SC95910

IN THE SUPREME COURT OF MISSOURI

THE ST. LOUIS RAMS LLC, f/k/a THE ST. LOUIS RAMS PARTNERSHIP,

Respondent,

v.

DIRECTOR OF REVENUE,
Appellant.

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

BRIEF OF RESPONDENT

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The St. Louis Rams LLC

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ADOPTION OF JURISDICTIONAL STATEMENT

The Los Angeles Rams, successor in interest to the St. Louis Rams LLC (the "Rams"), adopt the Jurisdictional Statement of the Director, Missouri Department of Revenue (the "Director").

PARTIAL ADOPTION OF STATEMENT OF FACTS

The Rams adopt the Director's Statement of Facts, with the following exceptions.

Exceptions to Appellant's Statement of Facts

The Director repeatedly states as a fact that the City of St. Louis Entertainment License Tax ("ELT") is charged by the Rams for admission, *e.g.*, "the Rams paid sales tax on all amounts that it charged its customers for admission, including the ELT." Brief of Appellant, p. 3, citing App. A3 (Vol. IX LF 758 ¶ 8) and Vol. V LF 390. Similarly, the Director implies that the Rams did not collect the ELT from their customers, *e.g.*, "the Rams reduced their reported sales by 5% (Vol. V LF 387), asserting that the portion of ticket sales that the Rams used to pay ELT was not subject to sales tax." Brief of Appellant, p. 3, citing Vol. V LF 389. These statements are not accurate, and are not supported by the record on appeal (the "record"). Specifically, the Director purports to support these statements with citations to a letter from a Missouri Department of Revenue ("Department") auditor and the Department's own audit report (Vol. V LF 385, 387 and 389). These statements are representative only of the Department's (and the Director's)

position; they are not facts supported by the record, are not facts found by the Commission, nor are they agreed facts from the parties' joint stipulations.

When the Director does cite to the parties' Joint Stipulation for purposes of arguing that ELT is a charge for admission, the citations do not support the Director's statements. Specifically, the Joint Stipulation states that the Rams claimed a "refund of the amounts remitted to the state as a result of the Rams including [ELT] *in the Sales Tax base for admission charges*..." and that the disputed amounts assessed are the result of "the Department's position that [ELT] should have been included *in the Sales Tax base for admission charges*, which is disputed by the Rams..." Vol. IX LF 758 ¶¶ 8 and 14 (emphasis added). In this regard, the parties' Joint Supplemental Stipulation defines "sales tax base" as "the amount subject to Missouri taxation pursuant to Mo. Rev. Stat. § 144.020(2)." Vol. IX LF 823 ¶ 3.

The Director's position that the Rams charged ELT for admission is in direct conflict with statements in his brief, *e.g.,* that the Rams "collect[ed] from ticket purchasers the five percent ELT on the sale of each ticket." Appellant's Brief, p. 2. Moreover, the Commission found that "the Rams collected and remitted [ELT] to the City pursuant to St. Louis, Missouri Code of Ordinances Chapter 8.08." Vol. IX LF 836, Findings of Fact 4. As discussed below, such collection and remission is inconsistent with the definition of "admission" for sales tax purposes because, among other reasons, the Rams collected the ELT for the benefit and use of the City of St. Louis, not for the its own benefit and use.

ARGUMENT

I. Standard of Review

Missouri law prohibits the imposition of sales tax on tax. 12 CSR 10-103.800. Contrary to the Director's assertion, the applicable statutes and regulations are not exemptions or exclusions to be construed against a taxpayer. As required by Missouri statute and this Court, and acknowledged by the Commission, "[s]tatutes imposing a tax are construed strictly in favor of the taxpayer" and against the Director. Vol. IX LF 838; Mo. Rev. Stat. § 136.300.1; *Moore Leasing, Inc. v. Dir. of Revenue,* 869 S.W.2d 760, 761 (Mo. banc 1994); *ITT Canteen Corp. v. Spradling*, 526 S.W.2d 11, 20 (Mo. 1975). Of particular relevance to this case, the Commission also cited this Court in stating that "[t]his is especially true of a 'tax upon a tax.'" Vol. IX LF 838; *Moore Leasing,* 869 S.W.2d at 761; *ITT Canteen*, 526 S.W.2d at 20.

The Director also mistakes the degree of deference due to a key finding made by the Commission. While emphasizing that this Court reviews the Commission's interpretation of revenue statutes *de novo,* the Director fails to note that central to the Director's argument is a disagreement with a fact found by the Commission, *i.e.*, "that the Rams collected and remitted [ELT] to the City pursuant to St. Louis, Missouri Code of Ordinance Chapter 8.08." Vol. IX LF 836, Findings of Fact 4. "The [Commission]'s factual determinations will be upheld if the law supports them and, after reviewing the whole record, there is substantial evidence that supports them." *Southwestern Bell Tel.*

Co. v. Dir. of Revenue, 182 S.W.3d 226, 228 (Mo. 2005). The Rams collected ELT from ticket purchasers, and remitted the ELT to the City of St. Louis. This fact was found by the Commission, is supported by the record, and is conceded by the Director. Vol. IX LF 836, Findings of Fact 3 and 4; Vol. IX LF 757-58 ¶ 7; Brief of Appellant, p. 2.

II. The Administrative Hearing Commission did not err in finding that the portion of ticket sales that the Rams used to pay the City of St. Louis' Entertainment License Tax (ELT) was not subject to state sales tax.

A. Missouri law excludes taxes from the sales tax base.

Missouri law provides that taxes collected from a purchaser as tax are not subject to the state sales tax imposed on admissions. Mo. Rev. Stat. §§ 144.020.1(2), and 144.010.1(1) and (4), provide that amounts charged by the Rams for admissions are subject to Missouri sales tax, and the Rams remitted sales taxes on these amounts. Vol. IX LF 836, Findings of Fact 4; Vol. IX LF 757-58 ¶ 7. The Director argues that the ELT collected by the Rams from its customers, and remitted to the City of St. Louis, was charged for admission and is subject to Missouri sales tax. Missouri statutes and the Department's own regulations clearly prohibit the Director's attempt to require the Rams to include amounts received for city taxes in the state tax base for admissions.

Missouri imposes a tax on "the amount paid for admission and seating accommodations, or fees paid to, or in any place of amusement, entertainment or recreation, games and athletic events." Mo. Rev. Stat. § 144.020.1(2). Amounts collected by the Rams for ELT are not "paid for admission and seating accommodation"

and cannot be included in the taxable base. In this regard, Missouri law expressly defines taxable "admission" to exclude other taxes. Specifically, the statute provides that "[a]dmission includes seats and tables [. . .] and other similar accommodations and charges made therefor and amount paid for admission, exclusive of any admission tax imposed by the federal government or by sections 144.010 to 144.525." Mo. Rev. Stat. § 144.010.1(1).

The Department's own regulation makes it clear that no taxes are to be included in the state sales tax base. Sales tax regulation 12 CSR 10-103.800(2)(E) expressly provides that "[a]mounts charged to and received from purchasers as tax are not included in gross receipts." The ELT is a tax. St. Louis City Rev. Code § 8.08.010 ("Any person or persons . . . in the business of admitting persons or groups upon payment of an admission charge to a . . . sporting event . . . *are taxed* upon the amount of gross receipts derived from such admission charges at the rate of five percent of the gross receipts.")(emphasis added). Moreover, the ELT is a tax as that term is defined for Missouri sales tax purposes.

> The noun "tax" means either the tax payable by the purchaser of a commodity or service subject to tax, or the aggregate amount of taxes due from the vendor of such commodities or services during the period for which he or she is required to report his or her collections, as the context may require.

Mo. Rev. Stat. § 144.010.1(13). This broad definition makes no distinctions based on either the subject or object of the levy, or the government authority imposing it, and clearly encompasses ELT.

This Court's decision in *Moore Leasing, Inc. v. Dir. of Revenue,* 869 S.W.2d 760 (Mo. banc 1994), recognizes and adopts the basic principle of Missouri law set forth above, *i.e.*, that amounts of tax, collected as such from a purchaser and remitted to a taxing authority, are not included in the state sales tax base. The Commission's decision in this case follows this Court's reasoning in *Moore Leasing*, recognizes that the ELT is not subject to Missouri sales tax, and should stand against the Director's appeal.

B. **Contrary to Appellant's argument, the amount charged by the Rams for admission did not include the ELT.**

The Director's appeal is entirely predicated on this Court reversing the finding of fact made by the Commission that the "Rams collected and remitted [ELT] to the City" in that ELT collected from purchasers and remitted to the City of St. Louis necessarily was not paid to the Rams for admission. Vol. IX LF 836 ¶ 47. As discussed above, the record supports this finding of fact, and the Director admitted to this fact in his brief. Vol. IX LF 836, Findings of Fact 3 and 4; Vol. IX LF 757-58 ¶ 7; Brief of Appellant, p. 2.

In this regard, the Director argues that "[t]he Commission's decision failed to address the actual ticket purchases, and made no mention that ELT was included in the amount that customers paid for admission to football games."

Brief of Appellant, p. 8. As discussed above, this argument is in direct conflict with the factual record in this case. The Director further argues that "the Commission failed to examine the language of § 144.020.1(2) or to consider the legislature's definition of "admission" (*see* §144.010.1(1) RSMo)." *Id.* To the contrary, the Commission found, and the Director conceded, that the Rams collected ELT on ticket sales and remitted ELT to St. Louis (and sales tax to the Director). Vol. IX LF 836, Findings of Fact 3 and 4; Vol. IX LF 757-58 ¶7; Brief of Appellant, p. 2. The Commission's decision is that those amounts of ELT collected were not subject to sales tax, and, thus, were not "paid for admission and seating accommodations, or fees paid to, or in any place of amusement, entertainment or recreation, games and athletic events." Mo. Rev. Stat. § 144.020.1(2). Beyond this fundamental factual failing in the Director's argument, the three sub-points raised in Brief of Appellant are also incorrect as a matter of law.

1. **ELT is not a charge for "admission" and thus is not subject to Missouri taxation pursuant to Mo. Rev. Stat. § 144.020.1(2).**

The Director asserts that "[t]he plain language of § 144.020.1(2) subjects the entire ticket price to state sales tax." Brief of Appellant, p. 8. To the contrary, nowhere in the cited statute, or in any other Missouri sales tax statute or regulation, is term "ticket price" defined or used as the measure of tax. The plain language of Mo. Rev. Stat. § 144.020.1(2) imposes sales tax upon "the amount paid for admission and seating accommodations, or fees paid to, or in any place of... games and athletic events...." As interpreted by this Court, Mo. Rev. Stat. § 144.020.1(2)

imposes sales tax on "sums paid for admissions to places of amusement, etc.; (2) on amounts paid for seating accommodations therein; and (3) on all fees paid to, or in places of amusement, etc." *Eighty Hundred Clayton Corp. v. Dir. of Revenue,* 111 S.W.3d 409, 410 (Mo. banc 2003).

The Director's claim, that the entire amount received by a seller is deemed to be the taxable sales price included in the tax base, has already been considered and rejected by this Court. In *ITT Canteen*, the Director argued, as here, that "all sellers are required to report and pay the tax upon their 'gross receipts,' and that this term means the 'total amount of the sale price of the sales at retail;' and further that 'the total amount of the sale price shall be deemed to be the amount received.'" *ITT Canteen,* 526 S.W.2d at 16. In *ITT Canteen*, the Director argued that the statutory definition of "gross receipts" required the taxpayer to include the Missouri cigarette tax in the sales tax base. The Court rejected this argument and ruled that it would not interpret these statutes in a vacuum. Instead, it construed the amount includable in the sales tax base to mean the amount "received for the seller's benefit and use." *Id.* at 18. Thus, this Court ruled that taxes collected from customers and remitted to taxing authorities were not includable in the state tax base. The Director's argument similarly misses the mark here. The ELT is not received for the benefit and use of the Rams, but for the benefit and use of the City of St. Louis.

As cited by the Director, "[t]he primary rule of statutory interpretation is to give effect to the General Assembly's intent as reflected in the plain language of the statute at issue." *Fred Weber, Inc. v. Dir. of Revenue,* 452 S.W.3d 628, 630

(Mo. banc 2015). Relevant to this case, the plain language of Mo. Rev. Stat. § 144.020.1(2) imposes tax on amounts paid for admission and seating accommodations, or fees paid to, or in any place of games and athletic events. The ELT was not paid by customers, or collected by the Rams, for any of the items taxed by §144.020.1(2). The Commission found as fact that the Rams collected ELT from ticket purchasers, and remitted the ELT to the City of St. Louis. Vol. IX LF 836, Findings of Fact 3 and 4. Further, this finding is supported by the record. Vol. IX LF 757-58 ¶ 7. Moreover, the Director conceded this fact in his brief. Brief of Appellant, p. 2. Such amounts, collected and remitted as tax, are neither paid for admission nor subject to Missouri sales tax.

2. **Sales tax is not imposed on amounts collected as tax; the exception in §144.010.1(1) for federal admission taxes and taxes imposed by sections 144.010 to 144.525 does not expand the tax base.**

Taxes collected by a seller in connection with a taxable sale are not subject to Missouri sales taxes. This is expressly stated in the relevant statutes and regulations. Specific to this case, only charges for "the amount paid for admission and seating accommodations, or fees paid to, or in any place of amusement, entertainment or recreation, games and athletic events" are subject to the tax imposed by §144.020.1(2). Amounts received for items other than "admission and seating accommodations," including amounts received for other taxes, are not subject to tax. *Id.*

The Director's argument that the law limits the exclusion of taxes collected from

the sales tax base for admissions is unsupportable. While Mo. Rev. Stat § 144.010.1(1) does state that admission taxes imposed by the federal government or under certain Missouri statutes are not considered amounts paid for admission, this list does not serve to subject all other taxes to Missouri state sales tax. The tax base is defined by Mo. Rev. Code § 144.010.1(4), which defines "gross receipts." Missouri law simply further defines an "admission" and provides illustrative examples of types of admissions taxes that may be collected with admission but do not constitute taxable admission. Mo. Rev. Code § 144.010.1(1). This list is not exclusive. After all, this Court has previously found other taxes, including local property taxes and cigarette taxes, were not includable in the sales tax base, even though there was nothing in the statute specifically stating that these types of taxes were not themselves subject to sales tax. *See*, *Moore Leasing* and *ITT Canteen*.

Moreover, as discussed above, a Missouri regulation explicitly provides that amounts of taxes are not included in the sales tax base, stating that "[a]mounts *charged to and received from purchasers as tax* are not included in gross receipts." 12 CSR 10-103.800(2)(E) (emphasis added). As explained above, there is no question that the ELT is a tax. Moreover, the parties have stipulated that the Rams collected the ELT from its customers and remitted it to the City of St. Louis. Vol. IX LF 757-58 ¶ 7. Under the plain language of 12 CSR 10-103.800(2)(E), the amounts charged to Rams customers as ELT are not subject to sales tax. Such amounts are not paid for admission, but rather are "charged to and received from purchasers as tax."

It is a commonly-accepted canon of legal interpretation that a court will not "construe a statute or regulation to produce unreasonable, oppressive, or absurd results."

Daly v. State Tax Commission, 120 SW.3d 262 (Mo. Ct. App. 2003). If Appellant's reading of the law were correct, taxpayers would be faced with the very result that 12 CSR 10-103.800(2)(E) was designed to prevent, *i.e.*, including in the sales tax base amounts collected from customers to be remitted to a taxing authority. Appellant's reading produces an absurd result, is unsupportable, and must be rejected.

The ELT is not subject to the sales tax as imposed on admissions per the plain language of the controlling Missouri statutes and regulation. Even if this Court finds ambiguity in the foregoing statutes and regulation, *Moore Leasing* and *ITT Canteen* requires that the provisions at issue be construed against the Director and in favor of the Rams.

3. The Commission properly followed this Court's decision in *Moore Leasing* to prohibit imposition of sales tax on ELT.

Finding ambiguity in the relevant statutes, the Commission followed the reasoning of this Court in *Moore Leasing, Inc. v. Dir. of Revenue,* 869 S.W.2d 760 (Mo. banc 1994). In *Moore Leasing*, this Court cited to its prior decision in *ITT Canteen Corporation v. Spradling*, 526 S.W.2d 11 (Mo. 1975), [1] which invalidated an administrative rule issued by the Department requiring sellers of cigarettes to include the

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[1] The *Moore Leasing* Court cited to *ITT Canteen* for the general rule that "in tax cases the law is strictly construed against the taxing agency, and specific or clearly implied authority for a tax must be shown" and that "[t]his should be especially true of a tax upon a tax." *ITT Canteen,* 526 S.W.2d at 20 (citations omitted).

Missouri cigarette tax in the sales tax base for the cigarettes sold. As discussed above, this Court found that the sales tax should only be imposed upon "amounts received for the seller's benefit and use." *ITT Canteen Corp.,* 526 S.W.2d at 18. The cigarette tax could not be included in the sales tax base because the seller did not benefit from the collection of the cigarette tax and merely collected it as an agent for the state. *Id.* In this case, the Commission determined that *ITT Canteen* was not controlling because there a statute expressly require the seller to act as an agent of the state and collect the cigarette tax from the consumer. Vol. IX LF 841. Nevertheless, both the outcome of *ITT Canteen,* and the analysis employed by this Court, support the Commission's decision in this case.

a. **Impermissible double taxation is implicated regardless of the government entity imposing the tax.**

Relying solely on one case that is more than 70 years old, *State ex rel. Spink v. Kemp,* 283 S.W.2d 502, 518 (Mo. banc 1955), the Director argues that including amounts charged for ELT in the state sales tax base for admissions cannot result in double taxation because "impermissible double taxation is not implicated where the second tax is imposed by a different government." Brief of Appellant, p. 12. In *State ex. rel. Spink v. Kemp* a city board of police commissioners sought a writ of mandamus to force city government officials to appropriate funds sufficient to meet the expenses of the police department. The city officials unsuccessfully argued that application of prior year surplus revenues to current year appropriations would constitute a "double tax" on the city. *State ex. rel. Spink v. Kemp* has absolutely no relevance to this case.

Moreover, the Director's analysis flies in the face of *Moore Leasing*, in which this Court had to decide whether a motor vehicle leasing company was required to collect sales taxes on personal property taxes collected from lessees and remitted to the local county assessors. This Court held that the Director was "not authorized to assess sales tax on separate personal property tax payments made to motor vehicle leasing companies." 869 S.W.2d at 761. Moreover, this Court reached this conclusion even though the state sales taxes were paid to the Director and the personal property taxes were paid to the local assessor. The Director's position is in conflict with Missouri law and must be rejected.

b. **The ELT is not subject to state sales tax, whether or not it is separately billed to the customer.**

The Director attempts to distinguish this case from *Moore Leasing* by arguing that "[t]he Rams chose to include the five percent ELT in the ticket price..." whereas, in *Moore Leasing*, the personal property taxes at issue were separately billed by the lessor to the lessee. Apart from this being an inaccurate description of the facts in this case, as discussed at length above, this is also a distinction without a difference.

The operative facts in the case at bar are indistinguishable from those presented in *Moore Leasing*. Here, the City of St. Louis imposed ELT on the Rams. The Rams passed the tax through to its customers when it sold tickets, as found by the Commission, stipulated by the parties, and admitted by the Director before this Court. Vol. IX LF 836, Findings of Fact 3 and 4; Vol. IX LF 757-58 ¶ 7; Brief of Appellant, p. 2. The Rams remitted the ELT it collected to the City of St. Louis. Vol. IX LF 836, Findings of

Fact 3; Vol. IX LF 757-58 ¶ 7. In *Moore Leasing,* the taxpayers also passed local taxes through to their customers as part of a taxable lease transaction. *Moore Leasing*, 869 S.W.2d at 760-61. For the same reason this Court found that the taxes in *Moore Leasing* could not be subject to sales tax, ELT collected by the Rams is not subject to sales tax. There is no basis for distinguishing between the two cases simply because the tax was passed through to the customer on a separate bill.

c. **There is no ambiguity in the prohibition against imposing sales tax on ELT, but if this Court finds ambiguity, *Moore Leasing* controls.**

There is no ambiguity in the scope of the imposition of the sales tax on admission, or that ELT is not includable in the sales tax base. This Court has explained the imposition of sales tax on admission in detail: "section 144.020.1(2) plainly provides for a sales tax to be imposed: (1) on sums paid for admissions to places of amusement, etc.; (2) on amounts paid for seating accommodations therein; and (3) on all fees paid to, or in places of amusement, etc." *Eighty Hundred Clayton Corp.,* 111 S.W.3d at 410. There is no plausible way to interpret Mo. Rev. Stat. § 144.020.1(2) as including in the admission tax base amounts of ELT collected from purchasers and remitted to the City of St. Louis. The Director's appeal should be rejected based on the plain meaning of the statutes and regulations discussed above.

Despite the clear language of the statutes and regulation at issue in this case, the Commission found ambiguity, and followed *Moore Leasing* to decide in favor of the

Rams. In *Moore Leasing*, this Court concluded that it was required to construe an ambiguous statute against the Director pursuant to its holding in *ITT Canteen.* Moreover, as in *ITT Canteen,* this Court reiterated that "the rule of strict construction against the taxing authority is especially true of a tax upon a tax." *Moore Leasing,* 869 S.W.2d at 761 (internal quotations omitted).

In *Moore Leasing*, this Court examined the statutory imposition of sales tax on rentals by leasing companies, and phrased the issue as "whether, under §144.070.5, the lessee's personal property tax payment to Moore are part of the 'amount charged for each rental or lease agreement.'" 869 S.W.2d at 760-61. In considering the issue, this Court noted that both parties and the Commission had evaluated the sales tax with reference to the general definition of "gross receipts" in the sales tax statutes, but then determined that "sales tax liability for motor vehicle leasing companies turns principally on § 144.070.5." *Id.* at 761. After reciting that Mo. Rev. Stat. § 144.070.5 allowed lessors two options for remitting sales tax, this Court stated that "[t]here is no significant difference between 'amount charged' in § 144.070.5 and 'rentals paid' in § 144.010.1(3) [the definition of "gross receipts" now codified at § 144.010.1(4]." *Id.* at n.2. With no further comment on the interaction between these statutes, this Court proceeded to hold that the ambiguity in these provisions must be resolved in favor of the taxpayer. *Id.* at 761. That is precisely what the Commission did in this case.

The Director argues that the Commission "apparently confounded § 144.010 and § 144.020 in reaching its decision" because of an apparent typo in the Commission's decision, which inadvertently cited §144.020.1(4), imposing tax on

telecommunications services, rather than §144.020.1(2), imposing tax on amounts paid for admissions and seating accommodations. The Director also critiques which phrase - "amount paid" under §144.020.1(2) (imposing sales tax on admissions), "amount c harged" under §144.070.5 (imposing sales tax on renting and leasing), "rentals paid" under §144.010.1(4) (regarding gross receipts), or "gross receipts" generally under §144.010.1(4) - the Commission construed to prohibit the imposition of sales tax on ELT collected from customers. This digression is a red herring, obfuscating the bases for both the Commission's decision here and this Court's decision in *Moore Leasing*, *i.e.*, that there is no significant difference between these phrases in the context of determining that the Director cannot impose sales tax on amounts charged and collected as tax.

CONCLUSION

Amounts collected and remitted as ELT are not subject to Missouri sales tax. Missouri statutes, the Department's own regulation, and the precedent of this Court, require that result. The decision of the Commission is proper and should be affirmed.

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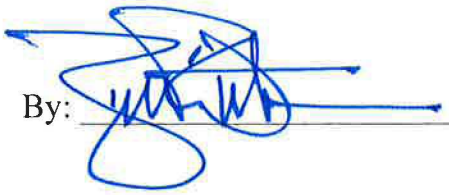
Respectfully submitted,

By: 

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CERTIFICATE OF SERVICE AND COMPLIANCE

I hereby certify that a true and correct copy of the foregoing was served electronically via the Court's electronic filing system on the 5th day of January, 2017, to:

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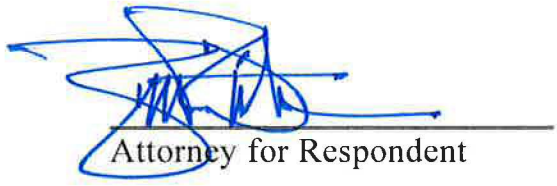
The undersigned further certifies that the foregoing brief complies with the limitations contained in Rule No. 84.06(b) and that the brief contains 4,781 words.



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