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 APPELLANT

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JURISDICTIONAL STATEMENT

This case came before the Commission on complaints filed by the St. Louis Rams LLC ("the Rams") challenging its sales tax liability. The issues before the Court in this matter involve the construction of revenue laws of the state of Missouri, §§144.010.1(1) and 144.020.1(2). Thus the petition for review is appropriately filed in this Court.

STATEMENT OF FACTS

The St. Louis Rams, LLC ("the Rams"), "owns, manages, and operates the St. Louis Rams, a professional football team that plays home games in the Edward Jones Dome" in St. Louis. Appellant's Appendix (App.) A2 (Vol. IX LF 757 ¶ 4). The Rams sold tickets to NFL football games that were played in the City of St. Louis. App. A2, A19 ¶2; Vol. IX LF 757 ¶ 5, 836.

The City of St. Louis, by ordinance, imposes an Entertainment License Tax (ELT) on "[a]ny person or persons… in the business of admitting persons or groups upon payment of an admission charge to a… sporting event, including, but not restricted to, baseball, football… and other like entertainment presentation… ." App. A8; Vol. IX LF 824 (section 8.08.010, Revised Code—City of St. Louis). Such businesses "are taxed upon the amount of the gross receipts derived from such admission charges at the rate of five percent of the gross receipts… ." App. A8 (Vol. IX LF 824). The Rams included the ELT in the price of the tickets it sold, collecting from ticket purchasers the five percent ELT on the sale of each ticket. See Vol. III LF 279, Vol. V LF 389, Vol. IX LF 801 n. 2; App. A2 (Vol. IX LF 757 ¶ 7).

The Rams also sold personal seat licenses ("PSLs"). Vol. V LF 389-90, Vol. VI LF 467-74. "PSLs provide purchasers with certain intangible rights including, among other things, the right to purchase tickets to view NFL football games… ." Vol. V LF 390.

For the time period from February 1, 2007, through January 31, 2010, the Rams paid sales tax on all amounts that it charged its customers for admission, including the ELT. App. A3 (Vol. IX LF 758 ¶ 8); see Vol. V LF 390.

For the time period from February 1, 2010, through January 31, 2013, the Rams did not collect or remit sales tax on PSL sales. Vol. V LF 387. During the same time period, 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 the ELT was not subject to sales tax, Vol. V LF 389.

The Director audited the Rams (App. A20 (Vol. IX LF 837, ¶12)), and determined that the Rams had failed to collect and remit sales taxes on PSL sales and on 5% of ticket sales. Vol. V LF 385, 387, 389; see Vol. VI LF 467-74. Based on that audit, the Director assessed the Rams $419,159.29 in sales tax, of which $351,954 was due to the Rams' 5% reduction of their reported ticket sales (Vol. IX LF 758 ¶12) and $67,205 was due to the Rams' failure to collect and remit sales tax on the PSL sales (App. A3, A4 (Vol. IX LF 758 ¶12, LF 759 ¶ 15)). The Rams did not dispute the $67,205 assessed for sales tax on the PSL sales or the interest associated with the $67,205. App. A4 (Vol. IX LF 759 ¶15).

Proceedings at the Administrative Hearing Commission

In December 2011, the Rams filed a complaint with the Administrative Hearing Commission seeking a refund of state sales tax in the amount of $401,195.00. App. A20 (Vol. IX LF 837 ¶8). The Rams had remitted $401,195.00 to the City of St. Louis for the ELT between February 1, 2007, and January 31, 2010. App. A20 (Vol. IX LF 837 ¶6).

In August 2013, the Rams filed a complaint with the Commission challenging the portion of the assessment of unpaid sales tax that was due to the Rams' 5% reduction of their reported ticket sales. Vol. V LF 385, 387; App. A3 (Vol. IX LF 758 ¶12-14).

The Commission consolidated the appeals. App. A19 (Vol. IX LF 836).

The parties submitted two joint stipulations. The first joint stipulation (App. A1-A5 (Vol. IX LF 756-60)) was an exhibit to the Rams' motion for summary disposition (Vol. IX LF 753-84). The Director filed a combined response and cross-motion for summary disposition. Vol. IX LF 785-96. Initially, the Commission denied the parties' motions, mainly because neither side had presented the City of St. Louis ordinance imposing the ELT. Vol. IX LF 815-816. Thereafter, the parties entered into a Joint Supplemental Stipulation (App. A6-A17 (Vol. IX LF 822-33)), which included, as exhibits, certified copies of a 2002 ordinance amending the ELT ordinance (App. A15-A17 (Vol. IX LF 831-33)) and chapter 8.08 Entertainment Licensing Tax,

Revised Code—City of St. Louis (App. A8-14 (Vol. IX LF 824-830)). The parties asked the Commission to reconsider their motions for summary disposition. Vol. IX LF 818-19. The Commission granted the motion for reconsideration. Vol. IX LF 834.

On August 1, 2016, the Commission granted the Rams' motion for summary disposition and denied the Director's motion for summary disposition. App. A18 (Vol. IX LF 835). The Commission concluded that the Rams were entitled to the full refund that they sought for February 1, 2007, through January 31, 2010, plus interest. App. A26 (Vol. IX LF 843). The Commission also determined that the Rams were "not liable for sales tax based on their not including amounts they paid to the City of St. Louis for that city's ELT in their gross receipts" between February 1, 2010, and January 31, 2013. App. A26-27 (Vol. IX LF 843-44). The Director appeals the Commission's decision.

POINT RELIED ON

The Administrative Hearing Commission erred 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 because the amounts paid for admission to Rams games included the ELT in that the Rams included the ELT in the ticket price and "admission" does not exclude the ELT.

Eighty Hundred Clayton Corp. v. Dir. of Revenue, 111 S.W.3d 409 (Mo. banc 2003)

§144.010.1(1)

§144.020.1(2)

ARGUMENT

Standard of Review

The Administrative Hearing Commission decided this case on the parties' motions for summary decision and two joint stipulations of fact. App. A18-19 (Vol. IX LF 835-36). This Court reviews the Commission's interpretation of revenue statutes *de novo*. *Brinker Missouri, Inc. v. Dir. of Revenue*, 319 S.W.3d 433, 435 (Mo. banc 2010). Taxing statutes are strictly construed in favor of the taxpayer, but exemptions or exclusions "must be strictly construed against the taxpayer, and any doubts are resolved against the party claiming it." *Bartlett Int'l, Inc. v. Dir. of Revenue*, 487 S.W.3d 470, 472 (Mo. banc 2016).

The Administrative Hearing Commission erred 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 because the amounts paid for admission to Rams games included the ELT in that the Rams included the ELT in the ticket price and "admission" does not exclude the ELT.

Missouri 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…" Section 144.020.1(2) RSMo. The Rams included the five percent ELT in the price of each football game ticket that the Rams sold. Vol.

V LF 389, Vol. IX LF 801 n.2. Accordingly, the entire ticket price was subject to tax under §144.020.1(2).

The Rams argued that a portion of the amounts that its customers paid for admission, which the Rams remitted in payment of the ELT, was not subject to state sales tax. The 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. The Commission quoted a portion of §144.020.1(2) toward the beginning of its decision (see App. A21; Vol. IX LF 838), and acknowledged that "our task is to resolve whether the ELT is included in 'the amount paid' in §144.020.1(2)" see App. A22 n. 10; Vol. IX LF 839. Yet 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). Those omissions impacted the Commission's reasoning, leading to an erroneous decision in the Rams' favor.

A. The plain language of §144.020.1(2) subjects the entire ticket price to state sales tax.

"The 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). Missouri 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…" Section 144.020.1(2) RSMo. Section 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 sales tax law defines "admission" as including seating "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[.]" Section 144.010.1(1) RSMo.

B. The exception in §144.010.1(1) for federal admission taxes and taxes imposed by sections 144.010 to 144.525 does not encompass the ELT.

The legislature's definition of "admission" excludes "any admission tax imposed by the federal government or by sections 144.010 to 144.525[.]" Section 144.010.1(1) RSMo. The language of that exception is not ambiguous.

The plain language of §144.010.1(1) does not specifically refer to, or exclude, any taxes but those imposed by the Sales Tax Law, *see* §144.010.3 RSMo, and any admission tax imposed by the federal government. Section 144.010.1(1). The ELT is not a sales tax. *See Springfield City Water Co. v. City of Springfield*, 182 S.W.2d 613, 619 (Mo. 1944). "Where statutory exceptions are plainly expressed, courts cannot add to the exceptions or

exclusions beyond those explicitly provided." *Smith v. Missouri Local Gov't Employees' Retirement Sys.*, 235 S.W.3d 578, 582 (Mo. App. W.D. 2007). The ELT does not fall within the exception in §144.010.1(1).

Nevertheless, the Rams argued that §144.010.1(1) should be interpreted to exclude all taxes of any nature, including the ELT, from "admission." Here, the statute's exclusion of federal admissions tax and taxes imposed by the Sales Tax Law necessarily indicates the legislature's intent not to adopt a broader exclusion that would encompass all taxes. *See Smith*, 235 S.W.3d at 582.

C. The decision in *Moore Leasing, Inc. v. Dir. of Revenue* does not support the Rams' refund claim.

The Rams relied on *Moore Leasing, Inc. v. Dir. of Revenue*, 869 S.W.2d 760 (Mo. banc 1994), to support their argument that the Director could "not assess a tax upon a tax." Vol. IX LF 775, see 779-80. That is not what the Director did here. The Rams chose to include the five percent ELT in the ticket price or "amount paid for admission," *see* §144.010.1(1). Vol. V LF 389, Vol. IX LF 801 n.2. The Director merely assessed sales tax on the amounts paid for admission to Rams games as authorized by the plain language of §144.020.1(2) and §144.010.1(1).

Moore Leasing does not apply to the transactions here, i.e., payments for admission to football games. *Moore Leasing* addressed the sales tax

liability of motor vehicle leasing companies, which "turns principally on §144.070.5." 869 S.W.2d at 761. Section 144.070 RSMo provided a motor vehicle leasing company with two options for paying the sales tax on vehicles purchased exclusively to be leased or rented to others—(1) to pay the full sales tax due at the time it acquired and registered a vehicle, §144.070.1, .5, or, (2) to charge and pay sales tax "on the amount charged for each rental or lease agreement" §144.070.5. *See Moore Leasing* at 761. Section 144.020.1(8) RSMo imposed sales tax on "the amount paid or charged for rental or lease of tangible personal property" if the lessor did not pay the sales tax at the time it "purchased the property…". Section 144.020.1(8) RSMo.

In *Moore Leasing*, the customers who leased the cars paid monthly rental or lease payments; the taxability of the monthly payments was not in dispute. 869 S.W.2d at 760. Rather, the question was whether separate, annual property tax payments on the leased vehicles were subject to sales tax. *Id.* at 760-61.

In addition to making monthly rental or lease payments, under the leases, each lessee was "billed for personal property tax on an annual basis[.]"*Moore Leasing*, 869 S.W.2d at 760. In practice, the motor vehicle leasing company would "forward the… annual personal property tax assessment" (apparently for a particular leased vehicle) "to the lessee for payment." *Id.* Each lessee would then send a check in payment of the

property tax either directly to the county collector, or to the motor vehicle leasing company, which would then pay the collector. *Id.* at 760-61. Though the leases obligated the lessees to pay the property tax, the Director only assessed sales tax on the property tax payments when the lessees' payments were routed through the motor vehicle leasing company, not when lessees paid the collector directly. 869 S.W.2d at 761 n.1.

This Court found §144.070.5 ambiguous in the factual context of *Moore Leasing*. 869 S.W.2d 761. Presented with two "equally legitimate" interpretations of an ambiguous statute, this Court construed §144.070.5 narrowly and in favor of the taxpayer. 869 S.W.2d 761. Here, in contrast with *Moore Leasing*, the statutes in question, §§144.010.1(1) and 144.020.1(2), are not ambiguous. And, though double taxation is disfavored and "not to be presumed[,]" *State v. Hallenberg-Wagner Motor Co.*, 108 S.W.2d 398, 402 (Mo. 1937), impermissible double taxation is not implicated where the second tax is imposed by a different government, *State ex rel. Spink v. Kemp*, 283 S.W.2d 502, 518 (Mo. banc 1955).

In *Moore Leasing,* in concluding that annual personal property tax payments that were routed through the motor vehicle leasing company were not subject to sales tax, this Court emphasized that the property tax payments were separate from the monthly lease payments. 869 S.W.2d at 761. The transactions in this case are not comparable to the separate

property tax payments in *Moore Leasing*. Unlike *Moore Leasing*, here the Director did not assess a tax upon a tax. Rather, the Director assessed sales tax on the amount paid for admission to football games.

The Commission's decision states that *Moore Leasing, Inc. v. Dir. of Revenue*, 869 S.W.2d 760 (Mo. banc 1994), "is not the controlling authority here." App. A26 (Vol. IX LF 843). Yet the decision appears to turn on a footnote in *Moore Leasing*. See App. A26 (Vol. IX LF 843). That footnote compared a portion of the definition of gross receipts that applies to leased or rented property to the phrase "amount charged" in §144.070.5. App. A26 (Vol. IX LF 843); *see Moore Leasing*, 869 S.W.2d at 761 n. 2.

The Commission noted that "gross receipts" is defined in §144.010.1(4). App. A21, A26 (Vol. IX LF 838, 843). But the statute that imposes sales tax on amounts paid for admission, §144.020.1(2), does not use the phrase "gross receipts." The Commission concluded that

> there is no significant difference between either "amount charged" or "rentals paid" [*see Moore Leasing*, 869 S.W.2d at 761 n.2] and "amount received," the language used in §144.020.1(4) to describe the amount upon which sales tax is based in this case—or, for that matter, between them and "amount received," the phrase used in the definition of "gross receipts."

App. A26 (Vol. IX LF 843).

The AHC apparently confounded §144.010 and §144.020 in reaching its decision. Neither §144.020.1(2) nor (4) uses the phrase "amount received." Section 144.020.1(4) imposes sales tax on sales of telecommunications service and equipment—no such sales were at issue in this case. Rather, the Rams sought a refund of sales tax imposed on amounts paid for admission to football games, which are taxable under §144.020.1(2).

The key question that the parties presented to the Commission was whether the ELT was included in the amount subject to sales tax under §144.020.1(2). See App. A22 n. 10 (Vol. IX LF 839). The Commission stated that its task was "to resolve whether the ELT is included in 'the amount paid' in §144.020.1(2)." See App. A22 n. 10 (Vol. IX LF 839). But the Commission's decision failed to answer that question.

Though the Commission quoted portions of §144.020.1(2) and §144.010.4 under a subheading "Governing statutes" (see App. A21 (Vol. IX LF 838)), the Commission's decision did not examine the language of §144.020.1(2) or the legislature's definition of admission. In the context of the analysis on page 9 of the Commission's decision, it is not clear whether its conclusion that "here we must construe §144.020.1(4) against the Director" (see App. A26 (Vol. IX LF 843)) was meant to refer to the definition of "gross receipts" in §144.010.1(4).

Perhaps some of the confusion can be attributed to the assertion, in the middle of the Rams' argument about what taxes the statutory definition of "admission" excludes, that "the tax base is defined by Mo. Rev. Stat. §144.010.1(4), which defines 'gross receipts.' " Vol. IX LF 781. Section 144.010.1(4) defines gross receipts for the purposes of sections 144.010 to 144.525, and provides that " '[g]ross receipts' … means the total amount of the sale price of the sales at retail." §144.010.1(4). Sections 144.020.1(2) and 144.010.1(1) are more specific statutes that explicitly address the imposition of sales tax on amounts paid for admission to places of games and athletic events. "When two statutes cover the same subject matter, the more specific statute governs over the more general statute." *MFA Petroleum Co. v. Dir. of Revenue*, 279 S.W.3d 177, 178 (Mo. banc 2009).

"[S]ection 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. In this case, §§144.020.1(2) and 144.010.1(1) govern what is subject to Missouri sales tax, not the general definition of "gross receipts" in §144.010.1(4). The full ticket price is subject to sales tax under §144.020.1(2).

CONCLUSION

For the reasons stated above, the decision of the Commission should be reversed and the decisions of the Director of Revenue affirmed.

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 3,395 words.

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