

**IN THE SUPREME COURT  
STATE OF MISSOURI**

**WESTERN BLUE PRINT CO.,**            )  
  )  
    **Respondent,**                        )  
  )  
    **v.**                                        ) **SC90172**  
  )  
**DIRECTOR OF REVENUE,**            )  
  )  
    **Appellant.**                         )

---

**Appeal from the Administrative Hearing Commission of Missouri  
Honorable John J. Kopp, Commissioner**

---

**REPLY BRIEF OF APPELLANT**

---

**CHRIS KOSTER  
Attorney General**

**JAMES R. LAYTON  
Missouri Bar No. 45631  
Solicitor General  
P.O. Box 899  
Jefferson City, MO 65102  
(573) 751-1800  
(573) 751-0774 (facsimile)  
James.Layton@ago.mo.gov**

**ATTORNEYS FOR APPELLANT**

## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	1
ARGUMENT .....	2
CONCLUSION.....	5
CERTIFICATE OF SERVICE.....	6
CERTIFICATION OF COMPLIANCE .....	6

## TABLE OF AUTHORITIES

### CASES

<i>Emerson Electric Co. v. Director of Revenue,</i> 204 S.W.3d 642 (Mo. banc 2006) .....	4
<i>Hyde Park Housing Partnership v. Director of Revenue,</i> 850 S.W.2d 82 (Mo. banc 1993) .....	4
<i>International Business Machines v. Director of Revenue,</i> 958 S.W.2d 554 (Mo. banc 1998) .....	3
<i>State ex rel. Unnerstall v. Berkemeyer, --- S.W.3d ----,</i> 2009 WL 3833437 (Mo. banc 2009) .....	4

### STATUTORY AUTHORITY

§ 144.010.1(10) .....	3
§ 144.030.2(5) .....	3

## ARGUMENT

1. In responding to Point I, Western presents facts and argument that make an important distinction – and then ignores it.

In its argument, Western describes what it does as merely making “digital electronic versions of a customer’s paper documents so the customer can access them and use them electronically.” Respondent’s Brief (“Resp. Br.”) at 8; *see also id.* at 6 (“convert customers’ paper images into electronic data”). That task differs little from making a set of paper copies of documents that a customer can file as backups or sort for some other purpose. In fact, the same machine may now do both tasks: scan, then print, save, or both. That belies Western’s unexplained and unsupported claim that “the process is far more elaborate” (Resp. Br. at 8) than copying.

In its Statement of Facts, Western identifies a different task – one that might be “more elaborate” than copying: “several of Western’s contracts require it to provide additional services” such as “indexing data,” preparing databases, converting publications into particular, specialized formats. Resp. Br. at 2. Western may have a different “true object” argument for what it produces pursuant to those contracts. But notably, it chose not to make a dual argument, seeking instead to have this Court exempt all those who make digital copies of anything. And the services provided in the precedents Western cites are more like the services that Western provides under that subset of its contracts than

they are like the mere copying to digital files that apparently comprises most of the sales for which Western seeks the exemption.

2. In responding to Point II, Western leaps immediately to the conclusion that the 1976 General Assembly made a typographical error<sup>1</sup> – and, presumably, subsequent General Assemblies have thought that obvious enough to have left it in place. Western doesn't address the necessary results of its analysis in at least two notable respects.

First, Western's interpretation leaves statutory terms without any meaning. Western does not and cannot argue that either "computer printouts" or "computer-assisted photo compositions" are not "computer output." So Western's argument necessarily leaves both terms without meaning and significance in the statute. That is contrary to the rule often cited by this Court: "It is presumed that the legislature intended that every word, clause, sentence, and provision of a statute have effect. Conversely, it will be presumed that the

---

<sup>1</sup> This Court has cited the language of § 144.010.1(10) without hinting that there might be a typographical error: in *International Business Machines v. Director of Revenue*, 958 S.W.2d 554, 558 (Mo. banc 1998), the Court held that the manufacturing exemption (§ 144.030.2(5)) was not available to machines "used to manufacture computer printouts, and *computer output on microfiche or microfilm.*" 958 S.W.2d at 558 (emphasis added).

legislature did not insert verbiage or superfluous language in a statute.” *Hyde Park Housing Partnership v. Director of Revenue*, 850 S.W.2d 82, 84 (Mo. banc 1993), quoted with approval, *State ex rel. Unnerstall v. Berkemeyer*, --- S.W.3d ---, 2009 WL 3833437 at \*4, slip op. at 9 (Mo. banc 2009).

Second, Western’s reading broadens the exemption beyond recognition. Much of what is now sold is, to some degree, “computer output.” That could include not just the sample parts produced by the stereolithography machine discussed in *Emerson Electric Co. v. Director of Revenue*, 204 S.W.3d 642, 644 (Mo. banc 2006), but also production parts produced by computer-controlled machinery. It could include not just three-dimensional blueprints, also discussed in *Emerson*, but also prints made by digital “copiers” or computer-controlled presses. Because of the use of computers in everything from mobile telephone handsets to automobiles, Western’s reading of the statute could be used to attack the application of sales tax to many or perhaps even most (at least by value) goods sold in Missouri.

3. Finally, also in response to Point II Western argues that there is no rational connection between “computer output” and microfilm and microfiche.

We do not mean to suggest that in 1976, when the exemption was passed, computers produced microfilm or microfiche (though they could do so today). But that is not the question. The exemption is for output that is sold on microfilm or microfiche – and computer output, from the beginning of the digital

age, could have been sold on microfilm or microfiche, as well as on paper. True, to have done that would have required an additional step, photographing the printout. But by including the “computer output on microfilm or microfiche” language, the General Assembly was ensuring that the exemption would cover output even if the vendor did take that intervening step – thus allowing a purchaser to get the benefit of the exemption even if it chose to take the output on microfilm or microfiche, not in the more cumbersome printed form. To permit such a choice – but not exempt literally everything that might result from the use of a “computer” (a term the statute does not define) was rational in 1976.

### **CONCLUSION**

For the reasons stated above and in the Appellant’s Brief, the decision of the Administrative Hearing Commission should be overturned and the Director’s assessment upheld.

Respectfully submitted,

CHRIS KOSTER  
Attorney General

JAMES R. LAYTON  
Solicitor General  
Missouri Bar No. 45631  
P.O. Box 899  
Jefferson City, MO 65102  
(573) 751-3321  
(573) 751-0774 (facsimile)

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that two copies of the foregoing brief were mailed, postage prepaid, via United States mail, December 24, 2009, to:

William Edward Quirk  
Suite 1600  
120 West 12<sup>th</sup> Street  
Kansas City, MO 64105

Administrative Hearing Commission  
Truman State Office Building  
P.O. Box 1557  
Jefferson City, MO 65102

---

James R. Layton  
Solicitor General

**CERTIFICATION OF COMPLIANCE**

The undersigned hereby certifies that the foregoing brief complies with the limitations contained in Rule No. 84.06(b), and that the brief contains 873 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.

---

James R. Layton  
Solicitor General