



**Petition for Review of a Decision of the
Administrative Hearing Commission
The Honorable Brett W. Berri, Commissioner**

¹ All statutory references are to RSMo Supp. 2012 unless otherwise indicated, except section 144.080, RSMo 2000.

timely if filed within three years of the date the tax return was due. Crescent claims it filed the refund request within three years of the latter date.

This Court affirms without reaching the issue of whether 12 C.S.R. 10-102.016(2)(A) is valid and consistent with section 144.190.2 because, even were it applicable, Crescent is incorrect about when its return was due. The return for each sale was due on the return filing date following that sale and could not be delayed until after it completed all transactions with that customer. The refund claim, therefore, is untimely because it was filed more than three years after the return was due and more than three years after the date Crescent paid the tax.

I. PROCEDURAL AND FACTUAL BACKGROUND

Crescent is a plumbing supply company located in Missouri. Crescent sold two water heating systems to the Murphy Company, also located in Missouri. The water heating systems were manufactured in Illinois and shipped directly to a Florida customer of Murphy on December 27, 2012. Crescent generated a \$120,361.06 invoice for the transaction on that date, which it sent to Murphy at the time it shipped the two water heating systems. Crescent's invoice also charged an additional \$10,219.86 for Missouri sales tax, which Murphy paid with the remainder of the amount due.

On February 4, 2013, Crescent sold three additional components to Murphy and shipped the components to the Florida customer for use with the water heating systems. Crescent's invoice for \$11,376.55 included a \$965.68 charge for Missouri sales tax. Murphy paid Crescent's invoice, including the Missouri sales tax, shortly thereafter.

Under section 144.080.1, sales tax returns for the quarterly period ending March

31, 2013, were due by the end of April 2013. On April 26, 2013, Crescent filed a Missouri sales tax return and remitted \$11,186.46 in Missouri sales tax collected as part of its December 2012 and its February 2013 sales to Murphy of water heaters and components.

In June 2013, Crescent sold and shipped one additional component for the water heating systems with an invoice dated June 28, 2013, for \$368.95, including \$30.71 of Missouri sales tax. Crescent remitted this sales tax on December 20, 2013, when it filed its November 2013 Missouri sales tax return.²

In 2016, Florida tax authorities told Murphy, because the water heating systems and components were sent to and used in Florida, sales tax should have been paid to Florida, not Missouri, on the sales, and Murphy then informed Crescent. Crescent paid the necessary tax to Florida and thereafter on May 11, 2016, requested a refund of the overpayment it had made when it remitted Missouri sales tax on these Florida sales.

The director agreed that, if the claims for refund were timely, Crescent would be entitled to a refund of the sales tax remitted on the three sales. But the director found only the final sale was within the three-year period for seeking refunds set by section

² The date the invoice was paid affected when Crescent should have filed its returns. The proper due date for a sales tax return depends on a number of factors, including the aggregate amount of sales tax levied and imposed in a month, the position of that month in the calendar quarter, the history of sales tax levied and imposed for the prior year, and the discretion of the director of revenue. *See* §§ 144.080; 144.081; 144.090; 144.100. While the record does not reveal the specific dates when each invoice was paid, at the time of remittance both Crescent and the Director treated April 30, 2013, as the applicable due date for the first two sales and December 20, 2013, as the applicable due date for the third sale. Neither denies these were the correct dates if the sales are treated as three separate sales at retail. *See* § 144.080.

144.190.2, which provides in relevant part that no “refund shall be allowed unless duplicate copies of a claim for refund are filed within three years from date of overpayment.”

Accordingly, the director refunded the \$30.71 in Missouri sales tax Crescent had paid December 20, 2013, and the propriety of that refund is not before this Court. But the director denied the claim for refund of the \$11,186.46 paid April 26, 2013, for the sales in December 2012 and February 2013, as the refund claim was filed more than three years after the April 26, 2013 payment.

Crescent appealed the Director’s denial of a refund of the amount paid on April 26, 2013, to the AHC, which affirmed. Crescent filed a petition for review in this Court. This Court has exclusive appellate jurisdiction because this case involves the construction of a state revenue law. *Mo. Const. art. V, § 3; Circuit City Stores, Inc. v. Dir. of Revenue*, 438 S.W.3d 397, 399 (Mo. banc 2014).

II. STANDARD OF REVIEW

This Court reviews the AHC’s interpretation of revenue statutes *de novo*. *Union Elec. Co. v. Dir. of Revenue*, 425 S.W.3d 118, 121 (Mo. banc 2014); *Circuit City*, 438 S.W.3d at 399.

A decision of the AHC will be affirmed if: (1) it is authorized by law; (2) it is supported by competent and substantial evidence based on the whole record; (3) mandatory procedural safeguards are not violated; and (4) it is not clearly contrary to the reasonable expectations of the legislature.

Union Elec., 425 S.W.3d at 121; *Mo. Const. art. V, § 18*.

III. CRESCENT'S REFUND REQUEST WAS UNTIMELY

Section 144.020.1(1) levies a tax upon “every retail sale in this state of tangible personal property.” The term “sale at retail” is defined as:

any transfer made by any person engaged in business as defined herein of the ownership of, or title to, tangible personal property to the purchaser, for use or consumption and not for resale in any form as tangible personal property, for a valuable consideration.

§ 144.010.1(11). Under this statutory definition, a sale at retail occurred each time Crescent transferred tangible personal property not for resale for a valuable consideration.

The record shows three distinct instances in which Crescent transferred tangible personal property: December 27, 2012; February 4, 2013; and June 2013. On the first occasion, Crescent shipped two water heating systems to Murphy’s customer in Florida, and on the second and third occasions it shipped the customer components for those heaters. Crescent sent its invoice after each sale for the amount due for that particular sale, including for Missouri sales tax, and was paid the invoiced Missouri sales tax along with its other charges.

Crescent remitted the sales tax it had collected for the first two sales on April 26, 2013, pursuant to section 144.080.1.³ April 26, 2013, therefore, is the date Crescent paid the sales tax for these sales which it and the director now agree should not have been

³ Section 144.080.1 provides:

Every person receiving any payment or consideration upon the sale of property ... shall, on or before the last day of the month following each calendar quarterly period of three months, file a return with the director of revenue showing the person’s gross receipts and the amount of tax levied in section 144.020 for the preceding quarter, and shall remit to the director of revenue, with the return, the taxes levied in section 144.020

paid. Section 144.190.2 provides:

If any tax, penalty or interest has been paid more than once, or has been erroneously or illegally collected ... the balance, ... 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.*

(Emphasis added).

The determinative issue is the meaning of “date of overpayment” as used in section 144.190.2. The director contends the plain meaning of “date of overpayment” is the date Crescent remitted the Missouri sales tax it now says it should not have paid. In support, the director cites *Ford Motor Co. v. Dir. of Revenue*, 97 S.W.3d 458, 462 (Mo. banc 2003), which holds “date of overpayment” means “when the taxpayer remits payment of tax on the transactions that generate the issue of overpayment.”

Crescent’s contrary argument is more complex. It concedes the refund claim came more than three years after April 26, 2013, the date on which it actually overpaid the sales tax it now says it should not have had to pay. But Crescent argues it need not have filed its return for the first two transactions on April 26, 2013. Rather, it contends, it could have waited to file its return and remit all the sales tax on December 20, 2013, the date on which it filed its return and paid the sales tax for the June 2013 sale. Crescent argues the director should treat all three transactions as portions of a single sale rather than as three separate sales as the sales were all made pursuant to a single contract between Murphy and Crescent for two water heating systems. Only when the final component was sent should that sale be considered complete, Crescent argues.

It is significant whether the sales are treated as a single sale only because 12 C.S.R. 10-102.016(2)(A) provides the “date of the overpayment is *the due date of the original return or the date paid whichever is later*” (emphasis added). According to Crescent, therefore, under the regulation, if all three sales are treated as a single sale for which the due date was December 2013, then the sales tax refund claim would be timely for all the sales tax. This is so, it claims, even though the actual date of payment, April 26, 2013, was more than three years prior to the filing of the refund request, because the due date would be later than the date the sales tax actually was remitted. Crescent distinguishes *Ford Motor* on the basis it did not address the then recently promulgated regulation, 12 C.S.R. 10-102.016(2)(A).

The normal meaning of “overpayment” is “payment in excess of what is due: the amount of such excess.” *Webster’s 3rd New International Dictionary 1609 (2002)*. The plain meaning of “date of overpayment” then, would be the date on which the taxpayer made a payment in excess of what is due. Section 144.190.2 refers only to “date of overpayment,” not the date the return might have been due, and nothing in the statute provides the term “overpayment” is used in any way other than its usual sense. It is well-settled “regulations may be promulgated only to the extent of and within the delegated authority of the statute involved.” *Hearst Corp. v. Dir. of Revenue* 779 S.W.2d 557, 558-59 (Mo. banc 1989). “If a regulation is inconsistent with the statute, it is the statute, not the regulation, that this Court will apply.” *Union Elec.*, 425 S.W.3d at 125. Even if valid, however, the regulation is applicable only if Crescent is correct that its three transactions constitute a single retail sale for sales tax purposes. And, in fact, they do not.

In support of its position that the three sales should be treated as a single sale, Crescent relies on the definition of “sale” under the Missouri Uniform Commercial Code (“UCC”), which provides in section 400.2-106, RSMo 2000: “A ‘sale’ consists in the passing of title from the seller to the buyer for a price.” Crescent says title did not pass until the Florida customer had the last piece necessary for the water heating systems to work, which it says was in June 2013. Crescent also relies on UCC section 400.1-103(a)(2), RSMo 2000, which provides: “This chapter shall be liberally construed and applied to promote its underlying purposes, which are ... to permit the continued expansion of commercial practices through custom, usage, and agreement of the parties.” Crescent says its custom, usage, and agreement in its dealing with Murphy all show these three transactions were part of the single contract for sale of two water heating systems.

The issue here, however, is not the UCC’s definition of “sale” or whether the parties entered into a single contract for the purchase of two water heating systems. “The legislature’s own construction of its language by means of definition of the terms employed should be followed in the interpretation of the statute to which it relates and is intended to apply and supersedes the commonly accepted dictionary or judicial definition and is binding on the courts.” *State v. Hermanns*, 641 S.W.2d 768, 769 (Mo. banc 1982). In other words, the definition of “sale at retail” in Missouri’s tax code is what governs here. Under section 144.010.1(11), a sale occurred each of the three times Crescent transferred tangible personal property for a valuable consideration.

Because three separate sales at retail occurred as defined under Missouri sales tax law, Crescent was required to file its return and remit the sales tax it had collected on the first two sales with its March 2013 return, which was due by April 30, 2013. It filed that return on April 26, 2013, and remitted the sales tax on those two sales with that return. As this was more than three years prior to the filing of Crescent's May 11, 2016, claim for refund, the claim for refund was untimely for those remittances.

IV. CONCLUSION

For the reasons stated above, the decision of the AHC is affirmed.

LAURA DENVIR STITH, JUDGE

All concur.