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

REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes, Rules, and Other Authorities

ARGUMENT

The question for this Court is whether the Rams met their burden of showing, "upon clear and unequivocal proof," that a portion of the price of football game tickets sold by the Rams is excluded from taxation. *Bartlett Int'l Inc. v. Dir. of Revenue*, 487 S.W.3d 470, 472 (Mo. banc 2016).

In their petitions, the Rams asserted that the statutory exclusion of federal admission tax and taxes imposed by the Sales Tax Law from "admission[,]" *see* §144.010.1(1) RSMo, includes "all taxes." Vol. IX LF 763 (Dec. 2011 Pet., Ex. 2 to the Rams' Mot. for Summ. Decision); Vol. IX LF 769 (Aug. 2013 Pet., Ex. 3 to the Rams' Mot. for Summ. Decision). The Administrative Hearing Commission correctly noted that "The Rams have the burden of proof." App. A21 (Vol. IX LF 838). The Rams failed to meet their burden and the law does not support the Rams' claims.

The parties stipulated that the exhibits referenced in the first joint stipulation, which was an exhibit to the Rams' motion for summary decision, "may be admitted in full." App. Al (Vol. IX LF 756). The summary decision record includes the audit work papers and the Department of Revenue's letter summarizing the audit findings (e.g., Vol. V LF 385-390[1]).

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[1] That letter and the audit work papers are contained in Exhibit G to the first joint stipulation. See Vol. V index; see App. A3 ¶11.

The Rams do not appear to dispute that the ELT was included in the ticket price. Resp't's Br. at 7, 13-14. If there were a genuine dispute with respect to a material fact, that would itself require reversal of the decision in the Rams' favor. *Krispy Kreme Doughnuts v. Dir. of Revenue*, 358 S.W.3d 48, 51, 53 (Mo. banc 2011).

The Rams' brief is interspersed with references to legal conclusions or statements of law contained in the first joint stipulation. But this Court is "not bound by stipulations or concessions as to questions of law." *Parr v. Breeden*, 489 S.W.3d 774, 779 (Mo. banc 2016).

I. 12 CSR §10-103.800 does not support the Rams' arguments.

The Rams argue that, under 12 CSR §10-103.800, the ELT is excluded from state tax liability. That argument fails. First, the Director of Revenue's regulation cannot enlarge the meaning of §144.010.1(1) RSMo, or that of any other statute. *Circuit City Stores, Inc. v. Dir. of Revenue*, 438 S.W.3d 397, 402 (Mo. banc 2014).

Second, the language of 12 CSR §10-103.800 must be read in context. *Circuit City Stores, Inc.*, 438 S.W.3d at 402. The purpose section of the regulation references state sales taxes imposed by §144.020 RSMo, and by art. IV, secs 43(a) and 47(a) of the Missouri Constitution, *see* §144.081.1 RSMo. The purpose section of 12 CSR §10-103.800 also states that Section "144.285, RSMo require[s] sellers to determine the correct rate of tax." 12

CSR §10-103.800. Section 144.285 RSMo and 12 CSR §10-103.800 each address sales tax imposed by political subdivisons, as well as state sales taxes. Section 144.285.6 RSMo; 12 CSR §10-103.800(1), (2)(B).

The purpose of 12 CSR §10-103.800 is to explain to sellers how to determine the correct rate of sales tax. 12 CSR §10-103.800 (purpose section), *see* §10-103.800(2)(A), (B). In order to determine the correct total sales tax rate, the seller must add all sales taxes imposed by political subdivisions to the state sales tax rate. Example A of the 12 CSR §10-103.800 illustrates the limited purpose of the regulation:

> A retailer located in an area with city and county taxes totaling two percent must charge and collect a total sales tax of 6.225% on all sales.

12 CSR §10-103.800(3)(A)

II. The price of the sales of tickets for admission to football games is subject to sales tax.

The Commission found that the Rams collected and remitted ELT to the City of St. Louis. App. A19 ¶4 (Vol. IX LF 836). That fact is not in dispute. The Rams appear to suggest that the Commission found that "ELT collected from purchasers and remitted to the City of St. Louis necessarily was not paid to the Rams for admission." Resp't's Br. at 6. The Commission's decision does not contain such a conclusion.

Contrary to the Rams' assertion in their brief, from February 1, 2010, through January 31, 2013, the Rams failed to pay sales tax on all "amount[s] 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; Vol. V LF 387. The Rams suggest that portions of ticket sales that the Rams used to pay the ELT were not paid for admission or seating accommodation. Resp't's Br. at 4, 7. But the Rams' customers purchased admission—i.e., entry—to football games when they paid the ticket price. Had the customers declined to pay the entire ticket price, surely the Rams would not have issued them tickets, nor given the customers permission to enter the stadium in order to watch football games. Moreover, "fees paid to, or in any place of… games and athletic events…" §144.020.1(2) RSMo, are subject to sales tax. *Id.; Eighty Hundred Clayton Corp. v. Dir. of Revenue*, 111 S.W.3d 409, 410 (Mo. banc 2003).

The Rams misread the Director's argument concerning the exclusion in §144.010.1(1). Here, the ticket price paid by the customer, which included the ELT, was "the amount paid for admission." The ELT does not qualify for the exclusion or exception in §144.010.1(1) because the ELT is not imposed by the Sales Tax Law, nor is it a federal admission tax. *See* §144.010.1(1) RSMo. The Rams failed to meet their burden of showing "that the transaction[s] at

issue fit[s] the statutory language exactly." *Bartlett Int'l Inc.*, 487 S.W.3d at 472.

This case does not involve prohibited double taxation. "Double taxation occurs when two separate taxes are placed on the same item for the same purpose by the same taxing authority during the same taxing period." *GTE Automatic Elec. v. Dir. of Revenue*, 780 S.W.2d 49, 53 (Mo. banc 1989) (*citing State ex rel. Spink v. Kemp*, 283 S.W.2d 502, 518 (Mo. banc 1955)), *overruled, in part, on other grounds by Southwestern Bell Tel. Co. v. Dir. of Revenue*, 78 S.W.3d 763 (Mo. banc 2002) (construing use tax exemption for machinery and equipment used in manufacturing), *Southwestern Bell Tel. Co.*, 78 S.W.3d 763, *abrogated by IBM Corp. v. Dir. of Revenue*, 491 S.W.3d 535 (Mo. banc 2016). Here, two different taxing authorities—the City of St. Louis and the State of Missouri—imposed the taxes in question. The fact that the Rams recovered the cost of the ELT in the sale price of tickets for admission to football games does not mean that double taxation results from the Rams' customers paying sales tax on those tickets. *Id.*

The Rams contend that the Commission did not merely decide that "amounts of ELT were not subject to sales tax…" Resp't's Br. at 7. The Rams claim that "[t]he Commission's decision is that those amounts of ELT… 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).” Resp’t’s Br. at 7. The Rams fail to cite any portion of the Commission’s decision that would support that characterization of the decision, and a review of the decision reveals none.

The Rams contend that “[t]he tax base is defined by” the definition of gross receipts. Resp’t’s Br. at 10. That argument lacks legal support. This Court has, on a few occasions, used the phrase “tax base” in discussing the relationship between the Sales Tax Law and other state taxes, chiefly use tax. *See Southwestern Bell Tel. Co. v. Morris*, 345 S.W.2d 62, 68 (Mo. banc 1961) (discussing the impact of a use tax exemption upon “the potential of the tax base established by the Sales Tax Act, §144.010 et seq.”); *Star Serv. & Petroleum Co. v. Admin. Hearing Comm’n*, 623 S.W.2d 237, 238 (Mo. 1981) (“the primary purpose of the use tax is the protection of the sales tax base”). Presumably, the Rams employ the phrase “tax base” because it appears in *ITT Canteen Corp. v. Spradling*, 526 S.W.2d 11 (Mo. 1975), a declaratory judgment action that sought to invalidate an administrative rule that attempted to impose sales tax on cigarette tax. *Id.* at 12.

The cigarette tax statute provided that the cigarette tax “was to be an item ‘added to’ the sales price, and not a part thereof.” *ITT Canteen Corp.*, 526 S.W.2d at 20, see *id.* at 14, 16-17; see App. A24 (Vol. IX LF 841) (quoting §149.024.4 RSMo 1969). Because, by statute, cigarette tax was not part of the sales price, this Court held that “the amount of the cigarette tax was not

properly includable in the sale tax base… .” 526 S.W.2d at 17. In contrast, no statute states that ELT is not a part of the sale price of admission tickets.

Here the sales tax is determined by applying the definition of “sale at retail,” which “embrace[s]: (a) sales of admission tickets,” §144.010.1(13), as well as §144.020.1(2), not by refering to the definition of “gross receipts” in isolation. *See City of Springfield v. Dir. of Revenue*, 659 S.W.2d 782, 784-85 (Mo. banc 1983); *see also Nat’l Fleetway, Inc. v. Dir. of Revenue,* 614 S.W.2d 258, 261 (Mo. 1981) (“Although the sales tax is no longer a ‘transaction’ tax, the seller’s tax liability is measured by his receipts from taxable transactions with purchasers.”). The definition of gross receipts states, in part, that “gross receipts… means the total amount of the sale price of the sales at retail…” Section 144.010.1(4) RSMo.

> Where necessary to conform to the context of sections 144.010 to 144.525 and the tax imposed thereby, the term ‘sale at retail’ shall be construed to embrace:
>
> (a) sales of admission *tickets*, cash admissions, charges and fees to or in places of amusement, entertainment and recreation, games and athletic events…

Section 144.010.1(13) RSMo (emphasis added).

“The general tenor of the sales tax law… makes the transaction between a seller and a purchaser the taxable event.” *Nat’l Fleetway, Inc. v.*

Dir. of Revenue, 614 S.W.2d 258, 261 (Mo. 1981), *citing* §144.020 RSMo. Section 144.020.1(2) subjects the football ticket sales to sales tax. Each ticket sale constituted a "sale at retail" *see* §144.010.1(13) RSMo, and "the total amount of the sale price," §144.010.1(4) RSMo, of each ticket, including the ELT, was subject to state sales tax.

The Rams suggest that the Commission found "ambiguity in the relevant statutes," and therefore followed the reasoning in *Moore Leasing, Inc. v. Dir. of Revenue*, 869 S.W.2d 760 (Mo. banc 1994). Resp't's Br. at 11. The Commission's decision contains a subheading "Ambiguous statutory definitions," and notes that, in *Moore Leasing*, this Court found §144.070.5 ambiguous. App. A26 (Vol. IX LF 843); 869 S.W.2d at 761. The Commission's decision does not explicitly find any other statute ambiguous, though it states "… here we must construe §144.020.1(4)"—which imposes sales tax on telecommunications service, and is not relevant to the issues in this case—"against the Director." App. A26 (Vol. IX LF 843). Assuming that the reference to §144.020.1(4) was a clerical error, it is not clear what statutory provision the Commission believed it was required to construe against the Director. Section 144.020.1(2), which imposes the sales tax, is not ambiguous. *Eighty Hundred Clayton Corp. v. Dir. of Revenue*, 111 S.W.3d 409, 410 (Mo. banc 2003).

Moore Leasing involved the sales tax liability of motor vehicle leasing companies with respect to motor vehicles owned by those companies, which "turns principally on §144.070.5." 869 S.W.2d at 761. The lessees' property tax payments, when routed through the motor vehicle leasing company, were separate from the monthly lease payments. 869 S.W.2d at 760-61. This Court concluded that "the amount charged for each rental or lease agreement," taxable under §144.070.5, did not include property tax payments that were "separate from those made to satisfy the basic monthly lease charges." *Id.* at 761. The property taxes were not "part of a taxable lease transaction" as the Rams suggest. See Resp't's Br. at 14. *Moore Leasing* does not apply to the transactions in this case. Indeed, the Commission acknowledged 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).

CONCLUSION

For the foregoing reasons, as well as those set forth in the Director of Revenue's opening brief, this Court should reverse the decision of the Administrative Hearing Commission.

Respectfully submitted,

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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 2,383 words.

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