

**IN THE SUPREME COURT OF MISSOURI**

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**SC95003**

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**MACON COUNTY EMERGENCY SERVICES BOARD, James Wilson, in his official capacity as an MCEB member; Jeff Roberts, in his official capacity as an MCEB member; Jeff Bixenman, in his official capacity as an MCEB member; Margie Voss, in her official capacity as an MCEB member; Stan East, Jr., in his official capacity as an MCEB member; Gene Wood, in his official capacity as an MCEB member; and Chuck Spencer in his official capacity as an MCEB member,**

**Appellants,**

**v.**

**MACON COUNTY COMMISSION, Alan Wyatt, in his official capacity as a Macon County Commissioner; Drew Belt, in his official capacity as a Macon County Commissioner; and Jon Dwiggins, in his official capacity as a Macon County Commissioner**

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**Appeal from the 41st Circuit Court of Missouri  
The Honorable Frederick Tucker  
Case No.14MA-CC00026**

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**APPELLANTS' REPLY BRIEF**

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**POINT RELIED ON**

**THE CIRCUIT COURT ERRED IN DETERMINING THAT THE BOARD IS NOT ENTITLED TO A PROPORTIONAL SHARE OF THE USE TAX BECAUSE THAT RULING DEFEATS THE LEGISLATIVE PURPOSE OF SECTION 144.757 IN THAT THERE IS NO AMELIORATION OF THE LOSS OF SALES TAX TO THE ENTITY THAT WOULD HAVE OTHERWISE RECEIVED A HIGHER SALES TAX BUT FOR A TAXPAYER PURCHASING FROM AN OUT-OF-STATE VENDOR WHO CHARGES NO OR A LOWER SALES TAX.**

*Page v. Scavuzzo*, 412 S.W.3d 263 (Mo. App. W.D. 2013)

Mo. Rev. Stat. § 115.557

Mo. Rev. Stat. § 144.757

Mo. Rev. Stat. § 144.759

**ARGUMENT**

**POINT RELIED ON**

**THE CIRCUIT COURT ERRED IN DETERMINING THAT THE BOARD IS NOT ENTITLED TO A PROPORTIONAL SHARE OF THE USE TAX BECAUSE THAT RULING DEFEATS THE LEGISLATIVE PURPOSE OF SECTION 144.757 IN THAT THERE IS NO AMELIORATION OF THE LOSS OF SALES TAX TO THE ENTITY THAT WOULD HAVE OTHERWISE RECEIVED A HIGHER SALES TAX BUT FOR A TAXPAYER PURCHASING FROM AN OUT OF STATE VENDOR WHO CHARGES NO OR A LOWER SALES TAX.**

Respondents argue in their brief that Appellants' cause of action should have been dismissed by the Circuit Court pursuant to § 115.557<sup>1</sup> because Appellants were challenging the election results of the November 6, 2012, Macon County Use Tax Election. Respondent's Brief p. 9. Respondents further state, "The Commission raised this issue successfully before the Circuit Court. As such, the Board shifted its arguments to keep the matter alive and the Circuit Court permitted the case to proceed." Respondent's Brief, p. 9–10. This is not an accurate description of any of the pleadings filed by Appellants, nor of what the Circuit Court did.

Appellants explained in their Response to Respondents' Motion to Dismiss that they were not challenging the election or the election results. L.F. 28. Rather, Appellants were challenging and are continuing to challenge Respondents' interpretation of the Use Tax Law, §§ 144.757 to 144.761,<sup>2</sup> and in particular § 144.757, by reading it to mean that Respondents did not have to give any of the Use Tax revenues collected by the Director of Revenue and sent to Macon County to Appellants. L.F. 33–34. Appellants have consistently argued that they should be receiving a portion of the Use Tax revenues sent to Macon County on the basis that they are one of the entities receiving a Macon County Sales Tax. L.F. 39–61.

Respondents also argue that because § 144.759 does not provide direction as to how use tax proceeds are to be spent, the Respondents are allowed to determine how to

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<sup>1</sup> All references herein to this statute are to Mo. Rev. Stat. 2000.

<sup>2</sup> All references herein to these statutes are to Mo. Rev. Stat. Cum. Supp. 2013.

spend these funds. Respondent Brief pp. 10–13. However, statutory construction holds that because § 144.759 specifically provides that a municipality within a county having a charter form of government with a population in excess of nine hundred thousand can spend one-half of the use tax revenues on “public safety, parks, and job creation” and has no provisions for any other municipality or county that is receiving a use tax, such as Macon County, Respondents are limited to spending use tax revenues only for the purpose that would meet the legislative intent of making up lost sales tax revenues to the entities that have a local sales tax.

The Amicus Curiae argues that *Page v. Scavuzzo*, 412 S.W.3d 263 (Mo. App. W.D. 2013) is a case that is instructive for the Court in the case at bar. Amicus Curiae Brief p. 10. That case, however, is not relevant to any of the issues in this appeal. *Page* deals with whether a county commission can be required to place a tax issue on the ballot and reviews the question of mandatory versus permissive language. That is not an issue in the case at bar as Respondents did place the use tax on the ballot. The Amicus Curiae further indicates that the *Page* stands for the proposition that Respondents had the discretion as to how much the rate of the use tax to be placed on the ballot should have been. Amicus Brief pp. 10–11. This is also not a relevant argument as Appellants are not challenging the November 6, 2012, use tax election that approved a rate lower than the local sales tax rate. Again, Appellants are arguing that once the use tax passed, they should have been given a proportionate share of the use tax proceeds.

## **CONCLUSION**

For the foregoing reasons, the Circuit Court's decision should be reversed and remanded with direction that the Board should receive its proportional share of the Macon County Use Tax and awarded a proportional share of the Use Tax Revenues since the tax was approved.

**Respectfully submitted,**

**THE LAW OFFICE OF DEBORAH NEFF, LLC**

A handwritten signature in black ink that reads "Deborah Neff". The signature is written in a cursive, flowing style.

Deborah Neff

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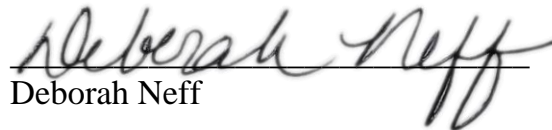
**ATTORNEY FOR APPELLANTS**

**CERTIFICATE OF SERVICE AND COMPLIANCE**

I hereby certify that a true and correct copy of the foregoing was served electronically via the Missouri electronic filing system on this 10th day of November, 2015:

Ivan L. Schraeder  
Attorney for Respondent Macon County Commission  
and Commissioners in their official capacities

Travis A. Elliott  
Attorney for Amicus Curiae  
Missouri Association of Counties

  
Deborah Neff

And a true and correct copy of the foregoing was mailed, first class mail, postage pre-paid, via the United States Post Office, on this 10th day of November, 2015, to:

Judge Rick Tucker  
101 E. Washington Street  
Macon, Missouri 63552

The undersigned further certifies that the foregoing brief complies with the limitations contained in Rule No. 84.06(b) and that the brief contains 910 words.

  
Deborah Neff  
Attorney for Appellants