

SC96731

IN THE MISSOURI SUPREME COURT

CASS COUNTY, MISSOURI
Appellant

v.

DIRECTOR OF REVENUE
Respondent.

CORRECTED APPELLANT'S BRIEF

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STATEMENT OF THE COURT'S APPELLATE JURISDICTION

Cass County, Missouri, appeals to this Court from a final decision by the Missouri Administrative Hearing Commission dated September 27, 2017, wherein the AHC held that the Missouri Director of Revenue “has the legal authority to withhold and redistribute [to Lee’s Summit, Missouri] \$966,692.25 in local sales taxes.” Lf 33, A 19.¹

This final administrative decision by the AHC is subject to judicial review. Mo. Const. Art. V § 18.

This Court has original appellate jurisdiction under Mo. Const. Art. V § 3 because the AHC’s decision construes revenue laws of the State of Missouri.

Cass County filed its petition for review on October 11, 2017, within 30 days of the AHC’s decision. This appeal is therefore timely under Mo. Rev. Stat. § 621.189 (2016).

¹ The legal file is cited as “Lf;” the hearing transcript as “Tr;” the appendix as “A;” the supplemental legal file as “Supp Lf.”

STATEMENT OF FACTS

Procedural history

On March 10, 2016, the Missouri Director of Revenue issued a final decision to “redistribute \$966,692.25 in local sales tax” from Cass County, Missouri, to the City of Lee’s Summit, Missouri. Lf 7, 16, A 2. The Director stated his intent to accomplish that by withholding a monthly amount of local sales tax collected by the Director on behalf of Cass County over a three-year period beginning July 1, 2016, and pay the funds to Lee’s Summit. Lf 7, 16, A 2.

Cass County appealed to the Missouri Administrative Hearing Commission on April 8, 2016. Lf 1, 16, A 2. The Director filed an answer on May 12, 2016 and the AHC granted Lee’s Summit leave to intervene on May 24, 2016. Lf 16, A 2.

The AHC held a hearing on September 16, 2016 and issued its decision on September 27, 2017. Lf 15-33, A 1-19. This appeal follows.

Cass County’s and Lee’s Summit’s local sales taxes

Lee’s Summit is located in both Jackson County and Cass County. Tr 11. Both Lee’s Summit and Cass County have enacted a local sales tax on domestic utilities, as allowed by Mo. Rev. Stat. § 144.032.² Tr 7, 33-34. Jackson County imposes no local sales tax on domestic utilities. Tr 33.

² All citations to Mo. Rev. Stat. are to the 2016 revision, as amended.

Lee's Summit, Cass County, and Jackson County have residents served by a public utility, Kansas City Power & Light ("KCP&L," formerly "AQUILLA"). Tr 33-35. At all relevant times KCP&L collected the correct amount of local sales tax from its Lee's Summit customers. However, KCP&L incorrectly reported the source of these collections on its sales tax returns filed with the Department of Revenue. As a result, KCP&L reported that the total of all collections from Lee's Summit customers was for payment of Cass County's local sales tax. Conversely, KCP&L failed to report that any of the money collected from Lee's Summit customers was for payment of Lee's Summit's local sales tax. Tr 37-38.

At the hearing before the AHC, the Director's auditor, Jane Gardner, offered testimony over Cass County's objection that a coding error on KCP&L's returns resulted in the amount of \$966,692.25 being "over reported" for Cass County, and therefore overpaid to Cass County during a period of three years. Tr 40.

The Director's handling of local sales tax money

The Department uses a computer program to keep track of local sales tax for each taxing jurisdiction wherein a seller of goods or services (KCP&L in this instance) is obligated to collect, remit, and report sales tax on its returns. Tr 80-81.

The Department deposits all sales tax money into an overnight safe-keeping account under the Director's custody. Tr 69. Money in this safekeeping account is separated the next day and transferred into either the state account, or into the non-

state account. Tr 70. The non-state account is divided into separate funds, including the local tax fund. Tr 70.

The money segregated to the local tax fund is separated further into funds for each taxing jurisdiction based on jurisdiction codes reported by the seller on its sales tax returns. Tr 75, 79-81. These jurisdiction codes serve a second purpose: they are used by the Director to calculate the amount of each monthly distribution to each local taxing entity from the funds held by the Director. Tr 75, 79-81. Distributions from each fund are based on the amount collected from each taxing jurisdiction, as identified by the jurisdiction codes on each seller's sales tax returns. Tr 80-81. An error in coding the jurisdiction for which sales tax money is collected, remitted, and reported by the seller results in an incorrect distribution.

Each month the Director provides reports to local taxing jurisdictions showing the amounts distributed. Cass County and Lee's Summit received these reports, but these reports did not provide the information necessary to know whether either was receiving too much or too little from any particular seller. Tr 82, 92-96. Cass County's first notice of any alleged overpayment was when a Department representative contacted the Cass County Treasurer in March 2012. Tr 92, 96.

The refund process

When the Department's auditor, Jane Gardner, notified KCP&L of its reporting error, KCP&L provided the information necessary to amend its returns, *i.e.*, "to file the returns correctly for the period of time at issue, December 2008 through December [] 2011." Tr 43.

According to Gardner, "amended returns are necessary to correct the problem" identified in the KCP&L audit. Tr 41 ("When you catch an error like this in an audit, you would actually generate the amended return").

The Department required KCP&L to file a "partial amended return." Tr 51. The Department plans to submit a series of amended returns over 36 or 37 months to generate the number of separate refunds for the money the Director contends Cass County owes. Tr 52-53.

In practice, local sales tax refunds are paid out of general revenue and reimbursed to general revenue from the appropriate taxing jurisdiction's account within the local fund. Tr 76-77.

Cass County's use of sales tax revenues

Cass County was in a dire financial condition during the years when the funds at issue were paid to Cass County, even with receipt of these funds. Tr 97-99. All local sales tax funds which the Director paid to Cass County were used for public services, many of which benefitted Lee's Summit residents. Tr 11-12.

The AHC's ruling which is in error

The AHC found the Director had a “duty to reallocate” funds from Cass County’s account to Lee’s Summit’s, citing the City Sales Tax Act, Mo. Rev. Stat. § 94.500-550. Lf 31, A 17. The AHC concluded that “the existence of this statute, however [constitutionally] flawed it is, shows the Legislature’s intention that the Director have the ability to cure ‘erroneous payments and overpayments’ such as the ones occurring here...[a]ccordingly, we conclude that the Director had the duty to reallocate the funds in question.” Lf 31, A 17.

In rejecting Cass County’s contention—that the statutes governing refunds, including Mo. Rev. Stat. § 144.190, must be followed as a precondition to the Director having any authority to withhold and redistribute funds held in trust for Cass County—the AHC concluded that “[r]efunds may only be claimed by ‘the person legally obligated to remit the tax’ or KCP&L...[however] the statute is plain that this is not a refund case because there is no balance to be refunded.” Lf 32, A 18.

The AHC ruling which Cass County asserts to be in error is this: “The Director has the legal authority to withhold and redistribute \$966,692.25 in local sales taxes to correct the erroneous payments made between December 2008 and November 2011.” Lf 33, A 19.

KCP&L's waivers of liability

KCP&L remains obligated to Lee's Summit for taxes collected but not paid to Lee's Summit due to these reporting errors. Between January 2012 through December 2015, KCP&L annually executed documents titled "WAIVER OF STATUTE OF LIMITATIONS," whereby KCP&L "waived the Statute of Limitations for additional assessment of local sales taxes for the Lee's Summit, Missouri local domestic utility sales taxes reporting errors." Tr 45-49, Exhibit B.

POINT RELIED ON

THE AHC ERRED IN RULING THAT “THE DIRECTOR HAS THE LEGAL AUTHORITY TO WITHHOLD AND REDISTRIBUTE \$966,692.25 IN LOCAL SALES TAXES” FROM FUNDS HELD IN TRUST FOR CASS COUNTY, BECAUSE THE AHC THEREBY MISINTERPRETED THE LAW AND MISAPPLIED THE LAW TO THE FACTS OF THE CASE IN THAT THE DIRECTOR’S AUTHORITY OVER COUNTY SALES TAX FUNDS HELD IN TRUST IS GOVERNED BY Mo. Rev. Stat. § 67.525, WHICH PERMITS THE DIRECTOR TO EITHER (1) PAY THESE FUNDS TO THE COUNTY WHICH IMPOSES THE TAX, OR (2) DIRECT THE STATE TREASURER TO ISSUE REFUND CHECKS TO CORRECT “ERRONEOUS PAYMENTS OR OVERPAYMENTS”; HOWEVER, KCP&L (THE BUSINESS WHICH COLLECTED AND REMITTED THE TAX, AND FILED THE RETURNS WHICH THE AHC FOUND TO BE IN ERROR) HAS FILED NO APPLICATION FOR REFUND, AS REQUIRED BY Mo. Rev. Stat. §§ 144.100 AND 144.190, AND THEREFORE, THE DIRECTOR LACKS AUTHORITY TO ORDER A REFUND BY CASS COUNTY TO BE PAID OUT OF LOCAL SALES TAX MONEY HELD IN TRUST BY THE DIRECTOR FOR CASS COUNTY.

While this appears to be a case presenting an issue of first impression, the following authorities are the leading authorities guiding resolution:

Ins. Co. of State of Pa. v. Dir. of Revenue & Dir. of Ins., 269 S.W.3d 32
(Mo. banc 2008)

State ex rel. National Investment Corp. v. Leachman, 613 S.W.2d 634 (Mo. banc 1981)

H.S. Construction Co. v. Lohman, 950 S.W.2d 331 (Mo. App. W.D. 1997)

ARGUMENT

POINT RELIED ON

THE AHC ERRED IN RULING THAT “THE DIRECTOR HAS THE LEGAL AUTHORITY TO WITHHOLD AND REDISTRIBUTE \$966,692.25 IN LOCAL SALES TAXES” FROM FUNDS HELD IN TRUST FOR CASS COUNTY, BECAUSE THE AHC THEREBY MISINTERPRETED THE LAW AND MISAPPLIED THE LAW TO THE FACTS OF THE CASE IN THAT THE DIRECTOR’S AUTHORITY OVER COUNTY SALES TAX FUNDS HELD IN TRUST IS GOVERNED BY Mo. Rev. Stat. § 67.525, WHICH PERMITS THE DIRECTOR TO EITHER (1) PAY THESE FUNDS TO THE COUNTY WHICH IMPOSES THE TAX, OR (2) DIRECT THE STATE TREASURER TO ISSUE REFUND CHECKS TO CORRECT “ERRONEOUS PAYMENTS OR OVERPAYMENTS”; HOWEVER, KCP&L (THE BUSINESS WHICH COLLECTED AND REMITTED THE TAX, AND FILED THE RETURNS WHICH THE AHC FOUND TO BE IN ERROR) HAS FILED NO APPLICATION FOR REFUND, AS REQUIRED BY Mo. Rev. Stat. §§ 144.100 AND 144.190, AND THEREFORE, THE DIRECTOR LACKS AUTHORITY TO ORDER A REFUND BY CASS COUNTY TO BE PAID OUT OF LOCAL SALES TAX MONEY HELD IN TRUST BY THE DIRECTOR FOR CASS COUNTY.

PRESERVATION OF ERROR

In its petition initiating review of the Director's decision before the AHC, Cass County asserted that the Director lacked jurisdiction to order a refund in the absence of a timely and valid refund application by the tax remitter, KCP&L, and lacked authority to take Cass County sales tax money and pay it to Lee's Summit. Lf 4 (Petition ¶¶ 13-16).

Throughout the proceedings, including in response to the Director's motion for summary disposition, Cass County asserted that the Director's authority to take money out of the sales tax fund held in trust for Cass County depended upon KCP&L first filing for a refund and prevailing on that claim, citing Mo. Rev. Stat. §§ 144.100.4, 190, and Mo. Rev. Stat. § 67.525. Supp Lf 37 (AHC's Order Denying Summary Disposition, at 4).

The AHC issued its final decision, ruling against Cass County on September 27, 2017. Lf 15-33, A 1-19. Cass County timely appealed to this Court. Nothing further was necessary to preserve for review the error of law asserted in this point.

STANDARD OF REVIEW

When reviewing a decision by the Director of Revenue the AHC steps into the Director's shoes and "the AHC decision becomes the administrative action of

the agency.” *Custom Hardware Eng'g & Consulting, Inc. v. Dir. of Revenue*, 358 S.W.3d 54, 58 (Mo. banc 2012).

Review of a final decision by the AHC is governed by Mo. Const. Art. 5 § 18, and Mo. Rev. Stat. § 621.193.

The AHC's decision shall be affirmed if: (1) it is authorized by law; (2) it is supported by competent and substantial evidence on the whole record; (3) mandatory procedural safeguards are not violated; and (4) it is not clearly contrary to the reasonable expectations of the General Assembly...The AHC's factual findings will be upheld if the findings are supported by substantial evidence in the record.

Custom Hardware, 358 S.W.3d at 56.

This Court reviews *de novo* all questions of statutory interpretation by the AHC, and “[n]o deference to the AHC's decision is appropriate unless the decision is ‘authorized by law.’” *AAA Laundry & Linen Supply Co. v. Dir. of Revenue*, 425 S.W.3d 126, 128 (Mo. banc 2014).

Finality in local revenue matters demands strict construction of local tax laws which in turn precludes requiring local governments to refund local taxes except as allowed by statutes specific to that purpose. *Ins. Co. of State of Pa. v. Dir. of Revenue & Dir. of Ins.*, 269 S.W.3d 32, 35 (Mo. banc 2008).

DISCUSSION

This dispute arose from a single error repeated on multiple sales tax returns filed over many years by the business which collected and remitted local domestic utility sales taxes imposed by Cass County and Lee's Summit, KCP&L. As a result of this error, the AHC found that money collected by KCP&L from Lee's Summit residents under Lee's Summit's domestic utility sales tax was paid to Cass County. These payments were made exactly as KCP&L's returns indicated they should have been made. It was KCP&L's error that caused any overpayment to Cass County. KCP&L has not taken steps to correct this error. KCP&L remains liable to Lee's Summit for the taxes it did not turn over to the Director for payment to Lee's Summit.

The Director has no authority to do for KCP&L two things that KCP&L has not done for itself—seek a refund from Cass County and pay the tax owed to Lee's Summit, in no specific order.

“Finality in taxation,” as Justice Wolff said in a frequently quoted concurring opinion, “is essential to local government.” *Green v. Lebanon R-III School District*, 13 S.W.3d 278, 289 (Mo. banc 2000) (Wolff, J. concurring). Finality demands strict construction of statutes governing tax refunds. *Ins. Co. of State of Pa.*, 269 S.W.3d at 35.

In connection with refunding a different local tax this Court said, in language equally applicable here, that “explicitly stated statutory requisites are to be strictly construed and enforced.” *State ex rel. National Investment Corp. v. Leachman*, 613 S.W.2d 634, 635 (Mo. banc 1981) (holding that failure to adhere to the procedures set by statute precluded refund) (internal quotations, citations omitted).

This strict construction in favor of local taxing entities is particularly important when, as here, “the government has not violated statutory obligations,” and the error resulting in refund rights is through fault of the party paying or remitting the tax. *Mo. Am. Water Co. v. Collector of St. Charles Cty., Mo.*, 103 S.W.3d 266, 271 (Mo. App. E.D. 2003).

The Director has no authority to require Cass County to refund money from Cass County’s current tax revenues.

This conclusion is based on applying three separate statutes governing refunds of county sales taxes, Mo. Rev. Stat. §§ 144.100, and 190, and § 67.525.

The parties’ positions before the AHC

Before the AHC, Cass County asserted that Mo. Rev. Stat. §§ 144.100 and 144.190, contain the exclusive remedy for a party asserting a refund of sales taxes based upon erroneous sales tax returns revealed by an audit, and that the proper

party, KCP&L, had asserted no claim for refund. Lf 4 (Petition ¶ 14).³ The Director, therefore, had no authority to compel a refund from Cass County by withholding money from funds held in trust for Cass County.

The Director and Lee's Summit asserted that the Director's action amounted to an "administrative" adjustment authorized by Mo. Rev. Stat. § 32.087.6, which does not require filing a "refund" claim. Lf 26-27.

The AHC's ruling in error

After holding that "the Director does not have the power to withhold Cass County's Local sales tax proceeds and pay them to Lee's Summit" under Mo. Rev. Stat. § 32.087.6 (Lf 28-31, A 14-17 (emphasis in the AHC's decision)), the AHC found the Director's authority to do so stemmed from a combination of three sources: (1) Mo. Const. Art. IV § 15 (requiring the Director to credit non-state funds to the proper fund); (2) Mo. Rev. Stat. § 32.087.6 (requiring the Director to administer and enforce the local sales tax); and (3) from legislative intent found in the City Sales Tax Act, Mo. Rev. Stat. §§ 94.500-550 (holding that "the existence of this statute, however flawed it is, shows the Legislature's intention that the Director have the ability to cure 'erroneous payments and overpayments' such as the ones occurring here"). Lf 31, A 17.

³ Missouri's State Sales Tax Law, Chapter 144, is made applicable to local sales taxes by Mo. Rev. Stat. § 32.087.7.

Why the AHC relied upon The City Sales Tax Act is unclear. It is inapplicable to funds received by the Director pursuant to a county sales tax. The County Sales Tax Act, and particularly Mo. Rev. Stat. § 67.525, controls the Director's authority over money collected and held under a county sales tax.

Moreover, the AHC reached its decision not by applying the City Sales Tax Act as written, but by construing that law as it would read in the absence of an unconstitutional delegation of authority by the legislature to the State Treasurer within the City Sales Tax Act. Lf 31, A 17.

As explained below, the Director is not authorized to take money which is being currently collected from all Cass County residents and being accurately remitted and reported by all Cass County sellers, and use those current funds to fix a problem caused by a series of old sales tax returns filed by one seller, KCP&L, which incorrectly reported the source of the local sales tax money KCP&L remitted to the Director between 2008 and 2011.

An action to recover from Cass County is a refund proceeding

A fundamental principle of statutory construction holds that “[s]tatutes relating to the same subject matter should be read together, but where one statute deals with the subject in general terms and the other deals in a specific way, to the extent they conflict, the specific statute prevails over the general statute.” *Turner v. School District of Clayton*, 318 S.W.3d 660, 668 (Mo. banc 2010).

The word “refund” is not defined within Missouri’s revenue laws. The dictionary definition is: “[t]o repay or restore; to return money had by one party of another.” Black’s Online Law Dictionary, 2d Ed. See also Opinion No. 85-20012001 WL 212682, at *3 (Mo. A.G. Feb. 16, 2001)(“We believe that generally the term “refunds” means a return of revenue as required by law,” citing *Kleban v. Morris*, 247 S.W.2d 832 (Mo. 1952)).

All three statutes cited by Cass County (Mo. Rev. Stat. §§ 144.100, and 190, § 67.525) expressly address refunding sales taxes, the latter specifically county sales taxes.

The statutes and constitutional provision on which the AHC based its decision address the subject of county sales tax refunds tangentially at best, or not at all.

The Director has no authority to “redistribute” Cass County’s current local sales tax money once it is deposited into the non-state account for county government taxes

The extent of the Director’s authority over county sales tax money collected and remitted to Cass County’s account is set by Mo. Rev. Stat. § 67.525.

It is important to note that this is not a situation wherein KCP&L or the Director’s auditors identified KCP&L’s reporting error during the time while the money was on hand in the county sales tax trust fund. The Director did not issue a

decision to “redistribute“ funds from Cass County’s account before the Director distributed payment from the county sales tax trust fund to Cass County. Whether the Director would have that authority is not before the Court.

What is before the Court is the question of whether the Director can compel a refund by Cass County out of its current sales tax revenues held by the Director in trust so that the money may be “redistributed” to Lee’s Summit.

Mo. Rev. Stat. § 67.525 denies the Director that authority. The legislature has placed strict limits on what the Director may do with a county’s sales tax money once it is collected and remitted to the Director to be held in trust. This is to restrain the Director from exercising authority too loosely over money paid by Missouri taxpayers to fund local government, and to place responsibility for correctly collecting and reporting local sales taxes upon the seller, here, KCP&L.

After deducting the Director’s one percent fee from county sales taxes remitted to the Director, the balance “shall be deposited with the state treasurer in a county sales tax trust fund [which] shall not be deemed to be state funds and shall not be comingled with any funds of the state.” Mo. Rev. Stat. § 67.525.1.

Once deposited into the County Sales Tax Trust Fund for Cass County, the Director can do only two things with the money: 1) pay it to Cass County, Mo. Rev. Stat. § 67.525.1 (“Not later than the tenth day of each month the director of revenue shall distribute all moneys deposited in the trust fund during the preceding

month...to the county treasurer, or such other officer as may be designated by the county ordinance or order.”); or 2) authorize the state treasurer to issue a “refund.” § 67.525.2 (“The director of revenue may authorize the state treasurer to make refunds from the amounts in the trust fund and credited to any county for erroneous payments and overpayments made.”) (emphasis added).

Mo. Rev. Stat. § 67.525.2 uses the term “refunds” expressly. There is no reason to believe the term has a different application than as used in the two other statutes dealing with sales tax refunds, Mo. Rev. Stat. §§ 144.100 and 190. Section 67.525 does not authorize correcting erroneous payments that result from reporting errors in past reporting periods by “redistributing” money collected in later reporting periods.

The Director’s authority under Section 67.252.2 to access funds in the County account, turns on the outcome of a refund proceeding.

Without a decision on a refund application by KCP&L the Director can do nothing with funds held in trust for Cass County except distribute them to Cass County.

Errors on KCP&L’s returns require KCP&L to file for a “refund” before the Director may compel Cass County to make a “refund”

Here, it is undisputed that the Director intends to process multiple amended returns and issue multiple “refunds” to recover money from the county sales tax

trust fund held for Cass County, and give it to Lee's Summit. Tr 41-43, 51-53.

The Director's own witnesses so testified.⁴

However, there is one step which must first happen before the Director has authority to refund (redistribute) Cass County's money to anybody. KCP&L must file for a refund. Mo. Rev. Stat. § 144.100.4. "If a refund or credit results from the filing of an amended return, no refund or credit shall be allowed unless an application for refund or credit is properly completed and submitted to the director pursuant to section 144.190." *Id.*

This statute negates the Director's authority to do exactly what the AHC says he may. In the absence of a successful refund claim by KCP&L, the Director has no authority to compel Cass County to give up money paid by Cass County taxpayers under Cass County's local sales tax ordinances during a current reporting period, and return it to the remitter, KCP&L or redistribute it to Lee's Summit.

The Director's authority to adjudicate a refund is granted in Mo. Rev. Stat. § 144.190.2. This section states:

If any tax, penalty or interest has been paid more than once, or has been erroneously or illegally collected, or has been erroneously or illegally computed, such sum shall be credited on any taxes then due

⁴ Lee's Summit has actually filed suit against Cass County in circuit court for these funds. See A 26.

from the person legally obligated to remit the tax pursuant to sections 144.010 to 144.525, and the balance, with interest as determined by section 32.065, shall be refunded to the person legally obligated to remit the tax, but no such credit or refund shall be allowed unless duplicate copies of a claim for refund are filed within three years from date of overpayment.

Mo. Rev. Stat. § 144.190.2.

The remedy of a refund is KCP&L's to exercise or not. *Bert v. Director of Revenue*, 935 S.W.2d 319, 320-21 (Mo. banc 1996)(refund action to be maintained by the remitter of the tax). Section 144.190.2 is the exclusive remedy for refund of sales taxes. *H.S. Construction Co. v. Lohman*, 950 S.W.2d 331, 332-33 (Mo. App. W.D. 1997)(citing cases dating to 1952).

Once KCP&L files its amended returns, the Director's authority to do more depends upon KCP&L filing a refund application as required by Mo. Rev. Stat. § 144.100.4.

In the absence of a refund claim by KCP&L, the Director has no authority to order one, or to withhold payments from Cass County out of current money collected from its taxpayers.

This much KCP&L and the Director both tacitly acknowledge. KCP&L executed a series of documents whereby it waived "the Statute of Limitations for

additional assessment of local sales taxes for the Lee's Summit, Missouri local domestic utility sales taxes reporting errors." Tr 45-49, Exhibit B. What is totally unclear is why KCP&L didn't simply file a refund application and pay Lee's Summit what it owed Lee's Summit, in no particular order.

In the context of revenue laws, "where special powers are expressly conferred or special methods are expressly prescribed for the exercise of power, other powers and procedures are excluded." *Brown v. Morris*, 290 S.W.2d 160, 166 (Mo. banc 1956). This is so even if other procedures are more expedient. "A presumption exists that the legislature does not insert idle verbiage or superfluous language in the statute." *State ex rel. Vincent v. D.C., Inc.*, 265 S.W.3d 303, 308 (Mo. App. E.D. 2008) (provisions in forfeiture statute requiring judicial declaration before the Director may act preclude action by the Director before that step is completed).

Before the Director can access money held in Trust for Cass County to refund (correct) any overpayment to Cass County on account of KCP&L's reporting errors, KCP&L must actually apply for a refund. This requirement cannot be overstepped for convenience. Compare *St. Charles County v. Dir. of Revenue*, 961 S.W.2d 44, 47-48 (Mo. banc 1998) (in that case a statute, Mo. Rev. Stat. § 144.749, expressly permitted the Director to withhold funds from local government upon a decision declaring the local use tax unconstitutional). The

Director's Decision to withhold funds from Cass County to pay Lee's Summit is grounded in no such statutory authority.

CONCLUSION AND REQUEST FOR RELIEF

It is undisputed that Lee's Summit and Cass County both need their respective sales tax money, past and current. This much was undisputed on the record. Cass County's Treasurer testified to the dire straits in which Cass County operated in the years preceding 2012 and still does. One of Cass County's most significant protections against having to disgorge tax money that it has already collected and spent is the three-year statute of limitations within Mo. Rev. Stat. § 144.190.2. This statute does not stop running until a refund claim is actually filed in the manner the statute requires. Consistent with all of the existing cases that address the importance of finality in matters of local taxation, that time limitation is in place to protect the taxing entity, and it must be strictly enforced for that reason. See *Ins. Co. of State of Pa.*, 269 S.W.3d at 35-36.

The AHC's authority is limited to applying statutes as enacted by the General Assembly and the regulations of an agency as promulgated. *State Tax Comm'n v. Admin. Hearing Comm'n*, 641 S.W.2d 69, 77 (Mo. banc 1982). The AHC lacks subject matter jurisdiction to enter what is in effect a declaratory judgment granting the Director authority that is not granted to the Director by law—"[i]t is emphatically the province and duty of the judicial department to say what the law is." *Id.* (quoting *Marbury v. Madison*, 1 Cranch (5 U.S.) 137, 177, 20 L.Ed. 60 (1803)).

For the foregoing reasons, Cass County requests that the Court reverse the decision of the AHC and order that the Director has no authority to withhold and redistribute to Lee's Summit any money held by the Director in non-state funds for Cass County.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served electronically upon all counsel of record on this 31st day of January, 2018.

/s/ Michael G. Berry
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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with Rule 84.06(b) and contains 4,799 words and 438 lines, excluding the cover, certificate of service, certificate of compliance, signature block and appendix; and that the brief contains words in 14 point Times New Roman.

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