IN THE
SUPREME COURT OF MISSOURI

SC91371

CRAIG A. STREET,

Appellant,

v.

DIRECTOR OF REVENUE,

Missouri Department of Revenue,

Respondent.

From the Missouri Administrative Hearing Commission
The Honorable Karen A. Winn, Commissioner

RESPONDENT'S BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

STATEMENT OF FACTS

This appeal addresses the imposition of local "sales" tax as part of the motor vehicle tax that must be paid before the State will issue a title for – in this instance – a boat, trailer, or outboard motor.

Appellant Street, a resident of Greene County, purchased a boat, trailer, and outboard motor from a dealer in another state. App. at A2. He sought to register all three with the Department of Revenue. *Id.* Before the Director of Revenue would accept the registration and issue titles for the three items, she required that Street pay taxes in the amount of $100.00 on the boat, $78.75 on the outboard motor, and $12.44 on the trailer based on Greene County's local "sales" tax rates, in addition to the taxes imposed by State law. *Id.*[1]

Street sought a refund, claiming that he was not required to pay taxes on the boat, trailer, and outboard motor calculated based on local "sales" tax rates, implicitly conceding that the state tax was proper. *Id.* The Director denied his request (*id.*); the Administrative Hearing Commission upheld the denial (App. at A22).

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[1] The Director conceded that she overcharged $41.25 on the motor; that amount has been or will be refunded to Street. *Id.*

ARGUMENT

Appellant Street's argument is the logical product of an erroneous conclusion: that Missouri tax law creates just two kinds of taxes calculated based on the purchase price of personal property, "sales" and "use" taxes, and that there is a bright line between those two. In fact, the line is not nearly as bright as Street's argument requires. That is particularly true as to the purchase of motor vehicles and other forms of personal property for which the State requires registration and issues titles – forms that include the items that Street purchased, the local portion of the tax on which he protests here.

Ultimately this case must be decided based not on "sales" and "use" labels, but on the language of the statutes themselves. And those statutes authorize counties to impose a tax on the purchase of motor vehicles by county residents that the Director of Revenue must then collect from the resident prior to issuing title to the new owner.

1. The State imposes a motor vehicle tax that is not precisely a "sales" tax as that term is typically used.

In *State ex rel. Conservation Comm'n v. LePage*, 566 S.W.2d 208, 211-12 (Mo. banc 1978), this Court said that the State motor vehicle tax, § 144.440[2], is merely a "sales" tax with a different method of collection. But as

[2] All statutory references are to RSMo 2000 unless noted otherwise.

demonstrated in appellant Street's brief, the issue is more complex than that.

Most of the time, Chapter 144 uses the terms "sales" and "use" in a consistent fashion. A "sales" tax is imposed on Missouri sellers and paid by those who buy within the State. It is collected and remitted by a seller of personal property. A "use" tax is imposed directly on purchasers of personal property from sellers in other states – sellers not subject to the "sales" tax. It is imposed based on where and when an item purchased in another state is used or stored in Missouri. The distinction is really the result of constitutional limitations on State taxation: the State of Missouri cannot require an out-of-state vendor to collect and remit Missouri "sales" tax on a transaction that takes place outside the State of Missouri, so it adopted a "use" tax to level the playing field between in- and out-of-state vendors. *See Associated Industries of Missouri v. Director of Revenue*, 857 S.W.2d 182 (Mo. banc 1993).

The motor vehicle tax, however, functions differently than either a "sales" or a "use" tax. In fact, it is described as and appears in the sections dealing with both "sales" (§ 144.440) and "use" (§ 144.613) taxes. It does not fit easily into either category – and, because it does not address sellers at all, does not implicate the constitutional concerns that require the differentiation between "sales" and "use" taxes.

Like a "sales" tax, the motor vehicle tax is imposed on purchases within the State. Like a "use" tax, it is imposed on purchases made out of state. Also like a "use" tax, but unlike a "sales" tax, it is paid directly by the purchaser rather than the seller. But unlike the "use" tax, the motor vehicle tax is not paid by the purchaser with a tax return (§ 144.655.4), nor is it imposed based on the mere "exercise of any right or power over tangible personal property incident to the ownership or control of that property" (§ 144.605(13)). Rather, it is imposed at the time of vehicle registration, as a prerequisite to the title necessary to operate the vehicle within Missouri.

Under Missouri law, "[e]very owner of a motor vehicle or trailer, which shall be operated or driven upon the highways of this state" must register that vehicle with the Director of Revenue. § 301.020.1. The Director issues a certificate of ownership or title for each motor vehicle. §§ 301.190, 301.210. The Director also issues titles for boats (§ 306.015) and outboard motors (§ 306.530). The Director is prohibited from issuing a certificate of title "unless the tax for the privilege of using the highways or waters of this state has been paid." § 144.440.4.

The amount of the State motor vehicle tax, imposed "for the privilege of using the highways or waters of this state," is "four percent of the purchase price, as defined in section 144.070, which is paid or charged on new and used

motor vehicles, trailers, boats, and outboard motors purchased or acquired for use on the highways or waters of this state which are required to be registered under the laws of the state of Missouri." § 144.440.1.

The State has chosen, then, not to make the motor vehicle tax a traditional "sales" nor a traditional "use" tax. Instead, it is a tax imposed in connection with the issuance of a title for the vehicle – a prerequisite to use of the vehicle.

Again, because the State is taxing owners at the time of registration rather than anyone at the point of sale, the constitutional underpinnings of the sales/use distinction – the State's inability to exercise taxation power outside its own territory – simply do not come into play. Street does not even hint at possible limits on the State's ability under the U.S. Constitution to impose a tax or to authorize a county to impose a tax in connection with issuing a title. So long as the tax is imposed on a state resident in connection with a transaction (here, a transaction with the government: obtaining a title) that takes place within the State, there is simply no constitutional concern. That the amount of the tax is tied to a purchase price paid to an out-of-state seller is constitutionally irrelevant.

Because the constitutional concerns that prompt the sales/use tax distinction do not come into play as to motor vehicles (including boats,

trailers, and outboard motors), that the statutes refer to the motor vehicle tax inconsistently as a "sales" and as a "use" tax is not important. What is important is that the State imposed that tax as part of the "sales" tax law. And the answer to the question posed by Street must be found in the language of that law.

2. Local governments are authorized to impose a "sales" tax with the same scope as the State "sales" tax.

Street timely paid – and does not dispute that he owed – the State motor vehicle tax. App. at A2. This appeal deals, then, not with the state motor vehicle tax, but with a local tax.

Local governments can impose "sales" taxes, calculated according to sales prices, for various purposes. *See* §§ 67.505, 67.582.1, 190.335, 644.032. The local "sales" tax is imposed on everything "subject to taxation by the state of Missouri under the provisions of sections 144.010 to 144.525." § 67.505.3. *See also* §§ 67.582.1, 190.335.4, 644.032.1. Another, more general statute declares: "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 …." § 32.087.5. In other words, when a local government

imposes a "sales" tax pursuant to this authority, that tax not only can, but must, have the same scope as the taxes imposed by the State in §§ 144.010 to 144.525.[3]

Local governments are also authorized to impose "use" taxes. §§ 144.757-144.761. Such taxes parallel and are collected in conjunction with the State "use" tax, which is "imposed for the privilege of storing, using or consuming within this state any article of tangible personal property." § 144.610. Again, the scope of those taxes is the same as the scope of the state "use" tax. *See* § 144.757.3 ("The local use tax may be imposed at the same rate as the local sales tax then currently in effect in the county or municipality upon all transactions which are subject to the taxes imposed pursuant to sections 144.600 to 144.745 within the county or municipality adopting such tax ….").

The requirement that the local taxes have the same coverage as the State taxes is the logical result of a practical decision made by the General Assembly: to have the Director of Revenue collect those taxes. Certainly the legislature could have chosen to authorize local governments to collect such

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[3] The General Assembly has explicitly created a few exceptions, perhaps most notably by authorizing local governments to "opt out" of "back-to-school" and "green" sales tax holidays. *See* §§ 144.049, 144.526.

taxes on their own. But that would have been at the very least inefficient. The Director is already in contact with sellers throughout the state, so the mechanism for collection exists at the state level and need not be duplicated at the local level. Moreover, having sellers remit all "sales" taxes to the Director rather than divide them between the Director and, often, multiple local governments is more efficient for the sellers. But if the Director is to be the collector of such taxes, she does not want to have to distinguish not just among local jurisdictions in terms of tax rates, but also in terms of the scope of taxation. The General Assembly, sharing that desire for uniformity and efficiency – not just on the State's behalf, but to benefit sellers and buyers – thus gave local governments only one choice: enact a law that piggybacks the state "sales" tax, or don't enact a tax at all.

3. The "local sales tax" includes the motor vehicle tax.

When a local government like Greene County, then, chose to adopt a local "sales" tax, it necessarily agreed to impose that tax in the same way as the state "sales" tax – *i.e.*, the tax imposed by §§ 144.010 to 144.525. That is confirmed by § 32.085(4): local "sales" tax "applies to all transactions which are subject to the taxes imposed under the provisions of sections 144.010 to 144.525." The local "sales" tax thus applies to all transactions subject to tax under § 144.440. So when Greene County imposed a "sales" tax, it imposed a

tax calculated from the purchase price of motor vehicles, boats, trailers, and outboard motors – the tax imposed by § 144.440.1.

The purchase of a boat and outboard motor may also be subject to the State's "use" tax, per § 144.613. That section, however, only applies if the boat and outboard motor is not subject to tax under § 144.440. § 144.615(4), RSMo Supp. 2010. Boats and outboard motors brought into Missouri that were registered and operated in another state in good faith for at least ninety days are specifically exempt from tax under § 144.440. § 144.450(2). As a result, only boats and outboard motors not subject to tax under §144.440 are subject to "use" tax under §144.610 and the local "use" tax local governments impose per § 144.757.

Whether Greene County has passed a local "use" tax – and Street says the County has not – is not relevant to the analysis here because Street is subject to tax under § 144.440 and not § 144.610. The fact that Greene County has adopted a "local sales" tax, that the "local sales" tax is coextensive with the state "sales" tax is defined in §§ 144.010 to 144.525, and the local "sales" tax is imposed on any transaction subject to tax under §§ 144.010 to 144.525, make Street's purchase of his boat and outboard motor subject to tax within those sections.

4. The local tax on motor vehicles is imposed where the owner resides, rather than where the purchase is made.

As discussed above, the State has chosen to impose the motor vehicle tax at the time the new owner seeks to register or title the vehicle. When doing so, the State divorced the location of the transaction from the taxation question. Again, that distinguishes the motor vehicle tax from "sales" taxes (assessed at the point of sale) or "use" taxes (assessed at the point of use, defined to include "storing, using or consuming … tangible personal property," § 144.610.).

But having divorced the motor vehicle tax from purchase, use, or storage location and yet having authorized local governments to impose the tax, the General Assembly faced new questions: which local government's rate would apply and to which local government would the tax collected be disbursed?

To answer those questions, the General Assembly specified that the residence of the purchaser shall be the location for which "sales" tax on such items is charged: But "sales of motor vehicles, trailers, boats, and outboard motors shall be deemed to be consummated at the residence of the purchaser and not at the place of business of the retailer." § 32.087.12(2). That contrasts to the regular "sales" tax, where the location of the sale is "the place

of business of the retailer." § 32.087.12(1). So when a resident of Greene County purchases a boat in Christian County, the law imposes tax at the rate for Greene County and the Director collects it when the boat is titled, while the simultaneous purchase of a sonar fishfinder in Christian County is taxed at the Christian County rate and the seller collects it at purchase. The motor vehicle tax approach also contrasts with the "use" tax, which is based not on the residence of the new owner, but on where the item is used or stored. So when a resident of Greene County purchases a boat in Oklahoma but stores and uses the boat at Table Rock Lake, the law still imposes tax at the rate for Greene County and the Director collects it when the boat is titled, while the simultaneous purchase of the sonar fishfinder, if not subject to "sales" tax in Oklahoma is subject to "use" tax in Missouri and the Director collects it via a return filed by the purchaser (*see* § 144.655), using the rate applicable to the place the fishfinder is first stored or used in Missouri (*see Kirkwood Glass Co., Inc. v. Director of Revenue*, 166 S.W.3d 583 (Mo. banc 2005), which may or may not be the residence of the purchaser.

* * *

The tax at issue here, then, though labeled a local "sales" tax and imposed by the "sales" tax law, is a somewhat different tax. Like both a "sales" and a "use" tax, the motor vehicle tax is calculated based on purchase

price. But unlike either a "sales" or a "use" tax, it is tied to and collected at the time of the registration or titling of the personal property to which it is applied, be that a motor vehicle, boat, trailer, or outboard motor. And unlike the "sales" or "use" tax, it is imposed based on the residence of the buyer, not according to the location of the sale or the location of use or storage. But the key point in terms of legal analysis is this: that local governments are authorized to impose "sales" taxes to the same extent that the State imposes any taxes, regardless of whether they are properly labeled "sales" taxes, pursuant to §§ 144.010 to 144.525, and the motor vehicle tax imposed in § 144.440 is contained within those sections.

CONCLUSION

For the reasons stated above, the decision of the Administrative Hearing Commission should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

The undersigned hereby certifies that a copy of the foregoing was mailed, postage prepaid, via United States mail, on this 22nd day of July, 2011, to:

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The undersigned further certifies that the foregoing brief complies with the limitations contained in Rule 84.06(b) and that the brief contains 2,994 words.

The undersigned further certifies that the labeled disk, simultaneously filed with the hard copies of the brief, has been scanned for viruses and is virus-free.

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James R. Layton
Solicitor General