IN THE
SUPREME COURT
STATE OF MISSOURI

No. 85181

T-3, INC.,
Appellant,

v.

DIRECTOR OF REVENUE, STATE OF MISSOURI,
Respondent.

ON PETITION FOR REVIEW
FROM THE MISSOURI ADMINISTRATIVE HEARING COMMISSION
THE HONORABLE KAREN A. WINN, COMMISSIONER

BRIEF FOR RESPONDENT

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STATEMENT OF FACTS

A. T-3, Inc. and its operations

The facts in this case were submitted by a joint stipulation (L.F. 11).[1] T-3, Inc. ("T-3") is a Missouri corporation with a mailing address in St. Louis, Missouri (L.F. 10). In 1996 and 1997, it engaged in business as a jewelry distributor (L.F. 12). Ninety percent of the company is owned by TSI Holding Company (TSI), which is the appellant in *TSI Holding Co. v. Director of Revenue*, No. 85179, one of the three related appeals to the Missouri Supreme Court (L.F. 12). In 1998, T-3 changed its focus and now operates as an investment holding company (L.F. 12). T-3 holds investments consisting of municipal bonds, mutual funds, investments in affiliated corporations, and cash (L.F. 110).

T-3 invests in Missouri entities (L.F. 12), but also invests in the municipal bonds of non-Missouri municipalities and in mutual funds that invest in securities doing business solely in foreign countries and have no assets in Missouri and do no business in Missouri (L.F. 12).

B. T-3's 1996-2000 Missouri franchise tax return

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[1] While the facts generally are not in dispute, the page numbers used by T-3 to reference the record do not correspond with the page numbers of the Legal File on file with the Missouri Supreme Court.

T-3 has never filed a franchise tax return in any state other than Missouri (L.F. 12). On its 1996-1997 Missouri franchise tax returns, T-3 computed its franchise tax apportionment percentage by classifying almost all of its assets as accounts receivable, inventory, or land and fixed assets (L.F. 12). T-3 computed its Missouri apportionment percentages as 94.9523 percent in 1996 and 94.729 percent in 1997 (L.F. 12). In 1998, T-3 used an alternate method of apportionment and determined its Missouri franchise tax base as follows: in the numerator, T-3 included all assets that were located in Missouri, had assets in Missouri, or did business in Missouri and included in the denominator all assets (L.F. 12). T-3 added to the numerator its cash and inter-company dividend receivables (L.F. 12-13). With respect to investments in municipal bonds for non-Missouri municipalities, T-3 included such investments in the denominator, but not in the numerator (L.F. 13). T-3 did not include its investments in affiliated companies in calculating its apportionment percentages; those investments were neither in the numerator nor the denominator (L.F. 13). On its 1998 return, T-3 reported an apportionment percentage of 31.9247% (L.F. 13). T-3 filed its Missouri franchise tax returns for 1999 - 2000 using the same allocation method as it had used in 1998 (L.F. 13).

C. Audit of 1998 return

In April 1999, an auditor working for the Director of the Department of Revenue and as an agent for the Secretary of State commenced an examination of T-3's Missouri franchise tax returns, including the return for 1998 (L.F. 13). The auditor did not accept T-3's alternate method of apportionment of assets in the 1998 return (L.F. 13).

On June 18, 1999, T-3's accountant sent a letter to the auditor explaining T-3's position (L.F. 13; Stip. Ex. G, L.F. 69). On September 13, 1999, the Secretary of State mailed an assessment notice to T-3 reporting a total amount due of Missouri franchise tax, interest and penalties for 1998 of $8,136.10 (L.F. 13). T-3 protested the assessment by letter dated October 6, 1999 (L.F. 14).

On or about May 11, 2000, the Director sent T-3 a rejection notice, stating that T-3's 2000 Missouri franchise return (which was filed using the same allocation method as the 1998 return) was being returned (L.F. 14). The explanation on the notice stated:

> Alternative method of apportionment as accepted by the office of the secretary of state years 1993, 1994 & 1995. Years 1996 through 1998 are currently being reviewed by the General Counsel's office.

(L.F.14; Stip. Ex. J, L.F. 72). T-3 received a second rejection notice dated June 5, 2000, which instructed, "Please resubmit original documents with copy of approval of alternative method" (L.F. 14; Stip. Ex. J, L.F. 72).

On October 12, 2001, the Director of Revenue issued her Final Decision upholding the assessment for 1998, but abating penalties (L.F. 14; Stip. Ex. L., L.F. 76). T-3 petitioned to appeal the Final Decision to the Administrative Hearing Commission (AHC) (L.F. 14).

D. Administration of the Missouri franchise tax

Prior to January 1, 2000, the Missouri franchise tax was administered by the Secretary of State (L.F. 15). Effective January 1, 2000, responsibility moved to the Director of Revenue (L.F. 15).

On August 28, 1995, the Secretary of State promulgated regulation 15 CSR 30-150.170 with an effective date of March 30, 1996 (L.F. 15; Stip. Ex. Q - L.F. 89). On October 21, 1998, the Secretary amended Regulation 15 CSR 30-150.170 effective April 30, 1999 (L.F. 15). The amended version became Regulation 12 CSR 10-9.200 on January 1, 2000 (L.F. 15; Stip. Ex. R - L.F. 92).

Neither the Director nor the Secretary of State has published any documents, other than Regulation 12 CSR 10-9.200, setting forth a requirement that a taxpayer receive written approval of the Director or Revenue or the Secretary of State prior to using an alternate method for apportioning assets for Missouri franchise tax purposes (L.F. 15). Neither the Director of Revenue nor the Secretary of State has published any documents referencing any standards by which a taxpayer may receive written approval from the Director or the Secretary of State to utilize an alternate method of apportionment of assets for Missouri franchise tax purpose (L.F. 15-16). The Director of Revenue and the Secretary of State, respectively, have published instructions to assist taxpayers in completing Missouri franchise tax returns (L.F. 16; Stip. Ex. T - L.F. 93).

When the Secretary of State administered the Missouri franchise tax, the Secretary of State generally accepted Missouri franchise tax returns using alternate methods of apportionment evidenced by a written approval letter, unless and until such alternate

methods were reviewed by a staff attorney and revoked by the Secretary of State at the attorney's suggestion (L.F. 16).

During the period in which the Director of Revenue administered the Missouri franchise tax, the Director disregarded any agreements in prior tax years in determining whether an alternate method of apportionment is acceptable for subsequent tax years (L.F. 16).

E. The Administrative Hearing Commission's decision

On March 3, 2003, the AHC entered its decision upholding the assessments of the Director of Revenue (L.F. 107; Respondent's Appendix A-1). The AHC ruled that T-3 was liable for Missouri franchise tax for years 1996 and 1998 as the Director of Revenue had assessed, that it was not entitled to use an alternate method of apportionment, and that it had not obtained approval for an alternate method of apportionment (L.F. 107 - 122). The AHC reasoned:

" The intent of § 147.010 is only to apply situations in which a corporation does business in more than any other state.

" T-3 does not conduct business in any other state.

" The record fails to support T-3's contention that T-3 ever sought prior approval from the Secretary of State to use an alternate method of apportionment

(L.F. 107-122; AHC Decision 11,13). T-3 thereafter filed its appeal to this Court as to the 1998 assessment.

STANDARD OF REVIEW

In reviewing the decision of the Administrative Hearing Commission (AHC) which upheld the assessment, this Court's review of the revenue laws is de novo. *Southwestern Bell Yellow Pages v. Director of Revenue*, 94 S.W.3d 388, 390 (Mo. banc 2002). The Court will uphold the AHC's decision if it is authorized by law and is supported by competent and substantial evidence upon the whole record. *Id.* (citing § 621.193, RSMo; *Southwestern Bell Telephone Co. v. Director of Revenue*, 78 S.W.3d 763, 765 (Mo. banc 2002) (citations omitted)).

POINT I

FRANCHISE TAX MEASURED BY T-3'S INVESTMENTS

A. Section 147.010, RSMo, precludes T-3 from apportioning in this case.

The Missouri General Assembly enacted a franchise tax that not only imposes an excise on the privilege of doing business in Missouri, *see State ex rel. Marquette Hotel Investment Co. v. State Tax Commission*, 282 Mo. 213, 221 S.W. 721, 722 (Mo. banc 1920), but provides a corporate entity with the opportunity to apportion its franchise tax base if "it *employs* a part of its outstanding shares in business in another state or country," § 147.010.1[2] (emphasis added). In such case, a foreign or domestic corporation "shall be deemed to have employed in this state that proportion of its entire outstanding shares and surplus that its property and assets employed in this state bears to all its property and assets wherever located." § 147.010.1. While the phrase, "employs a part of its outstanding shares in business in another state or county," is not clearly defined in statute or case law, certainly the phrase means something more than merely owning securities in an out-of-state entity. If it means something more than that, then T-3 is not entitled to apportion its franchise tax base under § 147.010.1.

A cardinal rule of statutory construction is to ascertain the intent of the lawmakers and to give effect to that intent. *Cub Cadet Corp. v. Mopec, Inc.*, 78 S.W.3d 205

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[2] Statutory references are to the Revised Statutes of Missouri 1994, although the 2000 version of § 147.010 is also provided in Respondent's Appendix.

(Mo.App., W.D. 2002). Legislative intent and the meaning of words used in the statute may be derived from the general purposes of the legislative enactment. *Id.* As stipulated by the parties, T-3 is in the business of holding investments, including mutual funds and municipal bonds. This business operates solely in Missouri and has no tangible assets outside our state. T-3 does not operate the type of business or municipality in which it invests. In short, T-3 "employs" all its outstanding shares and surplus in Missouri because its business operations are exclusively in Missouri. The business of T-3 is managed, directed, and controlled from within the State of Missouri. Its intangible assets, such as minority shares of stocks and municipal bonds, wherever located, bear a direct relationship to its business operations here in Missouri.

If a franchise tax is truly a tax for the privilege of doing business in Missouri, *State ex rel. Marquette Hotel Investment Co. v. State Tax Commission*, then the intent of the legislature is effectuated if the measurement of the tax includes all property that has a relationship to the privilege granted. T-3's power to act as an investment-holding company is authorized by the State of Missouri. It would make no sense to grant a domestic investment-holding corporation the privilege of operating its business in Missouri, granting the corporation the protections of this state, and then allow the same company to exploit that privilege and avoid its franchise tax simply by limiting its investments to out-of-state stocks and bonds. Yet that is what T-3 insists Missouri's law allows.

T-3's interpretation of the § 147.010.1 would render parts of the statute meaningless. For instance, the statute directs a corporation to calculate its apportionment percentage for the purposes of Chapter 147, RSMo, as follows:

> [S]uch corporation shall be deemed to have employed in this state that proportion of its entire outstanding shares and surplus that its property and assets *employed* in this state bears to all of its property and assets wherever located.

§ 147.010.1 (emphasis added). To interpret the statute in the fashion proposed by T-3, the word "employed," as italicized , simply could be eliminated. Another rule of statutory construction, however, is that a "statute must be harmonized and every word, clause, sentence, and section thereof must be given some meaning." *Sermchief v. Gonzales*, 660 S.W.2d 683, 688-89 (Mo. banc 1983).

Reading each of the words in § 147.010.1 as having some meaning, the apportionment of T-3's out-of-state investments from the company's Missouri franchise tax base is unauthorized because all of T-3's assets are investments and those investments are "employed" here. The imposition of the franchise tax on all of T-3's holdings is appropriate because all of its securities holdings have a fair relationship to the value of the franchise enjoyed by T-3 in this state.

B. *Union Electric Co. v. Morris,* 222 S.W.2d 767 (Mo. 1949), does not authorize the

taxpayer to apportion out its investments in foreign entities.

Contrary to T-3's contention, this case is not factually on point with *Union Electric Co. v. Morris*, 222 S.W.2d 767 (Mo. 1949). Indeed, the factual distinctions between this case and *Union Electric* demonstrate that the decision of the AHC was correct and should be affirmed.

Union Electric, a Missouri utility company, held 100 percent of the stock in two Illinois utility corporations. The wholly owned foreign subsidiaries did no business in Missouri and owned no assets in this state. This Court concluded that Union Electric's stock in the subsidiaries could be excluded from its Missouri franchise tax base because the subsidiaries were not used in business in Missouri and were not a part of the parent corporation's "property and assets in this state." 222 S.W.2d at 772. The holding in *Union Electric* advances the purpose of a franchise tax, which is designed to tax only the right of a corporation to do business in Missouri, as opposed to some other state. *See State ex rel. Marquette Hotel Investment Co. v. State Tax Commission*, 221 S.W. at 722.

Union Electric, however, does not stand for the proposition that all investments in all foreign corporations are to be excluded from a domestic corporation's Missouri franchise tax base. This Court considered, but specifically rejected such a bright-line rule, noting that the words used in the franchise tax statute "cannot be determined independent of the particular context in which they are used and the subject matter under discussion." 222 S.W.2d at 770. While this Court determined within the context of *Union Electric*, that the Missouri utility's shares of stock in its two wholly owned foreign subsidiaries were not

employed in business in this state, the Court recognized that this may not be the appropriate holding in every case of foreign investment. As the Court specifically commented, "There is no suggestion that the shares of stock in question were used in respondent's business, or that it was in the business of buying or selling stocks." 222 S.W.2d at 570. The clear inference is that if Union Electric was an investment-holding company, such as T-3, it would not have been allowed to apportion out its investments in foreign corporations.

C. No double taxation

The Director also vigorously disputes T-3's assertion that the Director's construction of § 147.010 will result in multiple taxation of the same assets (Appellant's brief 19-20). First, there is no evidence in the stipulated record that the mutual funds or municipalities in which T-3 invests are subject to franchise taxation in the other states. It is unlikely that any jurisdiction imposes franchise tax on a municipality, and at least a part of T-3's investments are in municipal bonds (L.F. 12). In Missouri, there are several classes of corporation that are exempt from franchise tax, including not-for-profit corporations. *See* § 147.010.2. The parties' stipulated facts clearly indicate, however, that T-3 pays no franchise tax in any other state (L.F. 12). So there certainly is no double taxation as to T-3.

Second, "[t]he [franchise] tax is not a property tax, but an excise levied upon the privilege of transacting business in this state as a corporation." *Missouri Athletic Ass'n v. Delk, Inv. Corp.*, 20 S.W.2d 51, 55 (Mo. 1929). The tax is on the privilege for the amount of business that a corporation conducts within the state. *Id.* One measure of determining the amount of franchise tax, thus attempting by formula to arrive at a reasonable

approximation of the value of the business conducted in Missouri, is to consider a company's assets and property employed within the state. But not every jurisdiction imposes its franchise tax in such manner. Some states determine the amount of franchise tax to be paid by a corporate entity through its earnings. For example, in *Education Films Corp. v. Ward*, 282 U.S. 379, 51 S.Ct. 170, 75 L.Ed 400 (1931), the United States Supreme Court considered but rejected a challenge to the validity of a New York franchise tax statute that measured the tax according to income, including income earned from tax-exempt federal bonds[3]. Due to the diversity of state franchise tax schemes, one cannot legitimately assert that Missouri's consideration of out-of-state investments in measuring the amount of franchise tax due will result in any double taxation on any investment.

D. The Commission's decision

1. Interstate Offices and Franchise Tax Returns

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[3] T-3 cites *Boatmen's Bancshares, Inc. v. Director of Revenue*, 757 S.W.2d 574, 576 (Mo. banc 1988), as support for its argument that the AHC's decision in the instant case will result in double taxation since in Missouri, each subsidiary pays its own franchise tax based upon the par value of its outstanding stock and surplus and thus, is taxed on investments in and advances to it by the parent (Appellant's brief 7). As this Court specifically noted, in *Boatmen's Bancshares*, however, in other jurisdictions, such as Texas, a corporation's surplus includes investments in its subsidiaries. Thus, *Boatmen's Bancshares*, only highlights the jurisdictional differences in franchise taxation.

Some of the rationales cited by the AHC for upholding the Director's franchise tax assessment against T-3 was the corporation's lack of a physical office outside Missouri and the fact that T-3 files no franchise tax returns in any other state (L.F. 106-122). T-3 contends that these two factors are irrelevant, noting that there is no statutory requirement that such facts be demonstrated as a precursor to franchise tax apportionment (Appellant's brief 21). The Director agrees that there is no such statutory requirement and the AHC did not suggest that such facts must be demonstrated before a corporation may apportion its franchise tax base under § 147.010. But that does not mean such facts are irrelevant. T-3's lack of offices and absence of franchise tax liability in other states is evidence that supports the finding that it performs no business activity in other states and therefore *employs* all of its outstanding shares and surplus in Missouri.

2. Municipal bonds

The AHC held that T-3's investments in municipal bonds in out-of-state municipalities did not entitle T-3 to apportion its franchise tax base because T-3 made its investment while in Missouri and received its return in Missouri (L.F. 120-21). T-3 contends that this holding of the AHC is contrary to *Household Finance Corp. v. Robertson*, 364 S.W.2d 595 (Mo. banc 1963) (Appellant's brief 22). But T-3 misunderstands that decision.

Household Finance Corp., involved a Delaware company with its principal place of business in Chicago. The company owned a number of subsidiaries doing business in Missouri, which were in the business of loaning money. This Court determined that the

foreign parent corporation's investments and cash advances to its Missouri subsidiaries were not the parent's "property and assets in this state," but were the assets of its subsidiaries. 364 S.W.2d at 607. This was the converse of the situation in *Union Electric Co.*, in which the stock of two foreign subsidiaries owned by a Missouri parent corporation was held not to be a part of the parent corporation's "property and assets [employed] in this state." 222 S.W.2d at 772.

While at first blush, *Household Finance Corp.*, might appear to support T-3's position, a thorough review of this Court's rationale, and its discussion of the earlier *Union Electric* case, supports the Director's position that the municipal bonds should not be apportioned out of T-3's franchise tax base.

In *Household Finance*, this Court turned to the word "employed" that T-3 wants to eliminate from the statute:

> Considering the Union Electric opinion in its entirety, we understand it to declare that the physical property of the Illinois corporations was not located in this state and neither was it employed by Union Electric in its business; and neither was it property and assets of Union Electric *in this state for the purpose contemplated in § 147.010*....[W]e do not understand it to hold, as plaintiff contends, that if the physical property were in fact employed in Union Electric's business in Missouri, it nevertheless should not be included in computing Union Electric's franchise tax on grounds that the situs of the physical assets represented by the shares of stock was not also in Missouri. Rather do we understand the opinion to hold that the franchise

tax imposed under § 147.010 is to be measured by and computed upon the value of its *property and assets employed in business in this state*.

Household Finance Corp., 364 S.W.2d at 602 (emphasis in the original).

It makes no difference that municipal bonds (or the mutual funds) might be an investment in an out-of-state entity. The situs of the security is not controlling. Rather, it is the value of the property and assets employed by T-3's business in Missouri that is in issue. T-3's business is located solely in Missouri. The investments are made from Missouri. T-3 operates solely in Missouri. The municipal bonds, irrespective of their location, are still employed in T-3's business in this state and are properly included in evaluating T-3's Missouri franchise tax base.

3. Investments in mutual funds

T-3 next argues that the AHC erred in distinguishing *Union Electric,* on the basis that it involved wholly owned subsidiaries (Appellant's brief 23-24). T-3 contends that nothing in the *Union Electric* decision or § 147.010, indicate that the percentage of ownership in another business entity is determinative (Appellant's brief 23-24). The fallacy of this argument is that the AHC did not rule that the percentage of ownership was a *determinative* factor. Rather, the AHC found that Union Electric, as a parent company, had "a degree of control over those subsidiaries such that the court regarded it as employing a portion of its own outstanding shares in business in another state." (AHC decision page

11). T-3 can hardly claim a substantial degree of control over an out-of-state municipality or a corporation in which it invests through a mutual fund.

In any event, the percentage of ownership issue is red herring. Regulations in effect during the pendency of this dispute allow a parent corporation to deduct from its tax base on line 2b of the franchise tax form, that portion of the corporation's surplus invested or advanced to a subsidiary corporation, provided the parent owns at least 50 percent of the voting stock 12 CSR 10-9.200(1)(C) 2000 (formerly 15 CSR 30-150.170, 1996 and as amended 1999). If T-3 had owned at least 50 percent of the voting stock in all of the out-of-state corporations in which it invests, this case would not be before the Supreme Court of Missouri today. The issue, therefore, is not and never has been the *percentage* of the stock T-3 owns in an out-of-state corporation. If the shares of stock owned in an out-of-state corporation are *employed* in connection with T'3's investment-holding business in this state, then T-3's franchise tax base should include such securities. On the facts of this case, where T-3 has no tangible property outside Missouri, no accounts receivable outside Missouri, no liability for franchise tax in another jurisdiction, and performs all business in this state, it cannot be said that T-3 has *employed* its outstanding shares in business outside of Missouri.

POINT II

THE ALTERNATE APPORTIONMENT FORMULA

A. The Director's regulation is fair

T-3 next addresses (Appellant's brief 25) whether in apportioning its franchise tax base it is required to follow the formula set forth in state regulations - 15 CSR 30-150.170 and 12 CSR 10-9.200 - or whether it may use an alternate formula. T-3 contends in its Second Point Relied On that it must be allowed to apportion by an alternate method because the Secretary of State's Office had approved such method, and that neither the Director, nor the AHC questioned the fairness, accuracy, or precision of the alternate methodology (Appellant's brief 27). This all assumes, of course, that T-3 is even allowed to apportion its franchise tax base, a point that the Director does not concede.

Whenever a corporation of sufficient worth operates in more than one state and employs a part of its outstanding shares and assets in another state or country, § 147.010 requires the corporation to pay its annual franchise tax based on the outstanding shares and surplus that *are* employed in this state. To assist a corporation in calculating the apportionment percentage for its franchise tax base, the Department of Revenue promulgated 12 CSR 10-9.200 (previously 15 CSR 30-150.170). The corporation is directed to calculate the value of all inventory, land, and fixed assets located in Missouri, together with the accounts receivable that are attributable to Missouri, and divide that amount by all inventory, land, fixed assets and accounts receivable, wherever located. 12 CSR 10-9.200(2)(E).

As T-3 recognizes (Appellant's brief 25), if a corporation has no land, fixed assets, accounts receivables, or inventory, the normal apportionment calculation will result in a zero figure. Thus, the company assets are not apportioned and its Missouri franchise tax is based on all of its assets, except those that might be advanced to its subsidiaries. 12 CSR 10-9.200 (2)(E). While T-3 baldly asserts that this result is "not fair, accurate or precise" (Appellant's brief 26), it is the same apportionment method described in *Household Finance Corp.*

In *Household Finance Corp.*, the State Tax Commission computed additional tax based on an additional $6,150,993.02 in Missouri assets it found due to these three adjustments: (1) Missouri cash was increased from $111,017.16 to $1,138,879; (2) the taxpayer's $560,000 investment in its subsidiaries operating in Missouri was added to Missouri assets; and (3) the taxpayer's advances of $4,563,132 to the same subsidiaries were added to Missouri assets. 364 S.W.2d at 598-99. The State Tax Commission recomputed the Missouri cash for 1959 by multiplying the taxpayer's total cash of $26,602,884.74 by 0.042812. This percentage was the ratio of Missouri loans receivable and tangible assets to total loans receivable and tangible assets. 364 S.W.2d at 598. This Court held that the cash employed by the taxpayer in its business in this state, irrespective of its location, must be included in determining the amount of franchise tax owed. 364 S.W.2d at 603. But the Court also upheld the apportionment method used by the State Tax Commission. *Id.* Consequently, the apportionment percentage was computed based on assets other than cash (loans receivable and tangible assets). This Court had the

opportunity, but did not express dissatisfaction with this method of computing the apportionment ratio.

The rationale for excluding cash from the computation of the apportionment ratio in *Household Finance Corp.,* was that its location did not accurately reflect the taxpayer's business and could easily be manipulated:

> For example, can the statute mean that either a domestic or foreign corporation engaged in the business of making loans in St. Louis, Missouri, may avoid payment of a portion of the franchise tax imposed under § 147.010 merely by keeping the cash thus employed by it in East St. Louis, Illinois, and drawing thereon as its Missouri commitments required? We think it can not. We hold that the corporation franchise tax imposed under § 147.010 requires that the cash employed by plaintiff in business in this state, irrespective of its location, shall be included in computing the amount of the tax annually accruing under § 147.010.

364 S.W.2d at 603. Similarly, the location of T-3's investments, like the location of cash in *Household Finance Corp.,* is not determinative of where T-3 is engaged in business and it is not unfair, inaccurate or imprecise to exclude investments, such as out-of- state mutual funds and municipals bonds, from the calculation of an apportionment ratio.

B. The alternate method of apportionment does not fairly reflect T-3's assets employed in Missouri.

T-3 erroneously describes the Commission's decision and the Director's position as simply being: "all assets are includable in the tax base unless a taxpayer has certain types of

assets [accounts receivable, inventories or land and fixed assets]." (Appellant's brief 27). Also painting its own argument with a broad stroke, T-3 postures that the alternate method of computation fairly reflects the proportion of the taxpayer's outstanding shares and surplus that its property and assets employed in this state bears to all of its property and assets wherever located (Appellant's brief 27). Neither statement is correct.

The Commission's decision and the Director's position are not so inflexible as to close the door in every instance to the use of an alternate method for computing the apportionment ratio. The alternate method is available in the appropriate circumstances. As was required by 15 CSR 30-150.170(2)(E)4, 1996 (Stip. Ex. Q, L.F. 89), and is now required by 12 CSR 10-9.200, 2000 (Stip. Ex. R, L.F. 91), a corporation must demonstrate "good cause" and obtain approval from the Secretary of State to use an alternate method of computation. Such good cause can not be demonstrated here because T-3 does not "employ" any part of its outstanding shares in business in another state or country, as is required by § 147.010. Rather, all of its outstanding shares are employed here in Missouri because all of T-3's business activities are centered in this state.

What distinguishes this case from *Union Electric*, is the very nature of the T-3's business. The inter-relationship between the out-of-state and in-state activities is a critical factor. In *Union Electric*, a multi-state business enterprise was conducted in a way that some of its business operations outside Missouri were wholly independent of and did not contribute to the business operations within this state. On such facts, it is "fair" to exclude such outside activity from Missouri franchise tax because the functions between the parent

company and its subsidiaries are independent. T-3's investments in out-of-state entities, however, are inextricably intertwined with its business as a Missouri investment-holding company and these investments contribute markedly to the value of the business transacted in Missouri and the privilege granted. On these facts, it cannot be said that T-3 "employs" its stock and surplus anywhere except in Missouri.

Finally, although T-3 appellant states in its Second Point Relied On that the Secretary of State previously approved T-3's alternate apportionment method, it fails to develop the argument. As noted in the stipulated facts, T-3 first used an alternate method of apportionment in 1998 (L.F. 12). There is no evidence to suggest that the Secretary of State had approved an alternate method of apportionment with respect to T-3.

CONCLUSION

The Administrative Hearing Commission appropriately applied the law to the facts in affirming the Director's assessment of franchise tax under § 147.010, RSMo. In view of the foregoing arguments and cited authorities, the Director requests that the decision of the Administrative Hearing Commission be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 84.06(B) AND (C)

The undersigned hereby certifies that on this 15th day of August 2003, two true and accurate copies of the foregoing brief, and one disk containing the foregoing brief, were mailed, postage prepaid, to:

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The undersigned certifies that the foregoing brief complies with the limitations contained in Supreme Court Rule No. 84.06(b) and that the brief contains 5668 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.

_____
Assistant Attorney General