SC93331

IN THE SUPREME COURT OF MISSOURI

AAA LAUNDRY & LINEN SUPPLY CO.,

Respondent (Petitioner below),

vs.

DIRECTOR OF REVENUE,

Appellant (Respondent below).

From the Administrative Hearing Commission of Missouri
The Honorable Sreenivasa Rao Dandamudi, Commissioner

BRIEF OF APPELLANT

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JURISDICTIONAL STATEMENT

This case came before the Administrative Hearing Commission ("Commission") on a complaint filed by AAA Laundry & Linen Supply Company on November 7, 2011, seeking an appeal of the assessment of unpaid sales/use tax made by the Missouri Department of Revenue, Taxation Division, for the monthly tax periods commencing on September 1, 2007, and ending on June 30, 2010. The resolution of this petition for review requires the construction of the revenue laws of this State, in particular, §§ 144.030 and 144.054, RSMo.[1/] Accordingly, the jurisdiction of this Court is invoked under Art. V, § 3 of the Missouri Constitution and § 621.189, RSMo.

[1/] All references to the Missouri Revised Statutes are to the 2012 Cumulative Supplement unless otherwise specified.

STATEMENT OF FACTS

AAA Laundry & Linen Supply Company ("AAA Laundry") is a Missouri corporation with its principal place of business in Kansas City, Missouri. (LF 59). AAA Laundry operates a commercial laundry business that rents items of tangible personal property to its customers. (LF 59). These items include: cleaned and sanitized uniforms, table cloths, towels, aprons, sheets, gowns, and scrubs. (LF 59). Customers pay a periodic rental fee for the use of these items in their business operations. (LF 59). The rented items are owned by AAA Laundry. (LF 59).

AAA Laundry primarily serves the health care, hospitality, and industrial markets. (LF 59). On a periodic basis, AAA Laundry delivers clean, sanitized items to its customers, and picks up soiled and otherwise used items. (LF 59). These items that are picked up are then cleaned, sanitized, and delivered back to the customers for re-use. (LF 59). It is the same items before and after the cleaning and sanitizing. (LF 69). Other services include the pickup of soiled and otherwise used items; the cleaning, sanitizing, and maintenance of the soiled and otherwise used items; the packaging and delivery of the items to the customer after they have been cleaned and sanitized; and the replacement of items that are no longer usable due to wear or tear. (LF 55).

Most customers are on multi-year rental agreements, ranging from two to five years. (LF 60). Any items that need to be replaced due to normal wear and tear are replaced by AAA Laundry at no additional charge to the customer. (LF 60). Customers are responsible for the return of all items delivered to them and are charged for the replacement of items that are lost or not returned by the customer. (LF 60). Customers are also obligated to pay AAA Laundry for any items that are damaged due to abuse, malicious destruction, or otherwise. (LF 60).

A. AAA Laundry Paid No Taxes on Its Purchases of Chemicals and Laundering Supplies.

AAA Laundry's cleaning and sanitizing of items produces mass quantities of wastewater ("wastewater"). (LF 60). As such, it is required by city ordinance and federal environmental laws to treat this wastewater to a prescribed quality before releasing it into the Kansas City, Missouri sewer system. (LF 60). AAA Laundry has purchased wastewater treatment equipment to comply with these treatment obligations. (LF 60). AAA Laundry also purchases chemicals that are used to treat the wastewater before releasing it into the Kansas City, Missouri, sewer system. (LF 60). Some of the chemicals are purchased from out of state vendors, then shipped to AAA Laundry's facility. (LF 61). Neither sales nor use tax has been paid with respect to the purchases of the chemicals. (LF 61).

AAA Laundry also purchases large quantities of soap, detergent, and sanitizing chemicals ("Laundering Supplies") which it uses to cleanse and sanitize the soiled and otherwise used items that it picks up from customers. (LF 61). Some of these purchases are from out of state vendors and shipped to AAA Laundry's facility. (LF 61). Neither sales nor use tax has been paid with respect to the purchases of the Laundering Supplies. (LF 61).

B. The Missouri Department of Revenue's Audit.

The Missouri Department of Revenue (the Department) conducted an audit of AAA Laundry for withholding sales and use taxes. (LF 61). The audit resulted in the following findings:

(a) liability for failing to collect sales tax with respect to renting items of tangible personal property to certain customers who claimed to be exempt from sales tax but failed to provide exemption certificates;

(b) liability for failing to pay sales tax with respect to items of tangible personal property purchased by AAA Laundry from vendors located in Missouri and used by AAA Laundry in Missouri; and

(c) liability for failure to pay use tax with respect to chemicals and Laundering Supplies purchased by AAA Laundry from vendors located outside of Missouri and used by AAA Laundry in Missouri.

(LF 61).

AAA Laundry agreed to the sales tax liability described in (a) and (b) above and has paid all taxes and interest associated with these liabilities, which are no longer at issue. (LF 61). AAA Laundry, however, objected to the use tax liability described in (c) above. (LF 61). As a result, the Department issued assessments for monthly tax periods beginning September 1, 2007, and ending June 30, 2010. (LF 61).

The disputed portion of the audit totals $45,722.11, which includes $40,246.10 in use tax liability (with $24,995.39 for Laundering Supplies and $15,250.71 for chemicals), $3,463.72 in statutory interest as of the audit close date of April 12, 2011, and $2,012.29 in additions to tax. (LF 61-62). Having considered the matter, the Commission concluded that chemicals used to

treat wastewater are "machinery" under § 144.030.2(15)[2/] and that cleaning laundry is "processing" a "product" under § 144.054. (LF 66 & 71).

[2/] Section 144.030.2 has been amended such that subdivision (15) is now located at subdivision (16). For purposes of this brief, however, citation will still be made to subdivision (15).

POINTS RELIED ON

I. The Administrative Hearing Commission Erred in Granting AAA Laundry a Use Tax Exemption for Wastewater Treatment Chemicals Purchased Outside of Missouri, Because Chemicals are Not Exempt Under § 144.030.2(15), In That Chemicals are Not "Machinery."

Akins v. Dir. of Revenue, 303 S.W.3d 563 (Mo. banc 2010)

BASF Corp. v. Dir. of Revenue,

392 S.W.3d 438 (Mo. banc 2012)

Lincoln Indus., Inc. v. Dir. of Revenue,

51 S.W.3d 462 (Mo. banc 2001)

§ 144.054.2, RSMo

II. The Trial Court Erred in Granting AAA Laundry a Use Tax Exemption for Soap, Detergent, and Cleaning Chemicals Purchased Outside of Missouri, Because Such Laundering Supplies are Not Exempt as "Processing" Under § 144.054.2, In That Merely Cleaning Laundry Does Not "Transform or Reduce" a "Product" to a "Different State or Thing."

Aquila Foreign Qualifications Corp. v. Dir. of Revenue,

362 S.W.3d 1 (Mo. banc 2012)

State ex rel. Union Elec. Co. v. Goldberg,

578 S.W.2d 921 (Mo. banc 1979)

L & R Egg Co., Inc. v. Dir. of Revenue,

796 S.W.2d 624 (Mo. banc 1990)

Unitog Rental Servs., Inc. v. Dir. of Revenue,

779 S.W.2d 568 (Mo. banc 1989)

§ 144.030, RSMo

SUMMARY OF THE ARGUMENT

No one thinks of "chemicals" as "machinery," in the ordinary sense of those terms, particularly since the term "machinery" is to be strictly or narrowly construed. *Branson Properties USA, L.P. v. Dir. of Revenue*, 110 S.W.3d 824, 825 (Mo. banc 2003). And neither did the General Assembly intend to include "chemicals" as "machinery" in § 144.030.2(15). The plain language of § 144.030.2(15) does not include "chemicals" in the list of items subject to a tax exemption, even though the provision deals exclusively with water pollution. The General Assembly would have undoubtedly been aware that the use of chemicals are commonplace in the treatment of water pollution, yet it did not include the term "chemicals" anywhere in the provision at issue.

The dictionary definition, likewise, does not include "chemicals" in its definition of "machinery," nor does it include "machinery" in its definition of "chemicals." Furthermore, the surrounding statutory provisions completely undermine the argument that "chemicals" are "machinery." In § 144.054.2, the General Assembly provided a tax exemption for "chemicals," and did so in the same list as (and next in sequence to) "machinery." Thus, the General Assembly considers "chemicals" to be distinct from "machinery." Had the General Assembly intended to include "chemicals" in the exemption for

machinery to treat water pollution, it certainly could have added it to the list. But it did not.

Similarly, the use of soap, detergent, and chemicals to clean laundry is not the "processing" of a "product" under § 144.054.2. The General Assembly defined "processing" in a way that suggests the taking of a product from its original form and changing it into something completely different – something "new." Not the mere cleaning of an item. What is more, and as evidenced by the language of the statute, the General Assembly relied on this Court's historical development of the term "processing" as derived from or inextricably connected with "manufacturing."

Over the years, this Court has found little or no practical difference in the meaning of "manufacturing" and "processing," because "[w]hen the legislature enacts a statute referring to terms that have had other judicial or legislative meaning attached to them, the legislature is presumed to have acted with knowledge of that judicial or legislative action." *See Cook Tractor Co., Inc. v. Dir. of Revenue*, 187 S.W.3d 870, 873 (Mo. banc 2006). The term "processing" appeared in the current manufacturing exemptions when they first became part of Missouri's sales and use tax law. In 1961 and 1967, "processing" was included in several parts of the statute. Thus, the term "processing," is not original to § 144.054.2 or to § 144.030.2(13), from which the language for § 144.054.2 was taken.

When the General Assembly added the identical definition of "processing" in § 144.054 that it had adopted in § 144.030.2(13), it is presumed to have adopted the same judicial interpretations of that term. And in *Unitog Rental Servs., Inc. v. Dir. of Revenue*, 779 S.W.2d 568 (Mo. banc 1989) this Court specifically rejected the contention that cleaning laundry – even on a large scale – satisfies the requirements necessary to be tax exempt under the manufacturing exemptions in § 144.030.

The efforts to expand the meaning of "processing" in this case should be rejected just as those same efforts were in *Aquila Foreign Qualifications Corp. v. Dir. of Revenue*, 362 S.W.3d 1 (Mo. banc 2012). In short, the exemption for "processing" in § 144.054.2 was not intended to expand the type of activity subject to exemption (*i.e.* a manufacturing type of activity), but instead the items (*i.e.* gas, coal, water, etc.) subject to exemption.

ARGUMENT

Standard of Review

The only issues in this case are legal issues, and they involve the interpretation of two closely related revenue laws – § 144.030.2(15) and § 144.054.2. This Court reviews the Commission's interpretation of revenue laws *de novo*. *Brinker Mo., Inc. v. Dir. of Revenue*, 319 S.W.3d 433, 436 (Mo. banc 2010) ("Statutory interpretation is an issue of law that this Court reviews *de novo*."); *Finnegan v. Old Republic Title Co. of St. Louis, Inc.,* 246 S.W.3d 928, 930 (Mo. banc 2008).

Sections 144.030 and 144.054 provide for sales and use tax exemptions. Tax exemptions are "strictly construed against the taxpayer." *Branson Properties USA, L.P. v. Dir. of Revenue*, 110 S.W.3d 824, 825 (Mo. banc 2003); *Dir. of Revenue v. Armco, Inc.*, 787 S.W.2d 722, 724 (Mo. banc 1990) (noting that "strict construction is mandated for statutes establishing conditions for claiming an exemption") (citing *Mo. Pub. Serv. Comm'n v. Dir. of Revenue*, 733 S.W.2d 448, 449 (Mo. banc 1987)). Indeed, an exemption is allowed "only upon clear and unequivocal proof, and doubts are resolved against the party claiming it." *Id.* As such, the burden is on the taxpayer claiming the exemption "to show that it fits the statutory language exactly." *Cook Tractor Co., Inc. v. Dir. of Revenue*, 187 S.W.3d 870, 872 (Mo. banc 2006).

In this case, the taxpayer's claims do not fit the statutory language in § 144.030.2(15) and § 144.054.2, much less exactly. Accordingly, the Commission's decision should be reversed and judgment entered in favor of the Director of Revenue.

I. The Administrative Hearing Commission Erred in Granting AAA Laundry a Use Tax Exemption for Wastewater Treatment Chemicals Purchased Outside of Missouri, Because Chemicals are Not Exempt Under § 144.030.2(15), In That Chemicals are Not "Machinery."

The company in this case – AAA Laundry – claims that wastewater treatment chemicals are "machinery" under the statute. The Commission erroneously agreed. The conclusion that chemicals are "machinery" is not consistent with the plain language of the statute or the surrounding statutory provisions. To include chemicals as machinery would also greatly expand the tax exemption in a way that would produce unreasonable or absurd results.

A. The Plain Language – Chemicals are Not Machinery.

As with any statutory provision, "the primary rule of statutory interpretation is to give effect to legislative intent as reflected in the plain language of the statute." *Akins v. Dir. of Revenue*, 303 S.W.3d 563, 565 (Mo. banc 2010) (citing *State ex rel. White Family Partnership v. Roldan*, 271

S.W.3d 569, 572 (Mo. banc 2008)). Statutory language is given its "plain and ordinary meaning." *United Pharm. Co. of Mo., Inc. v. Mo. Bd. of Pharm.*, 208 S.W.3d 907, 910 (Mo. banc 2006).

Furthermore, "[n]o portion of a statute is read in isolation, but rather is read in context to the entire statute, harmonizing all provisions." *Utility Serv. Co., Inc. v. Dep't of Labor and Indus. Relations*, 331 S.W.3d 654, 658 (Mo. banc 2011). "Ascertaining and implementing the policy of the General Assembly requires the court to harmonize all provisions of the statute." *20th & Main Redevelopment Partnership v. Kelley,* 774 S.W.2d 139, 141 (Mo. banc 1989). It is likewise essential that the "[c]onstruction of statutes should avoid unreasonable or absurd results." *Reichert v. Bd. of Educ. of City of St. Louis,* 217 S.W.3d 301, 305 (Mo. banc 2007).

AAA Laundry claims an exemption for its purchase of wastewater treatment chemicals under § 144.030.2(15), which provides that only the following are exempt:

> Machinery, equipment, appliances and devices purchased or leased and used solely for the purpose of preventing, abating or monitoring water pollution, and materials and supplies solely required for the installation, construction or reconstruction of such machinery, equipment, appliances and devices;

§ 144.030.2(15). There is no mention or use of the term "chemicals" in the exemption, despite the fact that the provision deals specifically with preventing, abating, or monitoring water pollution.

Chemical treatment, of course, has long been part of wastewater treatment. *See* http://en.wikipedia.org/wiki/Wastewater (last visited Sept. 16, 2013) ("Most wastewater is treated in industrial-scale energy intensive wastewater treatment plants (WWTPs) which include physical, chemical and biological treatment processes."). Had the General Assembly intended to include chemicals in the exemption for treating water pollution, it certainly could have included that term, particularly since chemicals are such a ubiquitous part of wastewater treatment. The Commission itself recognized that both city ordinance and federal environmental laws require AAA Laundry to treat the wastewater. (LF 60).

With no reference to chemicals in the provision at issue, AAA Laundry argues that chemicals are "machinery," and therefore qualify under the exemption. Exemptions, however, must be strictly construed. And claiming that chemicals are machinery is well beyond fitting "the statutory language exactly." *Cook Tractor*, 187 S.W.3d at 872. Even an "individual part" of an actual machine is not included in the definition of "machinery." *See Lincoln Indus., Inc. v. Dir. of Revenue*, 51 S.W.3d at 466.

The dictionary definition also does not support the claim that chemicals are "machinery." *See State ex rel. Burns v. Whittington*, 219 S.W.3d 224, 225 (Mo. banc 2007) ("In the absence of statutory definitions, the plain and ordinary meaning of a term may be derived from a dictionary … and by considering the context of the entire statute in which it appears."). The dictionary definition of "machinery," relied on by the Commission, provides in relevant part as follows:

> **1 :** machines as a functioning unit: . . . **b (1) :** the constituent parts of a machine or instrument . . . .

Webster's Third New International Dictionary 1354 (1993).

Nowhere in the definition of the term "machinery," does the term "chemical" appear. Nor, for that matter, does the term "machinery" appear in the definition of the term "chemical." *Id.* at 383-84. As such, the plain language of the statutory provision at issue as well as the dictionary definitions does not support the strict construction that must be afforded the exemption. *See Wolff Shoe Co. v. Dir. of Revenue,* 762 S.W.2d 29, 31 (Mo. banc 1988) ("[T]he plain and unambiguous language of a statute cannot be made unambiguous by administrative interpretation and thereby given a meaning which is different from that expressed in a statute's clear and unambiguous language.").

B. The Statutory Structure and Surrounding Provisions Demonstrate That the General Assembly Did Not Intend to Include Chemicals as Machinery.

Not only is there no mention of the term "chemicals" in the statutory provision or dictionary definitions, but the statutory structure and surrounding statutory provisions make clear that chemicals were not intended to be included in the meaning of machinery.

Once again, it is worth noting that this is a statutory provision dealing with water pollution, an area in which the use of chemicals is quite commonplace. The statutory exemption at issue provides a list of four types of items that qualify for the exemption; namely "machinery, equipment, appliances and devices." § 144.030.2(15). In *Aquila Foreign Qualifications Corp. v. Dir. of Revenue*, 362 S.W.3d 1 (Mo. banc 2012), this Court appropriately applied "the statutory maxim of *noscitur a sociis* – a word is known by the company it keeps." *Id.* at 5. And that is the case here as well. The words surrounding "machinery" do not suggest the inclusion of chemicals, but instead point at solid mechanical items. Equipment, appliances, and devices are all similar in their type and do not support the inclusion of chemicals.

Furthermore, the term "chemicals" is used in other statutory exemptions in Missouri law, including in a list with the term "machinery." Its

use in surrounding statutory provisions suggests that the General Assembly's exclusion in this provision was on purpose. After all, it is not as though the General Assembly does not know how to use the term chemicals for purposes of tax exemptions. *See, e.g.,* § 144.047 (describing "agricultural chemicals"); § 144.046 ("chemical energy"). Indeed, the most compelling example of the General Assembly's intent to leave chemicals out of the definition of machinery is demonstrated in § 144.054, which provides tax exemptions in addition to the very provision at issue in this case, § 144.030.

In § 144.054.2, the General Assembly provided for "chemicals," and did so in the same list as (and next in sequence to) "machinery." The General Assembly provided that "[i]n addition to all other exemptions granted under this chapter, there is hereby specifically exempted" from taxes "energy sources, chemicals, machinery, equipment, and materials used or consumed in the manufacturing . . . ." This statutory language, and the surrounding provisions makes plain that the General Assembly considers the term "chemicals" to be distinct from the term "machinery." Had the General Assembly wanted to include "chemicals" in the exemption for water pollution, it certainly could have. But it did not.

The Commission's position in this case is also contrary to the position it took in *BASF Corp. v. Dir. of Revenue*, 392 S.W.3d 438 (Mo. banc 2012), when analyzing another provision in the same subsection of the same statute. The

Commission concluded in *BASF* that "the chemicals at issue were 'supplies' for purposes of section 144.030.2(4)." *Id.* at 442. Yet, the Commission cannot have it both ways. Section 144.030.2(4) includes "supplies" along with "machinery and equipment." Therefore, the Commission found in *BASF* that chemicals are "supplies" instead of "machinery and equipment." The Commission now takes the position that chemicals are "machinery," even though "supplies" is also included in § 144.030.2(15).

Apparently, the Commission considers chemicals to be "supplies" under one provision and "machinery" under another provision in the same subsection of the same statute. This contorted application of tax exemptions cannot be sustained, particularly when it is unsupported by the plain language of the statute and the surrounding statutory provisions.

C. Including Chemicals as Machinery Will Produce Absurd Results.

In addition to the plain language and surrounding statutory provisions and structure, it is essential that the "[c]onstruction of statutes should avoid unreasonable or absurd results." *Reichert,* 217 S.W.3d at 305. This is particularly true for tax exemptions where an exemption is allowed "only upon clear and unequivocal proof, and doubts are resolved against the party claiming it." *Branson Properties USA,* 110 S.W.3d at 825.

Following AAA Laundry's logic to its conclusion, many other items that are not explicitly exempted by statute, but are nonetheless critical to the operation of the wastewater machinery or equipment, such as electric power or other utilities, would be exempt from taxes "for the purpose of preventing, abating or monitoring water pollution." § 144.030.2(15). They are not. The General Assembly chose to include only "machinery, equipment, appliances and devices." Utilities, chemicals, and other items are specifically covered in § 144.054, and there is no mention of water pollution in that provision.

The General Assembly is presumed to be aware of the meaning of the terms it adopts. If the intent of the General Assembly was to exempt chemicals used in conjunction with "machinery, equipment, appliances and devices," which are listed in the statute, the General Assembly was capable of doing so explicitly. In fact, it did so in another provision. That "chemicals" was not so added in § 144.030, yet added in § 144.054, leads to the simple conclusion that the General Assembly did not intend to grant the exemption AAA Laundry seeks. Accordingly, the Commission should be reversed on this point.

II. The Trial Court Erred in Granting AAA Laundry a Use Tax Exemption for Soap, Detergent, and Cleaning Chemicals Purchased Outside of Missouri, Because Such Laundering Supplies are Not Exempt as "Processing" Under § 144.054.2, In That Merely Cleaning Laundry Does Not "Transform or Reduce" a "Product" to a "Different State or Thing."

In addition to their claimed exemption for wastewater treatment chemicals, AAA Laundry also claims that the supplies they use to clean laundry, including soap, detergent, and other chemicals are exempt as "processing" of a "product" under § 144.054. But merely cleaning laundry does not constitute a sufficient transformation to entitle the taxpayer to a "processing" exemption under § 144.054. As such, this claim fails, and the Commission should be reversed on this point.

A. Cleaning Laundry Does Not "Transform or Reduce" the Laundry "to a Different State or Thing."

The starting point for the interpretation of any statutory provision is always the definition provided in the statute itself. *See Akins*, 303 S.W.3d at 565 (citing *State ex rel. White Family Partnership v. Roldan,* 271 S.W.3d 569, 572 (Mo. banc 2008) (noting that "[a]bsent a statutory definition, the primary rule of statutory interpretation is to give effect to legislative intent as

reflected in the plain language of the statute.")). And as with any tax exemption, it is to be strictly construed against the taxpayer. *See Branson Properties*, 110 S.W.3d at 825.

Here, the General Assembly provided a definition of "processing" as: "any mode of treatment, act, or series of acts performed upon materials to transform or reduce them to a different state or thing, including treatment necessary to maintain or preserve such processing by the producer at the production facility." § 144.054.1(1). This definition suggests the taking of a product from its original form and changing it into something completely different – something "new." This construction of "processing" has been well recognized by this Court and is inconsistent with the mere cleaning of an item.

In case after case, this Court has concluded that "processing" and "manufacturing" in Missouri's sales and use tax laws contemplate the creation of something new. *See, e.g., Mid-America Dairymen, Inc. v. Dir. of Revenue*, 924 S.W.2d 280, 284 (Mo. banc 1996); *HGP Indus., Inc. v. Dir. of Revenue*, 924 S.W.2d 284, 285 (Mo. banc 1996) (holding that taxpayer must show that the "processing does in fact work a transformation on the subject matter and result in a new product with a new identity, use and market value"). And new in a way that " 'makes more than a superficial change in the original substance; it causes a substantial transformation in quality and

adaptability and creates an end product quite different from the original.' " *Unitog Rental Services, Inc. v. Dir. of Revenue*, 779 S.W.2d 568, 570 (Mo. banc 1989) (quoting *Jackson Excavating Co. v. Admin. Hearing Comm'n,* 646 S.W.2d 48, 51 (Mo. banc 1983)).

AAA Laundry contended below that its cleaning and laundering process is similar to the water purification process involved in *Jackson Excavating Co.*, 646 S.W.2d 48 (Mo. banc 1983). This Court, however, specifically distinguished laundering and water purification, finding that cleaning laundry does not cause a substantial transformation. *Unitog*, 779 S.W.2d at 570 (quoting *Jackson Excavating Co.*, 646 S.W.2d at 51) (rejecting the argument that laundry is worthless after a single use without cleaning). This Court went on to cite its prior holding in *State ex rel. AMF, Inc. v. Spradling*, 518 S.W.2d 58 (Mo. 1974), in which a taxpayer sought to exempt machinery used in the retreading of tires, holding that the machinery was not exempt "because retreading amounted to nothing more than repair and restoration of the original article." *Unitog*, 779 S.W.2d at 570. AAA Laundry's repeated cleaning of its rental clothing and linens does not even repair and restore an item, but merely cleans items.

Similarly, in *L & R Egg Co., Inc. v. Dir. of Revenue*, 796 S.W.2d 624 (Mo. banc 1990), this Court analyzed the large-scale cleaning and preparation of eggs. In order to satisfy the statute, the process must "make more than a

superficial change in the original substance." *Id.* at 626. Cleaning eggs was just such a superficial change because it did not transform an end product into anything substantially different from the original. *See id.* at 676 ("Washing is not manufacturing.").

To satisfy the statutory exemption, the taxpayer must establish "that it engages in processing (or manufacturing, or any of the other statutorily recognized activities), which is the transformation of a substance into a 'product'—an item with a new identity, use, and market value produced by the taxpayer's efforts." *Mid-America Dairymen*, 924 S.W.2d at 284. A strict construction of the statutory terms in this case suggests that the processing of a product must result in something new, and not just in a superficial way but a substantial transformation.

In this case, the Commission's conclusion is dispositive – according to the Commission, "we have the same product before and after cleaning and sanitizing." (LF 69). Therefore, the tax exemption does not apply.

B. The Surrounding Statutory Provisions and Their Historical Development Demonstrate That "Processing" is More Than Just Cleaning.

While this Court has not specifically considered whether cleaning laundry is "processing" under § 144.054, the surrounding statutory provisions and their historical development support the conclusion that it is not. For

example, this Court considered a nearly identical case under § 144.030.2(4), *Unitog Rental Servs., Inc. v. Dir. of Revenue*, 779 S.W.2d 568 (Mo. banc 1989).

In *Unitog*, the taxpayer's business rented industrial-grade uniform clothing and ancillary items to businesses. The taxpayer also picked up soiled garments and provided fresh replacements. The taxpayer then "cleaned, decontaminated, treated, dried, pressed and repaired" the soiled garments for future use. *Id.* at 568-569. Unless cleaned, the garments were "utterly useless and of no value." *Id.* at 569. Yet, this Court rejected the notion that mere "repair and restoration" or cleaning of clothes was sufficient:

> [t]he common thread running throughout all of the cases in which we have defined "manufacturing" is the production of an article with a new use different from its original use. In the instant case…there has not been the manufacture of a new article but the repair and restoration of an old one.

Id. at 570. The facts presented by AAA Laundry are virtually indistinguishable from the facts of *Unitog*. Like in *Unitog*, the laundry is not transformed to a "different state or thing" but returned to that of the original. "[M]anufacturing, processing, compounding, mining, or producing of any product" typically contemplates some new product, not a reused product. *Id.*

Indeed, the notion that simply recycling or reusing an item is "processing" is dispelled in the very same subsection of § 144.054. The very next sentence to the one at issue deals with the processing of recovered materials. "Recovered materials" is then defined to include reuse or recycling materials diverted or removed from the waste stream. Those same terms of reuse or recycling are not used, however, in the definition of "processing" applicable in this case and the laundered items were never considered waste.

AAA Laundry conceded below that its activities are not manufacturing, but argues instead that its activities qualify as "processing" under § 144.054, which was enacted after *Unitog*. But the use of the term "processing" in § 144.054 and the surrounding provisions does not support this argument. The General Assembly's use of the words "manufacturing, processing, compounding, mining, or producing" with the statutory definition of "processing" must be understood as an effort to precisely circumscribe the activities exempted by § 144.054.2, given that the words and definition enacted in § 144.054.2 already had substantial legislative and judicial meaning attached to them from their use in the other manufacturing exemptions of Missouri's sales and use tax law. *See Cook Tractor*, 187 S.W.3d at 873 ("When the legislature enacts a statute referring to terms that have had other judicial or legislative meaning attached to them, the legislature is

presumed to have acted with knowledge of that judicial or legislative action.").

Examining the language of § 144.054.2 and that of § 144.030.2 establishes that the General Assembly did not intend for § 144.054.2 to apply to non-manufacturing activities like cleaning laundry. It expanded the items exempted, not the types of activities. Highlighted below is language in § 144.054 taken directly from the language in § 144.030:

> 1. As used in this section, the following terms mean:
>
> (1) ***"Processing"***, ***any mode of treatment, act, or series of acts performed upon materials to transform*** or ***reduce them to a different state or thing, including treatment necessary to maintain or preserve such processing by the producer at the production facility***[.]
>
> * * *
>
> 2. In addition to all other exemptions granted under this chapter, there is hereby specifically exempted . . . ***electrical energy*** and gas, whether natural, artificial, or propane, water, coal, and energy sources, chemicals, machinery, equipment, and

materials ***used*** or consumed ***in*** the ***manufacturing, processing, compounding, mining, or producing of*** any ***product***[.]

§ 144.054 (emphasis added indicating language drawn from § 144.030.2(13)).

The same types of activities identified in § 144.054.2 are also exempt under other manufacturing exemptions in § 144.030.2:

(2) Materials, manufactured goods, machinery and parts which when used in ***manufacturing***, ***processing***, ***compounding***, ***mining***, ***producing*** or fabricating become a component part or ingredient of the new personal property resulting from such ***manufacturing***, ***processing***, ***compounding***, ***mining***, ***producing*** or fabricating and which new personal property is intended to be sold ultimately for final use or consumption . . .

* * *

(5) Replacement machinery, equipment, and parts and the materials and supplies solely required for the installation or construction of such replacement machinery, equipment, and parts, used directly in ***manufacturing***, ***mining***, fabricating or ***producing***

a product which is intended to be sold ultimately for final use or consumption; . . .

(6) Machinery and equipment, and parts and the materials and supplies solely required for the installation or construction of such machinery and equipment, purchased and used to establish new or to expand existing ***manufacturing***, ***mining*** or fabricating plants in the state if such machinery and equipment is used directly in ***manufacturing***, ***mining*** or fabricating ***a product*** which is intended to be sold ultimately for final use or consumption;

(7) Tangible personal property which is used exclusively in the ***manufacturing***, ***processing***, modification or assembling of products sold to the United States government or to any agency of the United States government;

* * *

(14) Anodes which are used or consumed in ***manufacturing***, ***processing***, ***compounding***, ***mining***, ***producing*** or fabricating and which have a useful life of less than one year; [and]

* * *

> (32) Electrical energy or gas, whether natural, artificial or propane, water, or other utilities which are ultimately consumed in connection with the ***manufacturing*** of cellular glass products or in any material recovery processing plant as defined in subdivision (5) of this subsection[.]

§ 144.030.2 (emphasis added indicating relevant language also appearing in § 144.054.2).

A comparison with the language used in the manufacturing exemptions in § 144.030.2 demonstrates that there is nothing in the language of § 144.054.2 to support the assertion that the General Assembly intended to expand the range of activities, rather than the range of items, that are exempt under § 144.054.2. The General Assembly used the same words to describe the activities exempted by § 144.054.2 (manufacturing, processing, compounding, mining, or producing) that it had previously used to describe activities exempted by § 144.030.2.

The similarity of the language in § 144.054.2 with that of § 144.030.2(13) and the other manufacturing exemptions of § 144.030.2 led this Court just last year to reject an argument similar in reasoning to that advanced in this case. In *Aquila*, it was argued that the term "processing" for

purposes of § 144.054.2 expanded the range of exempt activities to include food preparation at retail convenience stores. *Aquila*, 362 S.W.3d at 3. In rejecting this argument, this Court determined that the term "processing" and its statutory definition in § 144.054.2 were ambiguous and required statutory construction in order to determine the scope of activities to which they apply. *Id.*

In determining the General Assembly's intent in § 144.054.2, this Court was guided by its prior decision in *Brinker Missouri, Inc. v. Dir. of Revenue*, 319 S.W.3d 433 (Mo. banc 2010), which found that food preparation in a retail restaurant was not manufacturing for purposes of § 144.030.2(4) and (5). *Id.* at 4. In reaching this decision, this Court pointed out that "no portion of a statute is read in isolation, but rather is read in context to the entire statute, harmonizing all provisions." *Id.* This Court also applied the statutory maxim of *noscitur a sociis* – a word is known by the company it keeps – to point out that all of the words of § 144.054.2 have industrial connotations. *Id.* at 5.

Importantly, this Court relied upon its prior case law interpreting § 144.030.2(13), decisions that found little or no practical difference in meaning between the terms "manufacturing" and "processing" because "[w]hen the legislature enacts a statute referring to terms that have had other judicial or legislative meaning attached to them, the legislature is

presumed to have acted with knowledge of that judicial or legislative action." *Id.* at 5, fn. 10 (*citing Cook Tractor*, 187 S.W.3d at 873, in relation to its reliance upon *Mid-America Dairymen*, 924 S.W.2d 280; *Hudson Foods, Inc. v. Dir. of Revenue*, 924 S.W.2d 277 (Mo. banc 1996)). Finally, it concluded that if the General Assembly had intended to exempt new activities in § 144.054.2 other than those previously exempted by § 144.030.2(13), it should have used more appropriate words to express its intent. *Id.*

The historical development and use of "processing" not only supports this Court's reasoning in *Aquila*, but also entirely undermines the arguments of AAA Laundry in this case. The term "processing," after all, appeared in the current manufacturing exemptions when they first became part of Missouri's sales and use tax law. In 1961, what would become subdivisions (2) and (7) of § 144.030.2 were added by S.C.S. S.B. 360. Those provisions specifically included several references to "processing." In 1967, what would become subdivisions (13) and (14) of § 144.030.2 were added by S.B. 19. Again, those provisions specifically included several references to "processing." Thus, the term "processing," is not original to § 144.054.2 or to § 144.030.2(13), from which the language for § 144.054.2 was taken.

Prior to the enactment of § 144.030.2(11) in 1967, this Court had not found it necessary to explain whether each of the various overlapping terms used to describe manufacturing had a unique, individual meaning. With

§ 144.030.2(11)'s use of the term "processing" in relation to both actual primary processing and secondary processing, however, this Court found it necessary to determine whether processing meant something different from manufacturing. This was noted by this Court *State ex rel. Union Elec. Co. v. Goldgerg*, 578 S.W.2d at 924:

> [T]he [General Assembly]'s inartful choice of overlapping terms, i.e., the use of the words "manufacturing, processing, compounding, and fabricating," the meaning of the latter three ordinarily being included within the meaning of the more general and inclusive term "manufacturing," and the use of the word "processing" with reference to both primary and secondary stages of production.

Goldberg, 578 S.W.2d at 924.

To address this issue, this Court adopted a definition of "processing" from an 1876 patent law case that used a definition of "processing" similar to that of the dictionary:

> Processing has been defined elsewhere as "a mode of treatment of certain materials to produce a given result. It is an act, or a series of acts, performed upon the subject matter to be transformed and reduced

> to a different state or thing." *Miller v. Electro Bleaching Gas Co.*, 276 F. 379, 381 (8th Cir. 1921), Quoting from *Cochrane v. Deener*, 94 U.S. 780, 788, 24 L.Ed. 139 (1876). This is similar to the definition in Webster's Third New International Dictionary, 1808 (1976), which gives illustrations as follows: processing cattle by slaughtering them; processing milk by pasteurizing it; processing grain by milling; processing cotton by spinning.

Id. Even in adopting this definition, this Court noted that it did not view the terms "manufacturing" and "processing" as mutually exclusive and found its definition of "manufacturing" from *West Lake Quarry & Material Co. v. Schaffner*, 451 S.W.2d 140 (Mo. 1970), broad enough to encompass most terms of § 144.030.2(11). *Id.* at fn. 3.

The *Goldberg* definition is the same definition of "processing" later found to be equivalent to the definition of manufacturing in *Hudson Foods*, 924 S.W.2d at 278 n. 1 ("there is little to no difference between the terms 'processing' and 'manufacturing,' as a practical matter."); and *Mid-America Dairymen*, 924 S.W.2d at 283 ("the meaning of the term 'processing' is ordinarily included within the meaning of the more general and inclusive term 'manufacturing.'") (internal quotation marks and citations omitted by

Court). A comparison of the *Goldberg* definition of "processing" with the statutory definition of "processing" in § 144.054.2, establishes why this Court in *Aquila* found its prior decisions persuasive in interpreting § 144.054.2:

Goldberg definition of "processing":

> Processing has been defined elsewhere as a mode of treatment of certain materials to produce a given result. It is an act, or a series of acts, performed upon the subject matter to be transformed and reduced to a different state or thing.

Section 144.054.2 definition of "processing":

> "Processing", any mode of treatment, act, or series of acts performed upon materials to transform or reduce them to a different state or thing, including treatment necessary to maintain or preserve such processing by the producer at the production facility[.]

The definition of "processing" in § 144.054.2 merely codifies the *Goldberg* definition of "processing" that this Court found equivalent to, or included within, its definition of manufacturing for purposes of the exemptions provided by Missouri's sales and use tax law. The only significant part of the statutory definition of "processing" in § 144.054.2, absent from the

Goldberg definition, is the phrase "or preserve such processing by the producer at the production facility." This phrase was first added to § 144.030.2(13) in 1996 to specifically overrule the holding in *Wetterau, Inc. v. Dir. of Revenue*, 843 S.W.2d 365, 368 (Mo. banc 1992) (holding that maintaining frozen meat in a frozen state is not "processing" for purposes of § 144.030.2(13) because it does not transform or reduce the meat to a different state).

This Court's reliance in *Aquila* on its prior decisions is reasonable and appropriate given that the General Assembly is presumed to know the legal meaning previously attached by the courts to the words taken from § 144.030.2(13) and used in § 144.054.2. *Cook Tractor*, 187 S.W.3d at 873. This is particularly true in this instance because the enacted language was taken from this Court's decision. Therefore, rather than signifying a desire that the exemption in § 144.054.2 be applied to a whole new range of activities, the General Assembly's statutory definition of "processing" must be interpreted as demonstrating the General Assembly's intent to have § 144.054.2 apply to the same types of activities that are exempted by the other manufacturing exemptions of § 144.030.2.

C. Turning the Cleaning of Laundry Into the "Processing" of a "Product" Leads to Absurd Results.

Furthermore, a conclusion that turns the cleaning of laundry into the "processing" of a "product" would lead to unreasonable and absurd results. Such a construction should be avoided. *Reichert,* 217 S.W.3d at 305. Laundering, after all, is an activity done by millions of people on a daily basis. It is done by large businesses, very small businesses, and individuals.

A conclusion that cleaning items is an exempt activity would lead to a huge influx of litigation casting mundane activities involving mere cleaning, such as car washing or housekeeping services, as "processing" under the expanded meaning of § 144.054.1 urged by AAA Laundry. The resulting exemption would extend to "electrical energy and gas . . . water, coal, and energy sources, chemicals, machinery, equipment, and materials." § 144.054.2.

This Court has consistently followed a reasonable interpretation and rejected the notion that cleaning an item is "manufacturing" or "processing." *See, e.g., L & R Egg Co., Inc. v. Dir. of Revenue*, 796 S.W.2d at 626 ("Washing is not manufacturing."); *Unitog Rental Services, Inc. v. Dir. of Revenue*, 779 S.W.2d 568 (Mo. banc 1989) ("the processing found to constitute manufacturing produced a new and different product, dissimilar to any previous condition of the processed article.). Consistent with a strict

construction of the definition of "processing," the Commission should be reversed.

CONCLUSION

For the foregoing reasons, the decision of the Administrative Hearing Commission should be reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

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The undersigned further certifies that the foregoing brief complies with the limitations contained in Rule No. 84.06(b) and that the brief contains 7,753 words.

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