue (Director) issued a final decision denying appellant's Form 426 Motor Vehicle Refund Request Application. (LF 3, 22, 23, 33, 110, 130) Appellant appealed Director's decision to the AHC pursuant to §§ 144.261<sup>5</sup> and 621.050.1.<sup>6</sup> (LF 1-22)

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<sup>4</sup> References to § 144.190 are to RSMo Cum. Supp. 2010.

<sup>5</sup> References to § 144.261 are to RSMo 2000.

<sup>6</sup> References to § 621.050 are to RSMo 2000.

On review, the AHC found that appellant's out-of-state purchase of the boat, outboard motor, and trailer was subject to local sales tax based upon its construction of § 144.069 and other revenue laws. (LF 129-150) As a result, the AHC concluded that appellant is not entitled to a refund of all local taxes paid on the boat, outboard motor, and trailer. (LF 150) As to appellant's claim that the Department applied the wrong tax rate on the outboard motor, the Director conceded the error and acknowledged that appellant is entitled to a refund of \$41.25 for overpayment of local sales tax thereon. (LF 23-24, 39, 56, 110, 114, 130) The AHC made an accordant finding. (LF 150)

On December 10, 2010, appellant filed a Petition for Review in this Court pursuant to § 621.189<sup>7</sup> and Rule 100.02<sup>8</sup> seeking review of the AHC's decision.

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<sup>7</sup> References to § 621.189 are to RSMo Cum. Supp. 2010

<sup>8</sup> Rule references are to Missouri Court Rules (2010).

### **POINT RELIED ON**

**The AHC erred in ruling that appellant is not entitled to a refund of all local sales tax paid in connection with his purchase of a boat, outboard motor, and trailer in this case because the AHC's decision misinterprets and misapplies §§ 32.087.12(2) and 144.069 and, under §§ 621.189<sup>9</sup> and 621.193<sup>10</sup>, is not authorized by law and creates a result that is clearly contrary to the reasonable expectations of the General Assembly in that: (1) The General Assembly has clearly expressed that a sales tax is a tax upon sellers for the privilege of engaging in business in the state of Missouri and is applicable to retail sales occurring in this state; (2) the undisputed facts of this case are that appellant purchased the boat, outboard motor, and trailer in the state of Maryland from a retail seller in that state; and (3) notwithstanding the General Assembly's clear expression of intent and purpose for the sales tax, the AHC construed §§ 32.087.12(2) and 144.069 as authorizing the assessment and collection of local sales tax on behalf of Greene County, Missouri, on appellant's purchase.**

*Fabick and Co. v. Schaffner*, 492 S.W.2d 737, 745 (Mo. banc 1973)

*Olin Corp. v. Director of Revenue*, 945 S.W.2d 442, 443 (Mo. banc 1997)

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<sup>9</sup> References to § 621.189 are to RSMo Cum. Supp. 2010.

<sup>10</sup> References to § 621.193 are to RSMo 2000.

*President Casino, Inc. v. Director of Revenue*, 219 S.W.3d 235, 239 (Mo. banc 2007)

§ 144.020 RSMo 2010

§ 144.021 RSMo 2000

§ 144.069 RSMo 2000

§ 621.050 RSMo 2000

## **ARGUMENT**

The AHC erred in ruling that appellant is not entitled to a refund of all local sales tax paid in connection with his purchase of a boat, outboard motor, and trailer in this case because the AHC's decision misinterprets and misapplies §§ 32.087.12(2) and 144.069 and, under §§ 621.189 and 621.193, is not authorized by law and creates a result that is clearly contrary to the reasonable expectations of the General Assembly in that: (1) The General Assembly has clearly expressed that a sales tax is a tax upon sellers for the privilege of engaging in business in the state of Missouri and is applicable to retail sales occurring in this state; (2) the undisputed facts of this case are that appellant purchased the boat, outboard motor, and trailer in the state of Maryland from a retail seller in that state; and (3) notwithstanding the General Assembly's clear expression of intent and purpose for the sales tax, the AHC construed §§ 32.087.12(2) and 144.069 as authorizing the assessment and collection of local sales tax on behalf of Greene County, Missouri, on appellant's purchase.

### **Standard of Review**

“The AHC's interpretation of revenue laws is reviewed *de novo*. The AHC's factual determinations will be upheld if the law supports them, and, after reviewing the whole record, there is substantial evidence that supports them.” *Missouri State USBC Ass'n v. Director of Revenue*, 250 S.W.3d 362, 363 (Mo. banc 2008) (citations

omitted). “The [AHC’s] decision shall be affirmed if: (1) it is authorized by law; (2) it is supported by competent and substantial evidence on the whole record; (3) mandatory procedural safeguards are not violated; and (4) it is not clearly contrary to the reasonable expectations of the General Assembly.” *Brinker Missouri, Inc. v. Director of Revenue*, 319 S.W.3d 433, 435 (Mo. banc 2010) (citations omitted); *see* § 621.193.

### **Introduction**

The undisputed facts in this case clearly establish that appellant made an out-of-state purchase of a boat, outboard motor, and trailer from an out-of-state seller. The undisputed facts also clearly establish that Greene County, Missouri, had no use tax in effect at the time of the purchase. Thus, the question presented in this case is whether Missouri law authorizes the assessment of local sales tax on the out-of-state purchase of a boat, outboard motor, and trailer from an out-of-state seller. It does not appear that this Court has previously addressed this question.

In her filings before the AHC, Director asserted that the purchase in this case is subject to local sales tax by operation of § 144.069. (LF 23-24, 55-57, 108-119) As relevant here, § 144.069 provides:

All sales of motor vehicles, trailers, boats and outboard motors shall be deemed to be consummated at the address of the owner thereof . . . and all applicable sales taxes levied by any political

subdivision shall be collected on such sales by the state department of revenue on that basis.

Based on this provision, Director argued before the AHC that the purchase in this case is deemed consummated at appellant's residence in Greene County, Missouri, and, as such, is subject to local sales tax in Greene County.

The AHC, in its decision of November 10, 2010, construed § 144.069 and other revenue laws consistent with Director's position.<sup>11</sup> For the reasons that follow, appellant submits that the AHC's interpretation of § 144.069 is not authorized by law and is clearly contrary to the reasonable expectations of the General Assembly. Briefly stated, the AHC's interpretation of § 144.069 disregards the fundamental nature of the sales tax as expressed by the General Assembly – i.e., it is a tax upon *sellers for the privilege of engaging in business in Missouri*.

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<sup>11</sup> The AHC's decision notes that "two statutes potentially can be read to deem the location for the transaction to be [appellant's] residence." (LF 140) One is § 144.069, which Director cited in her Answer and other filings before the AHC. (LF 23-25, 55-58, 108-119) The other, which was not cited by Director, is § 32.087.12(2). These provisions contain similar language, and it is appellant's position that the two ought to be construed to have the same purpose, meaning, and effect. In an effort to simplify matters, appellant's argument will refer only to § 144.069, but appellant's arguments are intended to apply to § 32.087.12(2), as well.

## Standards for Construction of Revenue Laws

“Taxing statutes are to be strictly construed in favor of the taxpayer and against the taxing authority.” *President Casino, Inc. v. Director of Revenue*, 219 S.W.3d 235, 239 (Mo. banc 2007); *see* § 136.300.1.<sup>12</sup> “Further, the primary rule of statutory construction is to ascertain the intent of the lawmakers from the language used, to give effect to that intent if possible, and to consider words used in the statute in their plain and ordinary meaning.” *The May Dep’t Stores Co. v. Director of Revenue*, 791 S.W.2d 388, 389 (Mo. banc 1990).

In determining legislative intent, the statute is read as a whole and *in pari materia* with related sections. In interpreting statutes, ““it is appropriate to take into consideration statutes involving similar or related subject matter when such statutes shed light upon the meaning of the statute being construed, even though the statutes are found in different chapters and were enacted at different times.”” Statutes involving the assessment, levy and payment of taxes should be construed in context with each other.

*Lane v. Lensmeyer*, 158 S.W.3d 218, 226 (Mo. banc 2005) (citations omitted) (original quotation from *Citizens Elec. Corp. v. Director of Dep’t of Revenue*, 766 S.W.2d 450, 452 (Mo. banc 1989)).

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<sup>12</sup> References to § 136.300 are to RSMo 2000.



[T]his Court may take into consideration statutes involving similar or related subject matter when such statutes shed light upon meaning of the statute being construed. All consistent statutes relating to the same subject are in pari materia and are construed together as though constituting one act, whether adopted at different dates or separated by long or short intervals.

*State ex rel. Rothermich v. Gallagher*, 816 S.W.2d 194, 200 (Mo. banc 1991) (citations omitted).

When § 144.069 is examined in context pursuant to the standards above, it is clear that the legislature did not intend to impose a sales tax, either state or local, on out-of-state retail transactions like that at issue here.

### **Contextual Analysis**

#### ***Missouri Sales Tax Law***

Section 144.069 appears within the Missouri Sales Tax Law, §§ 144.010 - .525. *See* § 144.010.3.<sup>13</sup> As relevant here, § 144.021<sup>14</sup> states that “[t]he purpose and intent of sections 144.010 to 144.510 is to impose a tax *upon the privilege of engaging in*

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<sup>13</sup> References to § 144.010 are to RSMo Cum. Supp. 2010.

<sup>14</sup> References to § 144.021 are to RSMo 2000.

*business, in this state, of selling tangible personal property”* (emphasis added).

Similarly, § 144.020<sup>15</sup> provides:

1. A tax is hereby levied and imposed *upon all sellers for the privilege of engaging in the business* of selling tangible personal property or rendering taxable service at retail *in this state*. The rate of tax shall be as follows:

(1) Upon every retail sale *in this state* of tangible personal property, including but not limited to motor vehicles, trailers, motorcycles, mopeds, motortricycles, boats and outboard motors . . . . [Emphasis added.]

These provisions unambiguously express the legislature’s intent that the sales tax be imposed upon *sellers for the privilege of engaging in business in this state*. Further, these provisions make it clear that the taxable event is a retail sale that occurs *within Missouri*. See *Olin Corp. v. Director of Revenue*, 945 S.W.2d 442, 443 (Mo. banc 1997) (“A sales tax is imposed on sales at retail that take place within the State of Missouri”). There is no contrary expression of legislative intent in § 144.069.

### ***Local Sales Tax Law***

Significantly, in the Local Sales Tax Law, the General Assembly has constrained the application of local sales taxes to those “transactions which are subject

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<sup>15</sup> References to § 144.020 are to RSMo Cum. Supp. 2010.

to the taxes imposed under the provisions of sections 144.010 to 144.525, RSMo.”

§ 32.085(4).<sup>16</sup> Section 32.087.5 provides:

The ordinance or order imposing a local sales tax under the local sales tax law shall impose upon all sellers a tax for the privilege of engaging in the business of selling tangible personal property or rendering taxable services at retail to the extent and in the manner provided in sections 144.010 to 144.525, RSMo . . . .

Similar expressions of constraint are contained in various statutes authorizing the imposition of local sales taxes.<sup>17</sup> In fact, the AHC found in this case that each of the

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<sup>16</sup> References to § 32.085 are to RSMo Cum. Supp. 2010.

<sup>17</sup> *See, e.g.*, §§ 67.505.3 (“The sales tax may be imposed . . . on the receipts from the sale at retail of all tangible personal property or taxable services at retail within any county adopting such tax, if such property and services are subject to taxation by the state of Missouri under the provisions of sections 144.010 to 144.525, RSMo.”); 67.547.3 RSMo Cum. Supp. 2009 (“The sales tax may be imposed . . . on the receipts from the sale at retail of all tangible personal property or taxable services at retail within any county adopting such tax, if such property and services are subject to taxation by the state of Missouri under the provisions of sections 144.010 to 144.525, RSMo.”); 67.550 (authorizing certain counties to impose a “sales tax on all retail sales made in such county which are subject to taxation under the provisions of sections

statutes under which Greene County has levied local sales taxes “provides that the tax is imposed on sales at retail of tangible personal property that is subject to taxation by the State of Missouri under the provisions of §§ 144.010 – 144.525.” (LF 139) *See* §§ 67.505.1, .3; 67.582.1; 190.335.1-.2, .4; and 644.032.1. (LF 137) Based on the language of these statutes, it is clear that local sales taxes apply only to transactions that are subject to the state sales tax. *See Norwin G. Heimos Greenhouse, Inc. v. Director of Revenue*, 724 S.W.2d 505, 508 (Mo. banc 1987) (“Missouri cities and counties have been authorized to impose sales taxes, but only upon sales that are subject to the state sales tax”). Inasmuch as the state sales tax is limited to retail sales occurring within Missouri, local sales taxes are likewise limited to retail sales occurring within the state.

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144.010 to 144.525, RSMo”); 67.571-.577 (providing for a local sales tax, the collection of which is governed by “[a]ll applicable provisions contained in sections 144.010 to 144.510, RSMo, governing the state sales tax”); 190.335 RSMo Cum. Supp. 2009 (“The sales tax may be imposed . . . on the receipts from the sale at retail of all tangible personal property or taxable services at retail within any county adopting such tax, if such property and services are subject to taxation by the state of Missouri under the provisions of sections 144.010 to 144.525, RSMo.”).

### *Compensating Use Tax Law*

The legislature's intent to limit the imposition of sales tax to retail sales occurring within Missouri is further made clear by the legislature's authorization and imposition of the use tax. *See* §§ 144.600 *et seq.* Under § 144.610.1,<sup>18</sup> the use tax is “is imposed for the privilege of storing, using or consuming within this state any article of tangible personal property.” Section 144.440<sup>19</sup> further provides for a state use tax “on new and used motor vehicles, trailers, boats, and outboard motors purchased or acquired for use on the highways or waters of this state.”

Notably, appellant, Director, and the AHC all agree that appellant's purchase of the boat, motor, and trailer in this case was subject to *use* tax at the state level. (LF 2, 23, 109, 131) Even so, the AHC found that the very same transaction is subject to *sales* tax at the local level. The AHC attempts to rationalize this discrepancy by making a finding that the General Assembly's intent with respect to taxation of motor vehicle purchases “is to tax in-state and out-of-state purchases of motor vehicles by Missouri residents equally.” (LF 132) Although the AHC is correct that motor vehicle purchases (whether in-state or out-of-state) are taxed equally at the state level, the AHC gives no real consideration to the fact that the General Assembly

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<sup>18</sup> References to § 144.610 are to RSMo 2000.

<sup>19</sup> References to § 144.440 are to RSMo 2000.

accomplished the equal taxation by imposing two different taxes with two different purposes.

While sales and use taxes are complementary, they are not of the same nature, and Missouri courts have repeatedly stated that sales taxes are limited to sales occurring within Missouri. “A sales tax is imposed on sales at retail that take place within the State of Missouri. In contrast, the use tax is designed to tax out-of-state purchases of tangible personal property by Missouri residents who use the property within the state.” *Olin Corp.*, 945 S.W.2d at 443 (citations omitted) (quoting *House of Lloyd, Inc. v. Director of Revenue*, 884 S.W.2d 271, 273 (Mo. banc 1994)). “The Use Tax, generally complementary to the Sales Tax, is designed to tax transactions on which no Sales Tax can be imposed because the sales do not occur in Missouri.” *Smith Beverage Co. of Columbia, Inc. v. Reiss*, 568 S.W.2d 61, 63 (Mo. banc 1978).

Use taxes are meant to complement, supplement, and protect sales taxes by eliminating the incentive to purchase from out-of-state sellers in order to avoid local sales taxes. They do this by taxing transactions in which no sales tax can be imposed because the items were purchased outside of Missouri.

*Kirkwood Glass Co., Inc. v. Director of Revenue*, 166 S.W.3d 583, 585 (Mo. banc 2005) (citations omitted). “[I]n jurisdictions that have elected to impose them, local

use taxes may be collected on the sale of goods that are purchased outside of Missouri . . . .” *Id.* at 586.

### **§ 144.069 in Context**

The AHC’s interpretation and application of § 144.069 in this case clearly conflicts with the General Assembly’s expressions of intent for the sales tax, as reflected above, by imposing sales tax on retail sales made outside Missouri by out-of-state sellers. This approach would result in the indiscriminate application of the sales tax to any seller of “motor vehicles, trailers, boats and outboard motors” without regard for whether the seller is engaged in business in Missouri or where the transaction actually occurs. Such an interpretation is wholly inconsistent with the General Assembly’s statements of purpose and intent in §§ 144.020 and 144.021. Thus, the AHC’s interpretation fails within the context of Missouri Sales Tax Law and Local Sales Tax Law.

Appellant respectfully suggests that § 144.069 is susceptible to a reading that gives it effect and harmonizes it with the General Assembly’s intent for the sales tax. That is, § 144.069 fixes the “taxable situs” of transactions involving “motor vehicles, trailers, boats and outboard motors” where such transactions are subject to sales tax (i.e., where a seller engaged in business within the state makes a sale in Missouri) and the transactions have a nexus with more than one political subdivision of Missouri. *See Fabick and Co. v. Schaffner*, 492 S.W.2d 737, 745 (Mo. banc 1973); *see also Shell Oil Co. v. Director of Revenue*, 732 S.W.2d 178, 181 (Mo. banc 1987). Read in

this manner, § 144.069 does not support the imposition of local sales tax on the out-of-state purchase of a boat, motor, and trailer. Rather, § 144.069 would be inapplicable to out-of-state sales by out-of-state sellers because such transactions are not subject to sales tax.

Notably, in *Thompson v. Director of Revenue*, No. 02-1875 RV, 2003 WL 21983916 (Mo. Admin. Hearing Comm’n Aug. 19, 2003), the AHC considered the applicability of § 144.069 to the out-of-state purchase of a motor vehicle. There, a Missouri resident (Thompson) purchased a motor vehicle from a car dealer in the state of Kansas. Director assessed Thompson with Missouri state and local sales tax on the purchase. The AHC determined that Thompson’s vehicle purchase was not subject to Missouri state or local sales tax “because [Thompson] did not make the purchase in Missouri.” In reaching its decision, the AHC specifically considered § 144.069, stating:

Section 144.069 begins with language describing when a sale shall be deemed to be consummated at the address of the owner.

Therefore, at first blush, the statute may appear to state that in an interstate transaction, such as this one, the sale is deemed to be consummated at the address of the purchaser. However, the statute continues by providing that all sales taxes levied by political subdivisions shall be collected on that basis; the statute does not refer to the state sales tax. Sections 144.020 and 144.070



impose the state sales tax, and § 32.087.6, RSMo Supp. 2002, requires the Director to collect local sales tax on behalf of political subdivisions. Section 32.087.12(2) and .13, RSMo Supp. 2002, specifically apply only to local sales tax. All consistent statutes relating to the same subject are *in pari materia*; thus, they are construed together and are presumed to be intended to be read consistently and harmoniously. Therefore, we conclude that the purpose and effect of § 144.069, in conjunction with § 32.087.12(2) and .13, RSMo Supp. 2002, is to determine which local sales tax rate applies to a sale in Missouri. These statutes govern the situation when a resident of one political subdivision purchases a vehicle in another political subdivision, and thus clearly provide what local sales tax applies to such a situation. The Missouri sales tax does not apply to transactions in interstate commerce, § 144.030.1, and the language of § 144.069 does not show that it was intended as an exception to that rule.

For the reasons expressed above, appellant submits that the AHC's construction of § 144.069 in *Thompson* was correct.

In its decision in this case, the AHC expressly rejects the *Thompson* analysis in favor of the analysis in *Beck v. Director of Revenue*, 782 S.W.2d 650 (Mo. App. 1989), and *Beck v. Director of Revenue*, No. RV-88-0446 (Mo. Admin. Hearing

Comm’n Dec. 30, 1988). *Beck* involved a husband and wife who purchased a motor vehicle from a dealer in Arkansas. *Beck*, 782 S.W.2d at 651. The Becks were residents of Missouri. *Id.* Via telephone from Missouri, the Becks reached an agreement to buy the vehicle from the dealer. *Id.* The Becks wired the purchase money to the dealer from Missouri. *Id.* The vehicle was then delivered to the Becks in Missouri. *Id.* The Becks paid Missouri use tax on the vehicle but refused to pay a local sales tax. *Id.* Director refused to issue the license or title for the vehicle without payment of the local sales tax. *Id.* The Becks appealed to the AHC and, later, to the Missouri Court of Appeals. Both the AHC and the Missouri Court of Appeals ruled in favor of Director.

The *Beck* cases should be disregarded for several reasons. First, *Beck* is factually dissimilar from the instant case. Whereas appellant in this case traveled to the state of Maryland and purchased the boat, outboard motor, and trailer there, the Becks never left the state of Missouri. One can make a persuasive argument that the sale in *Beck* occurred *in* Missouri and was properly subject to Missouri state and local sales tax.<sup>20</sup> See *Id.* at 652 (Karohl, J., concurring) (“The automobile and the documents of title were delivered to purchasers in Brentwood, Missouri. The sale

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<sup>20</sup> In the *Beck* cases, the issues involved the application of law to an “interstate” transaction. The cases did not squarely consider or decide *where* the sale actually occurred.

took place there.”); *see also Jones v. Director of Revenue*, 832 S.W.2d 516, 518 (Mo. banc 1992) (holding under § 144.010.1 RSMo that a “sale” of tangible personal property occurs upon the *physical transfer of property* for valuable consideration paid).

Second, in the *Beck* cases, neither the Court of Appeals nor the AHC addressed the legal issues presented by appellant in this case. In *Beck v. Director of Revenue*, 782 S.W.2d 650 (Mo. App. 1989), the Court of Appeals considered only whether the application of local sales taxes to an “interstate” transaction is precluded by the Constitution or laws of the United States of America.<sup>21</sup> In *Beck v. Director of Revenue*, No. RV-88-0446 (Mo. Admin. Hearing Comm’n Dec. 30, 1988), the AHC construed § 144.069 in conjunction with § 144.440 RSMo 1986 (the highway use tax) and § 144.030.1 RSMo 1986 (sales tax exemptions). Although appellant’s case

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<sup>21</sup> Specifically, the Becks claimed that their purchase was *exempt* from sales tax under § 144.030.1 RSMo 1986 as a “retail sale which the state of Missouri is prohibited from taxing under the Constitution or laws of the United States of America.” Appellant does not claim that his purchase is *exempt* from sales tax or that the imposition of sales tax is precluded under the Constitution or laws of the United States of America. Rather, appellant contends that Missouri law does not impose sales tax on an out-of-state purchase of a boat, outboard motor, and trailer from an out-of-state seller.

involves the construction of § 144.069, appellant's arguments are based upon the broader legislative purposes of the Missouri Sales Tax Act, the Local Sales Tax Law, and the Compensating Use Tax Law.<sup>22</sup>

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<sup>22</sup> Notably, in its *Beck* decision, the AHC was clearly concerned with what it viewed as a conflict between § 144.069 and § 144.440 (the highway use tax). The AHC noted only two possible constructions of § 144.069 as it related to § 144.440: (1) "It could be construed to mean that all automobile purchases by Missouri residents are subject to state and local sales taxes without regard to who the seller is or where he resides," or (2) "It also could be construed to be, in effect, provision for a local use tax by attaching local sales taxes to motor vehicle purchases which would otherwise be subject only to state use tax." Ultimately, the AHC opted for the second interpretation, concluding: "The only way we can harmonize Sections 144.069 and 144.440 is to conclude that the General Assembly established through Section 144.069 something tantamount to a local use tax." It is clear that the AHC overlooked the interpretation of § 144.069 proffered by appellant herein. That is, the purpose of § 144.069 is to fix the "taxable situs" of transactions involving "motor vehicles, trailers, boats and outboard motors" where such transactions are subject to sales tax (i.e., the sale occurs in Missouri) and the transactions have a nexus with more than one political subdivision. Interpreting § 144.069 in this manner eliminates any conflict with the highway use tax provision of § 144.440 because, under this reading,

Finally, in at least two later cases, the AHC, itself, has stated that the *Beck* decision is limited to its “unique facts.” *Preston v. Director of Revenue*, No. 2005-0086 RV (Mo. Admin. Hearing Comm’n Dec. 12, 2005); *Mackey v. Director of Revenue*, No. 05-0113 RV (Mo. Admin. Hearing Comm’n Nov. 14, 2005). In these same cases, the AHC cited with approval its *in-pari-materia* interpretation of § 144.069 set out in *Thompson v. Director of Revenue*, No. 02-1875 RV (Mo. Admin. Hearing Comm’n Aug. 19, 2003). As the AHC succinctly stated in *Preston* and *Mackey*, “[r]elying on § 144.069 to impose Missouri sales tax on a sale that took place wholly within [another state] would create an absurd and unjust result.” The same is true in this case.

For all these reasons, the *Beck* cases should given no weight.

### Other Matters

The AHC’s decision also attempts to distinguish the sales tax on motor vehicles, boat, trailers, and outboard motors from the sales tax on other tangible personal property based on the fact that §§ 144.070.1 and 144.440.2 and .4 provide for a different manner of payment of the tax. (LF 135-136) This Court has previously

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§ 144.069 would apply only to transactions that are subject to the general state sales tax. Such transactions are not subject to the highway use tax. *See* § 144.450(1). Further, this interpretation is consistent with Missouri Sales Tax Act, the Local Sales Tax Law, and the Compensating Use Tax Law.

stated that the sales tax on motor vehicles, boats, trailers, and outboard motors is different only in the *manner of collection*. *State ex rel. Conservation Comm’n v. LePage*, 566 S.W.2d 208, 211-12 (Mo. banc 1978). The *nature* of the sales tax on motor vehicles, boats, trailers, and outboard motors is the same as the general sales tax. *Id.* at 212.

### **CONCLUSION**

For the reasons above, the AHC’s interpretation of § 144.069 (and § 32.087.12(2)) as authorizing the imposition of local sales taxes on an out-of-state transaction is unauthorized by law and clearly contrary to the reasonable expectations of the General Assembly. As such, the Court should reverse the decision of the AHC and order Director to refund all local taxes paid by appellant in this case.

### **Request for Final Disposition with Interest**

The appeal to the AHC in this case was authorized and governed by § 621.050. *See* § 144.261. As pertinent here, § 621.050.2 provides that “[i]n the event the taxpayer prevails in any dispute under this section, interest shall be allowed at the rate of six percent per annum upon the amount found to have been wrongfully collected or erroneously paid.” Accordingly, if this Court reverses the decision of the AHC and finds that appellant is entitled to a refund of all local taxes paid in this matter, appellant would request that the Court dispose finally of this case in accordance with Rule 84.14. Any such decision should include an award of interest to appellant pursuant to § 621.050.2 in addition to a refund of all local taxes paid by appellant.

WHEREFORE, appellant prays that this Court reverse the decision of the Administrative Hearing Commission in this case and, pursuant to Rule 84.14, order Director to issue a refund, in full, of all local taxes paid by appellant in connection with his out-of-state purchase of the boat, outboard motor, and trailer in this case together with interest as authorized by § 621.050.2, and for such other and further relief as this Court deems lawful and appropriate.

Respectfully Submitted,

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**CERTIFICATE OF COMPLIANCE WITH RULE 84.06**

I hereby certify the following:

1. The foregoing “APPELLANT’S BRIEF” complies with the word count limitations as specified in Rule 84.06(b).
2. The foregoing “APPELLANT’S BRIEF” (excluding the cover, certificate of service, this certificate, and the signature block) contains 6,073 words as counted by Microsoft Office Word 2007.
3. The CD-ROM submitted herewith as required by Rule 84.06(g) has been scanned for viruses using McAfee VirusScan and is virus free.

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 24, 2011, one true and correct copy of  
“APPELLANT’S BRIEF” and one disk containing an electronic copy of  
“APPELLANT’S BRIEF” were mailed, postage prepaid, to:

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