

**IN THE SUPREME COURT OF
THE STATE OF MISSOURI**

SC97091

Crescent Plumbing Supply, Inc.

Appellant

v.

Missouri Director of Revenue

Respondent

**Appeal from the Administrative Hearing Commission of Missouri
The Honorable Brett W. Berri, Commissioner**

BRIEF OF APPELLANT CRESCENT PLUMBING SUPPLY, INC.

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JURISDICTIONAL STATEMENT

This appeal arises out of a March 20, 2018 ruling by the Administrative Hearing Commission in which Crescent's appeal of an August 22, 2016 decision by the Director of Revenue was denied on the grounds that Crescent's request for refund was outside the Statute of Limitations for such a request. Appellants filed a timely Notice of Appeal. This Court has jurisdiction over this appeal as a matter of exclusive jurisdiction because the matter concerns the construction of Missouri's revenue laws; specifically, whether § 144.190 and the statute of limitations as defined therein denies Crescent relief in the form of its request for refund. *Mo. Const. art. V, § 3; Missouri Revised Statute § 621.189.*

INTRODUCTION

Appellant, Crescent Plumbing Supply Company, hereinafter “Crescent”, is a corporation doing business in the State of Missouri. It is undisputed that Crescent submitted its Seller’s Claim for Sales or Use Tax Refund for Credit Form 472S on or about May 11, 2016 wherein Petitioner requested a refund for filing periods covered from March 2013 to November 2013, for sales taxes paid erroneously to the State of Missouri. The sales taxes erroneously paid by Crescent from March 2013 to June 2013 arose from a single sale contract and transaction for a sale involving a specifically designed and built industrial hot water system built by an out-of-state manufacturer which shipped the specific product directly to Florida. Said sale between the contracting parties was not concluded until June 21, 2013. No other evidence was offered to indicate that the sale between the parties was anything other than a single sale contract that concluded on said date, June 21, 2013. Applying Missouri Revised Statute 144.190.2, Crescent is permitted to file a claim for refund of an overpayment of sales taxes resulting from a mistake of fact or law. Following 12 CSR 10-102.016, the date of overpayment is further defined as within three years after the date of overpayment, which is the due date of the original return or the date paid whichever is later. In this case, three years after the due date of the original return, is November 2016. Crescent has fully met the requirements allowing for the refund of \$11,217.17 requested.

STATEMENT OF FACTS

1. On information and belief, The Director of Revenue is the state official charged with the collection of all taxes and fees payable to the State of Missouri.

2. The taxpayer is Crescent Plumbing Supply Company, hereinafter, “Crescent”.

3. The sales taxes for which Crescent has requested a refund were paid to the State of Missouri from the period of March 2013 through November 2013. Tr. 10:1-25. Ex. 4-7.

4. The amount of sales tax erroneously paid to the State of Missouri by Crescent was in the amount of \$11,217.17. Tr. 20:16-20. Ex. 8.

5. Crescent’s erroneous payment of sales tax occurred as the result of an interstate transaction involving three separate entities: Crescent, an out-of-state manufacturer and a Florida-based purchaser known as “Murphy”. Tr. 11:13-25, Tr. 12:1-9.

6. The interstate sale between Crescent and Murphy involved a series of shipments and modifications of a specifically designed industrial hot water system manufactured, produced and assembled out-of-state. The sale culminated in a final shipment and assembly of the custom-manufactured order in June of 2013, wherein the sale was deemed complete. Tr. 12:3-17, Tr. 26:18-24.

7. The manufacturing, shipment, and installation of all items involved in the sales contract occurred out-of-state, with no physical contact occurring in the State of Missouri. Tr. 8:22-25.

8. With the culmination of the sale in June 2013, Crescent believed the sale was subject to the taxable period concluding in November 2013. Tr.13:15-20

9. Crescent paid the sales tax pursuant to Crescent's normal business procedure for paying sales tax. Specifically, Crescent pays taxes upon receipt of monies paid by the purchaser, thereby not waiting until said sales tax assessment is owed and due; in this particular case, this is important. Tr. 15:3-13.

A. The first shipment date for Crescent's sale to Murphy occurred on the 27th day of December, 2012. Ex. 1.

B. The second shipment date for Crescent's sale to Murphy occurred on the 4th day of February, 2013. Ex. 2.

C. The third shipment date for Crescent's sale to Murphy occurred on the 21st day of June, 2013. Ex. 3.

10. That the actions of the parties as described hereinabove in this particular case determined when in fact the title was passed to the purchaser and when the sale was concluded. Tr. 13:15-25, Tr. 14:1-24.

A. In this particular case, title passed to Murphy on or about 21st day of June, 2013; and

B. That because the title transferred on said date, and if in fact taxes were owed and due the state of Missouri for the quarter, said taxes would be due in November 2013; and

C. That the aforementioned date upon which taxes were owed and due is from March 2013 as purported by The Director of Revenue.

11. Crescent discovered the erroneous payment of sales tax to the State of Missouri when Murphy inquired about said sales taxes owed to the State of Florida [Murphy themselves had been contacted by the State of Florida regarding inquiry about the payment of sales tax owed from said sales contract.] Tr. 17:12-22.

12. Crescent immediately in writing, stating specific grounds, properly signed, and timely applied for a refund from the Director of Revenue, State of Missouri, on or about May 11, 2016. Ex. 8.

13. The Director of Revenue denied Crescent request for refund. LF:00009

14. Crescent is entitled to a refund of \$11,217.27, plus interest. Ex. 8.

POINTS RELIED ON

- I. CRESCENT PLUMBING’S ERRONEOUS PAYMENT OF SALES TAXES, AND THE MISSOURI DIRECTOR OF REVENUE’S ERRONEOUS COLLECTION OF SALES TAX FROM CRESCENT PLUMBING SUPPLY IS UNDISPUTED AND CRESCENT MADE A VALID REQUEST FOR REFUND WITHIN THE STATUTE OF LIMITATIONS.**

Missouri Revised Statute (herein “RSMo.”) § 144.190 (2016)

Missouri 12 Code of State Regulations (herein “CSR”) 10-103.600 (2000)

Missouri 12 CSR 10-102.016 (2002)

Ford Motor Co. v. Director of Revenue, 97 S.W.3d 458 (Mo. banc. 2003)

Aquila Foreign Qualifications Corporation v. Director of Revenue, 362 S.W.3d 1 (Mo. banc 2012)

- II. THE ADMINISTRATIVE HEARING COMMISSION ERRED AS A MATTER OF LAW IN CONCLUDING THE STATUTE OF LIMITATIONS HAD RUN; CRESCENT’S CONTRACT CONSTITUTED A SINGLE SALE WHICH WAS CONCLUDED ON JUNE 21, 2013; THE SALES TAX RETURN PERIOD FOR TAXES OWED WAS NOVEMBER 2013 AND CRESCENT’S APPLICATION FOR REFUND WAS TIMELY FILED ON MAY 11, 2016.**

Computer Network v. Purcell Tire & Rubber, 797 S.W.2d 669 (Mo. App. E.D. 5th 1988)

RSMo. (UCC) §400.1-103 (2016)

RSMo. (UCC) §400.2-106 (2016)

RSMo. (UCC) §400.2-208 (2016)

RSMo. (UCC) §400.2-209 (2016)

**III. THE ADMINISTRATIVE HEARING COMMISSION’S DECISION
MISAPPLIED THE PRECEDENT ESTABLISHED IN FORD MOTOR CO.
V. DIRECTOR OF REVENUE CASE AND DID NOT CONSIDER THE
CODE OF STATE REGULATIONS IN EVALUATING THE LEGISLATIVE
INTENT OF 144.190.2.**

Aquila Foreign Qualifications Corporation v. Director of Revenue, 362 S.W.3d 1
(Mo. banc 2012)

Balloons Over the Rainbow v. Director of Revenue, 427 S.W.3d 815 (Mo. banc
2014)

BASF Corp. v. Dir. of Revenue, 392 S.W.3d 438 (Mo. banc 2012)

Ford Motor Co. v. Director of Revenue, 97 S.W.3d 458 (Mo. banc. 2003)

Missouri 12 CSR 10-102.016 (2002)

STANDARD OF REVIEW

This Court reviews the decision of the AHC pursuant to section §621.189. The Court reviews the AHC's interpretations of the state's revenue laws de novo. *Mackey v. Dir. of Revenue*, 200 S.W.3d 521, 523 (Mo. banc 2006); *Brambles Indus., Inc. v. Dir. of Revenue*, 981 S.W.2d 568, 570 (Mo. banc 1998); *Street v. Director of Revenue*, 361 S.W.3d 355 (Mo. 2012). § 621.189 (2016).

Under section §621.193, the decision of the AHC is to be "upheld when authorized by law and supported by competent and substantial evidence upon the record as a whole unless clearly contrary to the reasonable expectations of the General Assembly." *Mackey*, 200 S.W.3d at 523. § 621.189 (2016).

ARGUMENTS

I. CRESCENT PLUMBING’S ERRONEOUS PAYMENT OF SALES TAXES, AND THE MISSOURI DIRECTOR OF REVENUE’S ERRONEOUS COLLECTION OF SALES TAX FROM CRESCENT PLUMBING SUPPLY IS UNDISPUTED AND CRESCENT MADE A VALID REQUEST FOR REFUND WITHIN THE STATUTE OF LIMITATIONS.

Missouri Revised Statute (herein “RSMo.”) §144.190.2 states as follows: “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 from the person legally obligated to remit the tax pursuant to sections 144.010 to 144.525, and the balance, with the 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 the date of overpayment.” *RSMo. §144.190.2* (2016).

The Missouri Code of State Regulations states under the rules governing the Director of Revenue and Taxpayers’ Rights as to Sales and/or Use Tax, the following:

“PURPOSE: Section §144.190, RSMo permits a taxpayer to file a claim for refund of an overpayment of sales or use taxes resulting from a mistake of fact or law... This rule explains requirements for obtaining a refund or credit on overpayment of sales and use taxes. [Italicization part of Missouri Code of State Regulations]

(1) In general, if a taxpayer has overpaid tax, the taxpayer may file a claim for a refund

with the department.

(2) Basic Application of Tax.

(a) A taxpayer may file a claim for a refund within three (3) years after the date of an overpayment. The date of overpayment is the due date of the original return or the date paid, whichever is later.” *12 Missouri Code of State Regulations (herein “CSR”) 10-102.016* (September 30, 2002).

It is undisputed that Crescent erroneously paid sales taxes totaling \$11,217.27 during the quarterly taxation periods of March 2013 and November 2013 to the State of Missouri. This payment of sales tax, and the collection thereof, was erroneous under Missouri Law (RSMo. §144.190.2), as the sales tax on the goods should have been paid to the State of Florida following the facts of the sale. *12 CSR 10-103.600* (2016). Crescent has dutifully paid the taxes owed to the State of Florida. Therefore, the question before this court is whether or not Crescent made its claim for refund to the Missouri Director of Revenue within the Statute of Limitations.

As stated in the above Missouri Code of State Regulations regarding Missouri taxpayers’ rights, so long as the due date of the original return is later than the date the taxes were paid, the due date of the original return is the valid date for which the statute of limitations should begin to run. *CSR 10-102.016*.

In the present case, the due date on Crescent’s original return for the sum of all monies owed on the sale of goods was November 2013. Tr.13:15-20.

Respondent presumably argues that the *Ford Motor Co. v. Director of Revenue*

precedent should be viewed without consideration of the Missouri Code of State Regulations. We respectfully disagree. In applying the *Ford Motor Co.* standard, we respectfully request that this Court examine the application of 144.190.2 in this case while considering the legislative intent evidenced by the Missouri Code of State Regulations. *Ford Motor Co. v. Director of Revenue*, 97 S.W.3d 458, 461 (Mo. banc. 2003) [holding that legislative intent can be measured by (1) the standard for statutory constructions and (2) the context of the Missouri tax code.]; *Aquila Foreign Qualifications Corporation v. Director of Revenue*, 362 S.W.3d 1, 4-5 (Mo. banc 2012) [holding that the Code of State Regulations provides context and evidences the intent of the legislature regarding Revised Missouri Statutes Chapter 144].

We will elaborate on the reasons for this in part III of our Arguments.

II. THE ADMINISTRATIVE HEARING COMMISSION ERRED AS A MATTER OF LAW IN CONCLUDING THE STATUTE OF LIMITATIONS HAD RUN; CRESCENT’S CONTRACT CONSTITUTED A SINGLE SALE WHICH WAS CONCLUDED ON JUNE 21, 2013; THE SALES TAX RETURN PERIOD FOR TAXES OWED WAS NOVEMBER 2013 AND CRESCENT’S APPLICATION FOR REFUND WAS TIMELY FILED ON MAY 11, 2016.

Crescent engaged in a contract for sale with a company known as “Murphy”, herein “Buyer”) from the State of Florida. This transaction involved the production of a specifically tailored product: an industrial hot water system, designed and assembled over time. The development, manufacturing and assembly of the product was contemplated by the parties as a single sale. In fact, in-order to fulfill the sale as originally contemplated by both parties, general modifications to both the product and the contract for sale in the course of performance of both the contract for, and the sale itself, were required.

“A contract for the sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.” *Computer Network v. Purcell Tire & Rubber*, 797 S.W.2d 669, 673-674 (Mo. App. E.D. 1988), [citing RSMo. §400.2-204(1) of the Uniform Commercial Code (herein “UCC”)].

RSMo. (UCC) §400.2-106, provides in pertinent part:

“Contract for sale” includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a

price (§400.2-401)”. *RSMo. (UCC) §400.2-106* (2016).

RSMo. (UCC) §400.2-208, provides in pertinent part:

“400.2-208. Course of performance or practical construction. — (1) Where the contract for sale involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection shall be relevant to determine the meaning of the agreement.” *RSMo. (UCC) §400.2-208* (2016)

“(2) The express terms of the agreement and any such course of performance, as well as any course of dealing and usage of trade, shall be construed whenever reasonable as consistent with each other; but when such construction is unreasonable, express terms shall control course of performance and course of performance shall control both course of dealing and usage of trade (§400.1-205).” *RSMo. (UCC) §400.2-208* (2016)

“(3) Subject to the provisions of section 400.2-209 on modification and waiver, such course of performance shall be relevant to show a waiver or modification of any term inconsistent with such course of performance.” *RSMo. (UCC) §400.2-208* (2016).

RSMo. (UCC) §400.2-209 provides in pertinent part:

“400.2-209. Modification, rescission and waiver. — (1) An agreement modifying a contract within this article needs no consideration to be binding.” *RSMo. (UCC) §400.2-209* (2016).

It is the intent of the parties that creates a contract and sale. *Computer Network v. Purcell Tire & Rubber*, 747 S.W.2d at 674. While the Administrative Hearing Commission stated in its opinion that Crescent fails to show how the UCC sections create a single sale

that did not become final until June 2013, the Administrative Hearing Commission should not be looking to the UCC to “create” the single sale. Rather, the purpose of the UCC in this particular matter is “to permit the continued expansion of commercial practices through custom, usage, and agreement of the parties.” *RSMo. (UCC) §400.1-103*.

Following common law and the Missouri Uniform Commercial Code, the goods delivered and assembled during the period of the sale from December 2012 until June 2013 were, in fact, a part of a single sale that concluded on June 21, 2013. In this particular case, the parties understood that the manufactured product had such specifications required, that 100% of the product would have had to been delivered and assembled in order for the contract to be fulfilled and the sale to be final. Because of the particular product involved, the customs and usage of trade, and the history of the course of dealings between the parties, such a determination by the parties is presumed in the UCC to be within the province of the parties, not the State of Missouri. In fact, the power to assent to contract for sale rests solely with the parties, and is not a creation of statute. Crescent cites the UCC to show that nothing in the code contravenes the intent and purpose of the transaction between the parties, not to evidence creation of the sale from the law itself. Furthermore, no evidence was offered to challenge Crescent’s assertion that this contract was in fact a single sale.

Rather, the Director of Revenue’s entire argument rests on the assertion that Crescent did not apply for its refund claim within the Statute of Limitations. The Director argues the Statute of Limitations began to run in March 2013, when the largest portion of goods transferred as part of the sale were delivered and when Crescent erroneously paid

the largest portion of the sales tax. This contradicts all evidence offered at trial concerning the intent, belief, and actions of the contracting parties and the nature of the sale itself. Therefore, Crescent timely applied for a refund for the entire amount of the erroneously paid sales taxes when Crescent filed Seller's Claim for Sales or Use Tax Refund or Credit on May 11, 2016. Ex. 8. The filing was within the three-year period of when the last taxes were erroneously paid on the sale or otherwise would have been due on November 2013. Tr.13:15-20.

III. THE ADMINISTRATIVE HEARING COMMISSION'S DECISION MISAPPLIED THE PRECEDENT ESTABLISHED IN FORD MOTOR CO. V. DIRECTOR OF REVENUE CASE AND DID NOT CONSIDER THE CODE OF STATE REGULATIONS IN EVALUATING THE LEGISLATIVE INTENT OF 144.190.2.

The Court's primary responsibility in statutory interpretation is to determine the legislative intent from the language of the statute and to give effect to that intent. *Aquila Foreign Qualifications Corporation v. Director of Revenue*, 362 S.W.3d at 4-5 [holding also that the Code of State Regulations evidences the intent of the legislature regarding Revised Missouri Statutes Chapter 144].

"Absent a statutory definition, words used in statutes are given their plain and ordinary meaning with help, as needed, from the dictionary." *Balloons Over the Rainbow v. Director of Revenue*, 427 S.W.3d 815, 825-826 (Mo. banc 2014) [citing *Am. Healthcare Mgmt., Inc. v. Dir. of Revenue*, 984 S.W.2d 496, 498 (Mo. banc 1999).] Moreover, when construing a statute, this Court considers statutes involving related subject matter if such statutes provide necessary definitions or shed light on the meaning of the statute being construed. *BASF Corp. v. Dir. of Revenue*, 392 S.W.3d 438, 444 (Mo. banc 2012)

"When the legislature enacts a statute referring to terms that have had other judicial or legislative meaning attached to them, the legislature is presumed to have acted with knowledge of that judicial or legislative action." *Balloons Over the Rainbow v. Director of Revenue*, 427 S.W.3d at 825-826 [citing *Cook Tractor Co., Inc. v. Dir. of Revenue*, 187 S.W.3d 870, 873 (Mo. banc 2006).]

The Administrative Hearing Commission stated in its decision on appeal that “we must follow regulations that are consistent with the statutes. *Bridge Data Co. v. Director of Revenue*, 794 S.W.2d 204, 207 (Mo. banc 1990).” In this particular case, the Administrative Hearing Commission based this argument on the precedent set in *Ford Motor Co. v. Director of Revenue*, which defined the legislative intent of §144.190.2. *Ford Motor Co. v. Director of Revenue*, 97 S.W.3d at 461. The Court decided the question of the meaning of ‘date of overpayment’ in the aforementioned statute.

The Court in *Ford Motor Co.* looked at accompanying statutes regarding tax payment issues specific to the Appellant’s claim in that matter, but the decision in *Ford Motor Co.* is void of examining the Missouri Code of State Regulation language of 12 CSR 10-102.016. 12 CSR 10-102.016 passed on or about September 30, 2002. 12 CSR 10-102.016. The language in 12 CSR 10-102.016 better defines the meaning of “date of overpayment.” *Id.* Only speculation can be applied when pondering the absence regarding the evaluation or application of 12 CSR 10-102.016 in *Ford Motor Co.*; perhaps 12 CSR 10-102.016 did not apply to the arguments of *Ford Motor Co.*, or perhaps the Court did not take notice of the then-new regulation as it was not part of any lower court decision in the *Ford Motor Co.* case.

In this particular case, it is essential that 12 CSR 10-102.016 be incorporated as a determinative element when deciding “date of overpayment”.

A. DISTINGUISHING THE FACTS SET FORTH IN FORD MOTOR COMPANY V. DIRECTOR OF REVENUE FROM THE FACTS OF THE SALE IN CRESCENT PLUMBING SUPPLY, INC. V. DIRECTOR OF REVENUE.

In *Ford Motor Co.*, Ford argued that “after its overpayment of use taxes for the 1995-1998 tax period, it became entitled to a claim for a refund for the 1992-1995 tax periods within three years of the 1995-1998 tax periods overpayment.” *Ford Motor Co. v. Director of Revenue*, 97 S.W.3d at 461. As the Court in that case rightly notes, “Ford seeks to have section 144.190.2 constructed so broadly as to allow a new unrelated overpayment to start a new three-year limitations period for refund claims, no matter how long ago the taxpayer filed the returns that are the subject of the refund claims.” *Id.*

The position of Ford to attempt to connect six years of overpayments was convoluted and is wholly unrelated to the fact pattern in the present matter. Rather, Crescent respectfully suggests, and the only evidence offered, established that there was one sale or transaction regarding custom-made goods, for which assembly of 100% of that product was mandated in order that the sale be fulfilled. Although the Commission did state that the “meaning of ‘date of overpayment’” is the question in that matter, and although the meaning of the date of overpayment is the question in both cases, the *Ford Motor Co.* case has a wholly unrelated fact pattern regarding the date of overpayment. The facts concerning the *Ford Motor Co.* case are entirely distinguishable from the date of overpayment in the Crescent matter. Furthermore, the meaning of the date of overpayment when applying the *Ford Motor Co.* standard in the present matter must now also account for the Missouri Code of State Regulations. *Id.*; 12 CSR 10-102.016. (September 30, 2002).

B. APPLYING THE CODE OF STATE REGULATIONS TAKEN IN CONTEXT WITH THE FORD MOTOR CO. CASE AND THE FACTS IN THIS PARTICULAR MATTER, ESTABLISHES THE DATE TAXES WERE DUE IN NOVEMBER, 2013.

The Ford Motor Co. Court stated that the legislature did not provide explicit guidance as to the meaning within section §144.190.2. *Ford Motor Co.* at 461. The *Ford Motor Co.* Court was correct in determining that the legislature had not, at the time the original *Ford Motor Co.* case was filed, provided explicit guidance as to the meaning of “date of overpayment” within section §144.190.2. *Id.* at 461.

Thus, the Court decided that the legislature’s intent and the meaning of “date of overpayment” was revealed in statutory construction and the context of the Missouri tax code. *Id.* No language to the contrary had existed in any portion of either the statute or the Missouri Code of State Regulations prior to September 30, 2002. Therefore, the court would not have had the opportunity to review any Code of State Regulation language consistent with its philosophy in both *Bridge Data Co.* and *Ford Motor Co.* to determine the meaning of “date of overpayment”, since the matter reviewed by the Court would not have had any new Code of State Regulations language passed thereafter as a part of any lower court decision. *Youakim v Miller*, 425 U.S. 231, 234 (1976) [holding that ordinarily the Court does not decide questions not raised or resolved in the lower court.]

However, the legislature’s intent was later clarified and codified during the life of the *Ford Motor Co. v. Director of Revenue* appeal itself, and thus, regardless of the outcome of the *Ford Motor Co.* matter, any application of the *Ford Motor Co.* standard would have to take-into-account the meaning of the “date of overpayment” as determined

by the legislature's intent, evidenced by the Missouri Code of State Regulations. *Id.* at 461 [holding that the legislature did not provide explicit guidance as to the meaning within section §144.190.2. It could be suggested then, that had such guidance existed at the time, the Court would have relied on it for context of the Missouri Tax Code.]; *Aquila Foreign Qualifications Corporation v. Director of Revenue*, 362 S.W.3d at 5 [holding that the Code of State Regulations evidences the intent of the legislature regarding Revised Missouri Statutes Chapter 144].

On September 30, 2002, The Missouri Department of Revenue promulgated the then-new regulation defining the “date of overpayment” and resolving the dilemma found in *Ford Motor Co. v. Director of Revenue* via the Missouri Code of State Regulations (herein “CSR”). 12 CSR 10-102.016. (2002). The CSR states clearly, “This rule explains requirements for obtaining a refund or credit on overpayment of sales and use taxes.” *Id.*

The CSR further states specifically that “a taxpayer may file a claim for a refund within three (3) years after the date of an overpayment.” *Id.* The CSR then states for the purpose of clarity, that the “date of overpayment” is the due date of the original return or the date paid whichever is later.” *Id.*

The CSR at issue in this matter, 12 CSR 10-102.016, therefore, does not contradict the statute itself, as the statute does not define “date of overpayment” as correctly observed by the *Ford Motor Co.* decision. *Ford Motor Co.* at 61. Since 12 CSR 10-102.016 does indeed not contradict the statute, but rather evidences its legislative intent and gives context to the Missouri Tax Code; it cannot be inconsistent with §144.190.2. *Aquila* at 5; *Ford Motor Co.* at 461.

Following the passage of 12 CSR 10-102.016, all matters from which precedent in *Ford Motor Co.* case are drawn must be viewed in a light which considers 12 CSR 10-102.016 with respect to the legislative intent of 144.190.2. *Ford Motor Co.* at 461 [looking to legislative intent]; *Aquila* at 5 [legislative intent can be found in the CSR.]

In the present matter, when properly considering 12 CSR 10-102.016 as evidence of the legislative intent of 144.190.2, it is clear the date of overpayment should be calculated as the date the sales taxes would have otherwise been due and therefore, Crescent is entitled to a refund under Missouri law.

CONCLUSION

The sale that took place between Crescent and Murphy from December 27, 2012 to June 21, 2013 was indisputably a single sale that Crescent erroneously believed to be subject to an assessment of Missouri sales tax. Furthermore, it is undisputed that Crescent submitted its Seller's Claim for Sales or Use Tax Refund for Credit Form 472S on or about May 11, 2016 wherein Petitioner requested a refund for filing periods covered from March 2013 to November 2013, for sales taxes paid erroneously to the State of Missouri. Said sale between the contracting parties was not concluded until June 21, 2013. Applying Missouri Revised Statute 144.190.2, as clarified by 12 CSR 10-102.016, the date of overpayment is defined as within three years after the date of overpayment, which is the due date of the original return or the date paid whichever is later. The facts as set forth in the undisputed testimony of Crescent, establish that Crescent has fully met the requirements allowing for the refund of \$11,217.17 requested.

Wherefore, Crescent respectfully requests that this Court reverse the Administrative Hearing Commission's decision and find in favor of Crescent and against the Department of Revenue and grant the relief of a refund of \$11,217.27 from the Department of Revenue and any other relief the Court deems just and proper.

Respectfully submitted,

D. DEAN PLOCHER, P.C.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 84.06(b), the undersigned certifies that the forgoing Brief of Appellant Crescent Plumbing, Inc. complies with the limitations in that rule and contains approximately 4,980 words, excluding the cover, signature block, and the certificates.

/s/ D. Dean Plocher
D. Dean Plocher MBE # 46067
Attorney for Appellant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and complete copy of the forgoing was e-filed with the Court on June 25, 2018 and served via electronic mail to Respondent’s attorney Thomas A. Houdek via the electronic filing system pursuant to Missouri Supreme Court Rule 103.08.

/s/ D. Dean Plocher