SC97730

IN THE SUPREME COURT OF MISSOURI

THE KANSAS CITY CHIEFS FOOTBALL CLUB, INC.,

Appellant, and

JACKSON COUNTY SPORTS COMPLEX AUTHORITY,

Intervenor-Appellant,

v.

DIRECTOR OF REVENUE,

Respondent.

From the Administrative Hearing Commission
The Honorable Sreenivasa Rao Dandamudi

RESPONDENT'S BRIEF

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INTRODUCTION

The Kansas City Chiefs are liable for sales tax and use tax on goods the Chiefs bought to benefit their for-profit business. During Arrowhead Stadium's renovation, the Chiefs purchased a bronze statue of the team's founder, sofas and chairs for the Chiefs' private suites and staff offices, desks for the Chiefs' coaches and staff, more than 850 flat-screen televisions, wayfinding signs for the Stadium and staff offices, video equipment, and scoreboards. These items generated revenue for the Chiefs or benefitted the Chiefs' staff.

The Chiefs selected and ordered all of the items in dispute. Purchase agreements for the furniture and televisions identify the Chiefs as the "Owner." The Chiefs contributed $125 million of their own funds and tax credits generated by the contribution to a fund that contained only the Chiefs' money. Under agreements between the Chiefs, Jackson County, and the Jackson County Sports Complex Authority, the Chiefs' money was kept separate and supposed to be used for purposes like private suites and interior finishes. The Chiefs also purchased the team founder statue out-of-pocket, and later decided to seek reimbursement from the fund.

The Authority provided the Chiefs with a tax exemption certificate, but the Chiefs did not act as a contractor on behalf of the Authority to purchase qualifying items. The Authority admitted that it did not purchase any of the

items in dispute. Nor have the Chiefs pointed to any evidence showing that individual purchases transferred title or ownership to the Authority or to the County instead of the Chiefs. The Chiefs also have not shown that any items were fixtures.

The Administrative Hearing Commission ruled the Chiefs were liable for sales tax in the amount of $252,775.39, use tax in the amount of $677,171.55, plus statutory interest. This Court should affirm the Commission's decision.

STATEMENT OF FACTS

The Kansas City Chiefs Football Club, Inc. is a for-profit corporation that owns and operates a professional sports franchise. L.F. 68, Stip. Ex. 1; L.F. 155, Stip. Ex. 2. The Chiefs sell admission to their home football games at Arrowhead Stadium. *Id.* Since 1990, the Chiefs have the right to all revenue derived at Arrowhead Stadium from broadcasting, advertising, and signs. L.F. 81, Stip. Ex. 1, § 7.03; L.F. 88-89, Stip. Ex. 1, § 14.01.

Arrowhead Stadium is owned by Jackson County, Missouri. L.F. 55, Stip. ¶ 1. The County leases Arrowhead Stadium, administrative offices, and a training facility to the Jackson County Sports Complex Authority. *Id.* at ¶ 2. The County created the Authority as a political subdivision under § 64.920. L.F. 1, ¶ 3. The Authority subleases Arrowhead Stadium, the administrative offices, and the training facility to the Chiefs. L.F. 55, Stip. ¶ 3; Hearing Tr. 92:4-13.

In 2006, the Chiefs and the Authority signed a new lease agreement that would keep the Chiefs playing games at Arrowhead for another 25 years. L.F. 157, Stip. Ex. 2, § 1.2.1. The 2006 agreement also required renovation of Arrowhead Stadium, funded by money from the Chiefs and from bond sales financed by a 3/8 cent sales tax later approved by County voters. L.F. 157, Stip. Ex. 2, § 1.3.1.

At the same time that it signed the 2006 lease, the Chiefs also signed a Development Agreement and Tax Credit Agreement with the Authority and the County. L.F. 225, Stip. Ex. 3; L.F. 499, Stip. Ex. 6. The Development Agreement made the Chiefs responsible for all costs of carrying out the plan, even if such costs exceeded the Authority's contribution and the Chiefs' initial contribution. L.F. 255, Stip. Ex. 3, § 6.01. The Development Agreement required the Chiefs to pay for all private suite costs, and it further required that the Chiefs' contribution of funds be allocated first to the additional suites, interior finishes, training facility and offices, the KC Football Museum, specialty food outlets, and the team store. L.F. 259-60, Stip. Ex. 3, § 6.05(b)(iii). The Development Agreement required the funds contributed by the Club and the Authority to be placed in a disbursement account held in trust solely for payment of costs related to the project and such funds could not be commingled with any other funds of the Authority or County. L.F. 260, Stip. Ex. 3, § 6.05(c). The Chiefs could receive the return of any unspent funds. L.F. 262, Stip. Ex. 3, § 6.07; Pet. & Int. Jnt. Ex. 30, Sept. 7, 2017 Dep. Tr. 30:19-33:12, 35:23-37:11.

The Chiefs contributed $125 million to the renovation project fund. Hearing Tr. 33:2-10; Pet. & Int. Jnt. Ex. 30, Sept. 7, 2017 Dep. Tr. 22:6-21. The Chiefs also contributed $62.5 million in tax credits issued by the Missouri Development Finance Board. Hearing Tr. 33:2-10.

All of the Chiefs' cash and tax credits were deposited into the Non-Bond Proceeds subaccount, which contained only money from the Chiefs. Hearing Tr. 77:3-10; Pet & Int. Jnt. Ex. 25, June 30, 2017 Dep. Tr. 57:20-24; Pet & Int. Jnt. Ex. 22. The Bond Proceeds account contained the $212.5 million in proceeds from the bond sales. Hearing Tr. 76:22-77:2. The third and final subaccount, the Investment Earnings subaccount, contained the interest earned from investments in the NBP and BP accounts. Hearing Tr. 38:5-7; L.F. 366, Stip. Ex. 4, § 502(e).

The Director conducted a sales tax audit for February 1, 2008 through January 31, 2011, and a use tax audit for January 1, 2008 through December 31, 2010.[1] L.F. 57, Stip. ¶ 18. Following this audit, in November 21, 2014, the Director issued sales and use tax assessments against the Chiefs. L.F. 9-53 Answer Ex. B; Respondent's Ex. A at Ex. 1. The Director assessed sales and use taxes on items such as the team founder statue, sofas and chairs for private suites, cheerleader uniforms and boots, cookie bouquets to a corporate sponsor, gifts of champagne, and helmet wax. Respondent's Ex. B, May 20, 2016 Dep. Tr. 14:23-15:13, 20:11-21, 21:22-22:8, 26:17-27:1, 46:7-49:6, 51:9-16, 59:1-10, 60:20-62:3. Before the Director's audit, all of these items had been purchased

[1] During the audit, the Chiefs and the Director signed four one-year waivers of the statute of limitations. Respondent's Ex. A at Ex. 1, G1-G13. The Chiefs have not raised arguments relating to the statute of limitations on appeal.

by the Chiefs and reimbursed from the project fund, or paid directly by the project fund. *Id.* at 84:14-85:1. The Chiefs had not paid sales tax or use tax on the purchase of any of these items. *Id.* at 35:4-8.

The Chiefs ultimately did not contest 335 of the 362 categories of items on which the Director had assessed use tax and statutory interest. L.F. 58, Stip. ¶ 24. The Director ultimately did not assert liability for 14 of the 362 categories of items on which the Director had assessed use tax and statutory interest. L.F. 57, Stip. ¶ 20. The Chiefs also ultimately did not contest two of the three categories of items on which the Director had assessed sales tax and statutory interest. L.F. 57, Stip. ¶ 23.

Before the Administrative Hearing Commission, the Chiefs and the Director continued to dispute the remaining categories of items on which the Director assessed sales tax, use tax, and statutory interest. L.F. 568-69, App. 8-9. These disputed items consisted of items sold by 12 vendors, nine of which are at issue on appeal ("Contested Items"). *See id.* For purposes of this appeal, "Contested Items" includes only those items on which the Commission ordered the Chiefs to pay sales and use tax, and does not include Edwards Technology, Ghostfire Design, Inc., or Winnercom Communications. L.F. 588-89, App. 28-29. All of the Contested Items share common characteristics:

1. The Authority did not purchase any of the Contested Items, and had no agreement with any of the sellers or vendors regarding the delivery of the Contested Items. L.F. 565, App. 5.
2. The Chiefs selected the Contested Items that they wanted, entered into the agreements for purchasing the Contested Items, and had exclusive use of the Contested Items after their purchase. Pet & Int. Jnt. Ex. 30: Sept. 7, 2017 Dep. Tr. 55:17-56:3.
3. On multiple occasions, the Chiefs purchased Contested Items using agreements that identified the Chiefs as the Owner. Respondent's Ex. E, Ex. F, Ex. G, Ex. H.
4. The Chiefs admitted they used all of the Contested Items in their business and had control over all of the Contested Items used in their business. Respondent's Ex. B, May 20, 2016 Dep. Tr. 82:7-10; Pet & Int. Jnt. Ex. 25, June 30, 2017 Dep. Tr. 77:18-78:11.
5. The Chiefs took federal income tax deductions for all of the Contested Items. Respondent's Ex. C.
6. The Chiefs admitted they took the income tax depreciation deductions for the Contested Items because they had beneficial ownership of the Contested Items and had made a capital investment in the Contested Items by paying money for them. Respondent's Ex. B, June 7, 2016 Dep. Tr. 27:19-28:17, 33:15-34:4; Hearing Tr. 134:17-135:1.

Encompas Corporation provided office furniture, such as desks, cabinets, and chairs for the Chiefs' administrative and executive offices. L.F. 564, App. 4; Hearing Tr. 91:17-92:13. Encompas also provided furniture, such as sofas and chairs, for the club level, private suites, the Founders Suite for the Hunt family, and concourses. *Id.*; *see also* Respondent's Ex. B, May 20, 2016 Dep. Tr. 14:23-15:17; Pet & Int. Jnt. Ex. 25, June 7, 2017 Dep. Tr. 61:21-64:24; Respondent's Ex. I.

John A. Marshall Co. provided business furniture, such as desks, chairs, cabinets, and tables for use in the Chiefs' administrative offices. L.F. 565, App. 5; *see also* Respondent's Ex. B, May 20, 2016 Dep. Tr. 23:5-20, 24:22-25:22; Pet. & Int. Jnt. Ex. 25, June 30, 2017 Dep. Tr. 64:25-66:23; Respondent's Ex. E; Hearing Tr. 90:8-91:7; Respondent's Ex. I. John Marshall also provided furniture for private suites at Arrowhead Stadium. *Id.*

Two companies, Harmon Sign and Star Sign, provided wayfinding signs for stadium customers to find their way around Arrowhead Stadium. L.F. 565, App. 5; Hearing Tr. 97:7-98:1; Respondent's Ex. B, May 20, 2016 Dep. Tr. 75:5-76:1; Pet. & Int. Jnt. Ex. 25, June 30, 2017 Dep. Tr. 72:15-75:14; Respondent's Ex. I.

Daktronics provided the scoreboards and ribbon boards in Arrowhead Stadium to display the game and advertising controlled by the Chiefs. L.F.

565, App. 5; Hearing Tr. 96:23-97:6; *see also* Respondent's Ex. B, May 20, 2016 Dep. Tr. 77:3-19; Respondent's Ex. I.

Roscor provided video cameras and video equipment for Arrowhead Stadium's main scoreboard. L.F. 565, App. 5; Hearing Tr. 95:13-96:22.

Sony Electronics, Inc. provided more than 850 televisions located throughout Arrowhead Stadium, such as at concourses, the concession stands, and in the private suites. L.F. 565, App. 5; Hearing Tr. 92:14-93:17; *see also* Respondent's Ex. B, May 20, 2016 Dep. Tr. 76:8-22; Pet. & Int. Jnt. Ex. 25, June 30, 2017 Dep. Tr. 75:15-76:22; Respondent's Ex. F at A-1 (KC001255); Respondent's Ex. I.

Bruce Wolfe created clay molds used to create the Lamar Hunt statue. L.F. 565, App. 5; Hearing Tr. 89:24-90:7. Artworks Foundry used these molds to create the bronze statue, which was placed in the northern part of Arrowhead Stadium. L.F. 565, App. 5; Hearing Tr. 89:11-23.

The Chiefs did not pay sales tax or use tax on its purchases of the Contested Items. Respondent's Ex. B, May 20, 2016 Dep. Tr. 35:4-8; Pet. & Int. Jnt. Ex. 25, June 30, 2017 Dep. Tr. 82:14-20. The Chiefs provided the sellers of the Contested Items with a Missouri Project Exemption Certificate signed by the Authority to claim that its purchases of the Contested Items were exempt from sales tax and use tax. Hearing Tr. 99:3-11; Pet. & Int. Jnt. Ex. 25, June 30, 2017 Dep. Tr. 47:13-25; Pet. & Int. Jnt. Ex. 10. When the Director

issued the Authority with an exemption letter in 2002, the Director stated that a contractor fulfilling a contract with the Authority could only purchase construction materials exempt from tax when the Authority had issued a project exemption certificate and the contractor purchased the construction materials in compliance with § 144.062, RSMo. Pet. & Int. Jnt. Ex. 9.

Following the Director's assessment of sales tax and use tax on the Contested Items, on December 17, 2014, the Chiefs filed a petition appealing the Director's final decision, and the Authority intervened in February 2015. L.F. 561, App. 1. The Administrative Hearing Commission held a hearing on October 10, 2017. *Id.* Following post-trial briefing, the Administrative Hearing Commission issued its final decision on January 29, 2019. L.F. 589, App. 29. The Administrative Hearing Commission concluded that the Chiefs were liable for sales tax in the amount of $252,775.39, use tax in the amount of $677,171.55, plus statutory interest. *Id.* The Commission's determination was based on the following allocation:

Vendor	NBP & IE DISBURSEMENTS	TAX DUE
Artworks Foundry	$22,418.98 (NBP)	$1,479.65 (Use, 6.6%)
Bruce Wolfe	$349,494.97 (NBP)	$23,066.67 (Use, 6.6%)
John Marshall	$267,971.90 (NBP)	$17,686.15 (Use, 6.6%)
Encompas	$3,272,173.27 (NBP)	$252,775.39 (Sales, 7.725%)
Sony	$995,920 (NBP)	$65,730.72 (Use, 6.6%)
ETI	$323,869 (NBP)	$0
Ghostfire	$1,239,912.71 (NBP)	$0
Winnercom	$282,000 (NBP)	$0
Roscor	$3,998,818.54 (NBP); $559.60 (IE)	$263,958.96 (Use, 6.6%)
Star Sign	$1,377,814.45 (NBP)	$90,935.75 (Use, 6.6%)
Harmon Sign	$682,882.12 (NBP); $295,882.25 (IE)	$64,598.45 (Use, 6.6%)
Daktronics	$1,496,670.06 (NBP); $771,742.00 (IE)	$149,715.20 (Use, 6.6%)
TOTALS		$677,171.55 (Use) $252,775.39 (Sales) **$929,946.94 (Total Tax Due)**

L.F. 588-89, App. 28-29. Of these disbursements, the Chiefs paid $951,884.47 directly and obtained reimbursement from the NBP account.[2] L.F. 555, 556, Stip. Ex. 8 at 1, 2. The Administrative Hearing Commission did not assess any sales tax or use tax for any funds paid by the BP account. L.F. 575, 577, App. 15, 17.

[2] This included all payments to Artworks Foundry ($22,418.98), all payments to Bruce Wolfe ($349,494.97), and some payments to Encompas ($579,970.52).

STANDARD OF REVIEW

A decision of the Administrative Hearing Commission must 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." *Brinker Mo., Inc. v. Dir. of Revenue*, 319 S.W.3d 433, 435-36 (Mo. banc 2010); Section 621.193, RSMo. The Commission's factual determinations "will be upheld if supported by substantial evidence based on review of the whole record." *Union Elec. Co. v. Dir. of Revenue*, 425 S.W.3d 118, 121 (Mo. banc 2014).

This Court reviews the Commission's interpretation of revenue statutes *de novo*. *Brinker Mo., Inc.*, 433 S.W.3d at 435. Exemptions are strictly construed against the taxpayer, "and any doubt must be resolved in favor of application of the tax." *Bartlett Int'l, Inc. v. Dir. of Revenue*, 487 S.W.3d 470, 472 (Mo. banc 2016). The taxpayer bears the burden of proving that "an exemption applies 'by clear and unequivocal proof[ ]' . . . ." *TracFone Wireless, Inc. v. Dir. of Revenue*, 514 S.W.3d 18, 21 (Mo. banc 2017).

ARGUMENT

I. The Contested Items are subject to tax because the Chiefs purchased and used the Contested Items in their for-profit business (Responds to the Chiefs' Point I).

The Commission concluded that the Chiefs were the purchaser and owner of the Contested Items. L.F. 574, 576, App. 14, 16. The Commission based its determination on the purchase orders that identify the Chiefs as the "Owner" and the use of the Chiefs' funds to make the purchases. *Id.*

The Chiefs are liable for sales tax and use tax. The Chiefs are not exempt from this liability because neither the County nor the Authority owned the Contested Items. The Authority admitted that it did not purchase the Contested Items, and the Chiefs do not present any evidence that the County purchased any of the Contested Items. The Chiefs are identified as the "Owner" on multiple purchase agreements, and the Chiefs paid for the Contested Items with the funds they contributed, which benefited the Chiefs.

A. The Chiefs are liable for sales tax and use tax.

Sales tax is imposed "upon all sellers for the privilege of engaging in the business of selling tangible personal property or rendering taxable service at retail in this state." § 144.020.1, RSMo.[3] The Chiefs admit that they provided Encompas with an exemption certificate claiming the purchases were exempt

[3] All statutory citations are to the Revised Statutes of Missouri unless otherwise noted.

from sales tax under § 144.062. App. Br. at 13, 35. "[W]hen a purchaser has purchased tangible personal property or services sales tax free under a claim of exemption which is found to be improper, the director of revenue may collect the proper amount of tax, interest, additions to tax and penalty from the purchaser directly." § 144.210.1, RSMo. The Chiefs do not deny that sales tax may be collected from them directly. Thus, the Chiefs are liable for sales tax on their purchases from Encompas unless their purchases are exempt, which they are not. The Commission upheld the Director's assessment of sales tax due on the Chiefs' purchases from Encompas. L.F. 588, App. 28.

Use tax is imposed "for the privilege of storing,[4] using[5] or consuming[6] within this state any article of tangible personal property, . . ." § 144.610.1, RSMo. The purchaser is liable for the use tax. *Id.* at § 144.610.2, RSMo. The Chiefs do not deny that they stored and used the Contested Items in their business. Thus, the Chiefs are liable for use tax on their purchases from Artworks Foundry, Bruce Wolfe, John Marshall, Roscor, Star Sign, Harmon

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[4] "Storage" is defined as "any keeping or retention in this state of tangible personal property purchased from a vendor, except property for sale or property that is temporarily kept or retained in this state for subsequent use outside the state." § 144.605(10), RSMo.

[5] "Use" is defined as "the exercise of any right or power over tangible personal property incident to the ownership or control of that property, except that it does not include the temporary storage of property in this state for subsequent use outside the state, or the sale of the property in the regular course of business." § 144.605(13), RSMo.

[6] "Consuming" is not defined by the statute.

Sign, and Daktronics. The Commission upheld the Director's assessment of use tax due on the Chiefs' purchases from these eight vendors. L.F. 588, App. 28.

B. The Chiefs purchased the Contested Items.

The Chiefs claim that they did not own the Contested Items because of the "economic realities" of the transactions at issue. App. Br. at 24, 25. These "realities" require disregarding the Authority's admissions that it did not purchase the Contested Items and ignoring the plain language of purchase agreements.

1. The Authority admitted that it did not purchase the Contested Items.

During discovery in the Commission proceedings, the Authority admitted that it did not purchase any of the Contested Items. L.F. 565, App. 5; Respondent's Ex. J, Authority's Answers to Interrogatories, at 5, 6. Specifically, when asked about an exhibit containing all of the Contested Items, the Authority denied that it purchased any of the items:

> 9. Separately for each and every item listed on Exhibit A, state whether you purchased the item.
>
> **ANSWER:** The Authority did not purchase any of the items on Exhibit A.

Respondent's Ex. J, Authority's Answers to Interrogatories, at 5.

The Authority also admitted that it did not enter into agreements to purchase any of the Contested Items:

> 12. Separately for each and every item listed on Exhibit A, identify all agreements between you and the seller/vendor of that item in relation to the purchase and/or delivery of that item.
>
> **ANSWER:** The Authority, to the best of its knowledge, has no agreement with the seller or vendor of any of the items on Exhibit A in relation to purchase and/or delivery of that item.

Id. at 6.

Although the Commission cited the Authority's concession on several occasions, L.F. 565, 585, App. 5, 25, the Chiefs did not address this concession in their brief. In a footnote, the Authority's only response to its concession is to argue it is not relevant "because the purchases occurred with County funds." Int.-App. Br. at 21 n.3. The concession is relevant because it is evidence that title and ownership passed from the seller to the Chiefs and not to the Authority. Neither the Chiefs nor the Authority attempt to argue that the Authority or the County purchased, or entered into agreements to purchase, any of the Contested Items.

2. The Chiefs are identified as the "Owner" on multiple purchase agreements.

The Chiefs purchased Contested Items—furniture, desks, and televisions—from John Marshall, Sony, and Encompas as the "Owner." *See*

Respondent's Ex. E, Ex. F, Ex. G. On the first page of each agreement, the Chiefs are identified as the "Owner." Respondent's Ex. E at 1 (KC001098); Ex. F at 1 (KC001248); Ex. G at 1 (JCSA001500). The Chiefs executed each agreement as the "Owner."[7] *Id.* The Chiefs also executed six change orders as the "Owner." Respondent's Ex. E (KC001120, KC001122, KC001125, KC001129, KC001137); Ex. F (KC001264). And the definitions sections define the Chiefs as the "Owner." Respondent's Ex. E at 2, ¶ 1(e) (KC001099); Ex. F at 2, ¶ 1(e) (KC001249); Ex. G at 2, ¶ 1(e) (JCSA001501).

As the Owner, the Chiefs—not the Authority or the County—had the rights and responsibilities of a purchaser, including key terms like:

- The duty to pay for the Contested Items. Respondent's Ex. E at 2, ¶ 4 (KC001099); Ex. F at 2, ¶ 4 (KC001249); Ex. G at 2, ¶ 4 (JCSA001501).
- The right to inspect and reject the Contested Items. Respondent's Ex. E at 3, ¶¶ 12, 13 (KC001101); Ex. F at 4, ¶¶ 11, 12 (KC001251); Ex. G at 3, ¶¶ 12, 13 (JCSA001503).

[7] While Respondent's Exhibit G does not include a signature by the Chiefs, the Chiefs did not dispute the validity of the agreement. *See* Hearing Tr. 125:5-25; App. Br. at 18.

- The right to terminate the agreement. Respondent's Ex. E at 6, ¶¶ 22, 23 (KC001104); Ex. F at 6, ¶ 17 (KC001253); Ex. G at 6, ¶¶ 22, 23 (JCSA001506).
- The right to receive notices as the "Owner." Respondent's Ex. E at 7, ¶ 31 (KC001105); Ex. F at 6, ¶ 23 (KC001253); Ex. G at 7, ¶ 31 (JCSA001507).

The only reference to the Authority or the County in these agreements is as additional parties that would be indemnified by the sellers. Respondent's Ex. E at 4, ¶ 18 (KC001102); Ex. F at 4, ¶ 14 (KC001251); Ex. G at 4, ¶ 18 (JCSA001504).

The Chiefs attempt to explain away these agreements by claiming they are simply "modified" standard forms that use "shorthand." App. Br. at 2, 10. But these agreements indicate intentional decisions. For example, the agreements identify the Authority and the County in the indemnification section, but not in the ownership definition, the detailed purchase payment provisions, or the notice provision. The Authority and the County are not even listed as third-party beneficiaries of the agreements. *See* Respondent's Ex. E at 8, ¶ 35 (KC001106); Ex. F at 7, ¶ 27 (KC001254); Ex. G at 8, ¶ 35 (JCSA001508). Designating the Chiefs as the owner of these Contested Items, when the parties demonstrated they knew how to include the Authority and the County but did so in only one provision, was the clear intent of the parties.

See State ex rel. Pinkerton v. Fahnestock, 531 S.W.3d 36, 44 (Mo. banc 2017) ("The intention of the parties is to be gleaned from the four corners of the contract.") (internal citation omitted); *Chochorowski v. Home Depot U.S.A.*, 404 S.W.3d 220, 226-27 (Mo. banc 2013) ("When the language of a contract is clear and unambiguous, the intent of the parties will be gathered from the contract alone, and a court will not resort to a construction where the intent of the parties is expressed in clear and unambiguous language.").

Furthermore, the "modified" standard form agreements include many specific details. For example, the agreements contain detailed information about the Project Tax Exemption Certificate under Missouri law. Respondent's Ex. E at 2, ¶ 5 (KC001100); Ex. F at 3, ¶ 5 (KC001250); Ex. G at 2, ¶ 5 (JCSA001502). Despite that level of specific detail, the agreements do not identify any unique issues related to title or payment.

Both the Chiefs and the Authority attempt to avoid the plain language of the agreements identifying the Chiefs as the "Owner" of Contested Items by arguing the agreements are trumped by the "economic realities" created by the various contractual agreements between the Chiefs, the Authority, and the County. App. Br. at 25-27; Int.-App. Br. at 21. But the Chiefs rely on cases where the Court followed contractual terms, not invalidated them. In *Scotchman's Coin Shop, Inc. v. Admin. Hearing Comm'n*, 654 S.W.2d 873, 875 (Mo. banc 1983), the Court relied on the sales price of South African and United

States silver coins as evidence the coins were sold for the value of their metal, rather than as legal tender. *Id.* at 875. Likewise, in *Becker Elec. Co., Inc. v. Director of Revenue*, 749 S.W.2d 403 (Mo. banc 1988), the contracts at issue identified the project owner, who paid for all materials directly: "appellant ordered all construction materials necessary to fulfill the subcontract in the name of 'St. Louis Housing Authority c/o Becker Electric.'" *Id.* at 404.[8] These cases are inapplicable to this situation where the Chiefs purchased Contested Items as the "Owner," yet now seek to invalidate these contractual terms agreed to with a third-party seller.[9]

For each purchase, the Chiefs could have incorporated their various agreements with the Authority and County in any number of ways. The Chiefs did not do so.

The plain language of these agreements to purchase Contested Items demonstrates the Chiefs considered themselves to be the "Owner" of these

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[8] The Chiefs overstate the Commission's position on the Chiefs' status as a lessee. App. Br. at 26-27. The Commission did not issue any sweeping pronouncements about lessees. *See* L.F. 574, App. 14. Instead, the Commission simply highlighted the difference between a contractor ordering construction materials for an owner's building, and a lessee ordering the Contested Items for the building it inhabited and from which would benefit.

[9] The record does not indicate the projected impact, if any, on the completed agreements if the Chiefs are not the "Owner" as defined by the agreements, or whether every seller would have made the sale on the same terms if they knew the Chiefs were not the "Owner."

Contested Items. The terms of these agreements, which were negotiated and signed by the Chiefs, should be followed.

C. The Chiefs paid for the Contested Items with the Chiefs' funds.

The crux of the Chiefs' argument that they do not owe sales or use tax is their claim that the Contested Items "were paid for with County funds." App. Br. at 27-30. But as the Commission found, the funds used to purchase the Contested Items were the Chiefs' funds. L.F. 579, App. 19.

It is undisputed that the Chiefs contributed $125 million of their money to the stadium project. App. Br. at 5, 7, 8-9; L.F. 564, 577, App. 4, 17. It also is undisputed that the only money in the NBP account came from the $125 million contributed by the Chiefs and the $62.5 million in tax credits the Chiefs' contribution generated. *Id.*; *see also* Pet. & Int. Jnt. Ex. 25, June 30, 2017 Dep. Tr. 57:20-58:12.

Even though the Chiefs admit they contributed this money, which was tracked separately and could be used for only certain items, the Chiefs claim that all of the Contested Items were purchased with County funds. App. Br. at 27-30. The Commission correctly concluded that the Chiefs' funds purchased the Contested Items. L.F. 574, App. 14.

1. The Chiefs paid for some Contested Items directly.

The parties stipulated that the Chiefs paid for the entire cost of the Lamar Hunt statue ($349,494.97 to Bruce Wolfe and $22,418.98 to Artworks

Foundry) and some of the furniture sold by Encompas ($579,970.52). L.F. 555, 556, Stip. Ex. 8 at 1, 2. The Chiefs downplay these "advance payments to accommodate smaller vendors that could not wait for distribution by the Trustee" since the Chiefs ultimately received reimbursement from the NBP account. App. Br. at 11, 28-29.

The Chiefs' direct payments matter for three reasons. First, some evidence suggests that the Chiefs decided to seek reimbursement for at least one Contested Item after contracting for services and receiving an invoice. *See* Respondent's Ex. B, May 20, 2016 Dep. Tr. 47:8-49:6 and accompanying Dep. Ex. 3 (KC000083) (note from former Chiefs treasurer after receiving $80,000 Lamar Hunt statue invoice from Bruce Wolfe: "Are we running this through the stadium project?"). Second, the direct payment completely distinguishes *Becker*, in which the non-exempt entity did not directly pay for any of the disputed items. *See Becker*, 749 S.W.2d at 404. And third, the direct payment provides further evidence that the Chiefs are the owner of the Contested Items.

The Chiefs alternatively argue in a footnote that even if they purchased some Contested Items "in a technical sense," that the Chiefs resold them to the County. App. Br. at 29 n.10. The Chiefs do not attempt to reconcile this argument, which requires a resale of tangible personal property, with their later argument that these particular purchases were fixtures, not tangible personal property. *Compare id. with* App. Br. at 47. In addition, the Chiefs

held title to these Contested Items and remained in exclusive possession and control of the Contested Items at all times since their purchase. The Chiefs have not presented evidence establishing the Contested Items were purchased from them or demonstrating that title transferred at the time the Chiefs received reimbursement from the NPB subaccount. Unlike this situation, the contracts in *McDonnell Douglas Corp. v. Director of Revenue*, 945 S.W.2d 437 (Mo. banc 1997) "specifically provide for the vesting of title in the government of the property purchased by MDC for the performance of the contracts *before* the property was used or consumed." *Id.* at 440. The Chiefs have failed to establish its purchases are exempt from tax under Section 144.018.1 as purchases for resale.

2. The NBP subaccount contained the Chiefs' money.

The Chiefs assert that as soon as they contributed their $125 million to the Missouri Development Finance Board, the money ceased to be theirs and became the County's. App. Br. at 8-11, 28. This argument ignores the "economic realities" of the Chiefs' contribution.

All of the money in the NBP subaccount came from the Chiefs. App. Br. at 5, 7, 8-9; L.F. 564, 577, App. 4, 17; Pet. & Int. Jnt. Ex. 25, June 30, 2017 Dep. Tr. 57:20-58:12. The NBP subaccount paid for more than 92% of the

Contested Item disbursements at issue on appeal. L.F. 588-89, App. 28-29.[10] In addition, the Chiefs retained substantial rights in their funds after their contribution, including: the return of any funds not expended; directing its contributions towards purchases of business assets; using funds for purchasing items not part of the project; and contractually specifying that the NBP funds would first be used to pay for Contested Items that would give the Chiefs beneficial depreciation deductions for income tax purposes. L.F. 259-60, Stip. Ex. 3, § 6.05(b)(iii); L.F. 262, Stip. Ex. 3, § 6.07; Pet. & Int. Jnt. Ex. 30, Sept. 7, 2017 Dep. Tr. 30:19-33:12, 35:23-37:11. The Chiefs do not explain how the County, purportedly the owner of the funds the moment they reach the Project Fund, legally may transfer its funds back to a private entity. Nor do the Chiefs explain why the funds would need to be kept separate, and expenditures tracked separately, unless the money was still the Chiefs'. L.F. 357, Stip. Ex. 4, § 401(1); L.F. 259-60, Stip. Ex. 3, § 6.05(b)(ii), (iii).

3. The Chiefs used their money in the NBP subaccount to purchase the Contested Items, which would benefit the Chiefs' business.

The Development Agreement required that the Chiefs' money be spent on specific categories of items. L.F. 259-60, Stip. Ex. 3, § 6.05(b)(iii).

[10] According to the table produced by the Commission, which the Chiefs have not disputed, the NBP fund paid $12,464,164.29 in Contested Item disbursements, compared to $1,067,624.25 by the IE fund. L.F. 588-89, App. 28-29.

Specifically, the Development Agreement required the Chiefs to pay for all private suite costs, and it further required that the Chiefs' contribution of funds be allocated first to items such as the additional suites, interior finishes, training facility, and offices. *Id.* Both the Chiefs and the County admitted that only the Chiefs' contributions could be used for private suite costs, the training facility, and offices. App. Br. at 12; Pet. & Int. Jnt. Ex. 30, Sept. 7, 2017 Dep. Tr. 30:19-32:22. Contested Items sold by John Marshall, Encompas, and Sony involved furnishing private suites, the training facility, and the administrative offices.

Like these sofas, desks, and televisions, the remaining Contested Items were business assets of the Chiefs for use in their for-profit business. The Development Agreement's items allocated to the Chiefs' contributions appear connected as either providing the Chiefs with profit beyond the normal game day experience (private suites, KC Football Museum, specialty food outlets, and team store), or providing the Chiefs with benefits for them and not the fans (interior finishes, training facility and offices). L.F. 259-60, Stip. Ex. 3 § 6.05(b)(iii). Although the record is unclear whether the Chiefs allocated any of their initial $75 million contribution or their subsequent $50 million contribution to other project line items, the Chiefs' revenue from scoreboard advertising and a statue commemorating the team's founder are consistent with the other items for which the Chiefs' contribution was allocated. In any

event, spending money from the NBP subaccount decreased the amount available to be returned to the Chiefs at the end of the project.

4. The Chiefs were the purchaser of the Contested Items because they acquired title and ownership of the Contested Items.

For purposes of the sales and use taxes, this Court has held that a purchaser "is the person who acquires title to, or ownership of, tangible personal property, or to whom is rendered services, in exchange for a valuable consideration." *Becker Elec. Co., Inc. v. Director of Revenue*, 749 S.W.2d 403, 407 (Mo. banc 1988). Although the Court found that the meaning of "ownership" depends on the context, it concluded that "title" indicated legislative intent to "denominate some interest or right other than the so-called 'bundle of rights' encompassed by the term title," and suggested "dominion or control over a thing." *Id.* at 407-08. Although the Court found the contractor in *Becker* likely had sufficient dominion and control because it had determined the materials needed, ordered and inspected them, and had discretion to use them, the Court ruled that the contractor did not owe taxes because it did not pay for any construction materials. *Id.* at 408.

The Chiefs' purchases differ from the *Becker* contractor in material ways. The Chiefs did pay directly for some materials, and they used their contributions in the NBP subaccount to pay for almost all of the Contested Items. L.F. 588, App. 28; *see also Blevins Asphalt Constr. Co. v. Director of*

Revenue, 938 S.W.2d 899, 902 (Mo. banc 1997) ("There, Becker Electric Company did not pay its suppliers for any construction materials; the tax-exempt entity was the purchaser. Here, Blevins paid the materials suppliers, and was the purchaser.") (internal citation omitted). The Chiefs identified themselves as the Owner in the agreements in the record. Respondent's Ex. E, Ex. F, Ex. G, Ex. H. These agreements did not identify the Authority or the County. And as the Commission found, "none of the agreements at issue in this case contain provisions that explicitly state that title or ownership of the Contested Items would transfer to the County or the Authority." L.F. 576, App. 16.

"Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his or her performance with reference to the physical delivery of the goods . . . .") § 400.2-401(2), RSMo; *see also Ovid Bell Press, Inc. v. Director of Revenue*, 45 S.W.3d 880, 885 (Mo. banc 2001) ("Passage of title or ownership ordinarily occurs upon delivery, unless otherwise agreed by the parties."). The Chiefs claim that the Court may rely on one party's intent to determine that title and ownership passed to the County instead of the "Owner" Chiefs, App. Br. at 26, but the Court only has used intent to determine when title and ownership transferred between a seller and a buyer, not between a seller and a third party. *See VisionStream, Inc. v. Director of Revenue*, 465 S.W.3d 45, 49 (Mo. banc 2015); *American Airlines,*

Inc. v. Director of Revenue, 389 S.W.3d 653, 658 (Mo. banc 2013); *Buchholz Mortuaries, Inc. v. Director of Revenue*, 113 S.W.3d 192, 194 (Mo. banc 2003); *Ovid Bell Press, Inc.*, 45 S.W.3d at 885. Only when purchase agreements expressly provided that title passed to a third party has the Court determined that title and ownership did not pass to a buyer. *See Olin Corp. v. Director of Revenue*, 945 S.W.2d 442, 443 (Mo. banc 1997).

The Chiefs do not point to any agreement with a seller that provided for title to or ownership of Contested Items to pass directly to the County rather than the Chiefs. Instead, the Chiefs cite to self-serving discovery responses by the Authority to claim that the "Chiefs and the Authority agreed and understood that the County had title to and ownership of the Sports Complex, the Contested Items, and the Project Fund. (*See, e.g.*, Ex. 18, Authority Resp. to Req. for Admissions.)." App. Br. at 11. Adopting the Chiefs' position that one party's secret intent to pass title to a third party not identified in the purchase agreements could allow buyers to retroactively manipulate who owes tax, what type of tax is owed, or whether tax is owed at all. This position should be rejected.

D. The Chiefs benefitted from the use of the Contested Items.

The Contested Items are business assets of the Chiefs for use in their for-profit business. The Chiefs used all of the Contested Items in their business and exclusively controlled their use in their business. Respondent's Ex. B, May

20, 2016 Dep. Tr. 82:7-10; Pet. & Int. Jnt. Ex. 25, June 30, 2017 Dep. Tr. 77:18-78:11. The Chiefs even took federal income tax depreciation deductions for the Contested Items. Respondent's Ex. C. The Chiefs admitted it claimed the depreciation deductions because they paid money for, and had beneficial ownership of, the Contested Items. Respondent's Ex. B, June 7, 2016 Dep. Tr. 27:19-28:17, 33:15-34:4; Hearing Tr. 134:17-135:1.

In short, the evidence in the record overwhelmingly supports that the Chiefs purchased the Contested Items as its own business assets, with no plans to transfer the items to another entity. The Chiefs have treated the items as their own assets for all purposes other than sales and use tax.

II. The Chiefs are liable for sales and use tax because the Contested Items are not exempt from tax under § 144.062.

The Chiefs' claim of exemption under Section 144.062 fails because the Chiefs were not acting as a contractor purchasing qualifying items on behalf of the Authority that were incorporated or consumed in the construction of the project. The Chiefs instead purchased the items for their own use in their for-profit business of owning and operating a professional sports team selling admission to its professional football games.

A. The Chiefs were not acting as a contractor on behalf of the Authority.

Section 144.062 provides a procedure for contractors making real property improvements on behalf of exempt entities to purchase and use

construction materials free of tax. §§ 144.062.1, 144.062.2, RSMo. But this protection is not unlimited. Section 144.062 only applies to contractors who make purchases to construct, repair or remodel facilities. *Id.* The contractor may "exercise[] dominion or control in any other manner over the materials," but only so long as it is "in conjunction with services or labor provided to the exempt entity." § 144.062.1, RSMo. Purchasing and using items on an on-going basis in one's own for-profit business is not an activity for which items may be purchased exempt from sales and use tax under § 144.062.

The Chiefs did not purchase the Contested Items as a contractor acting on behalf of the Authority to construct, repair, or remodel Arrowhead Stadium. The Chiefs have not produced any contractor agreement between them and the Authority establishing that the Authority paid the Chiefs as a contractor to construct, repair, or remodel for the Authority. The only evidence cited by the Chiefs as proof they acted as a contractor is the Authority's issuance of the exemption certificate to them. App. Br. at 35 n.13. But the mere issuance of an exemption certificate cannot make an entity a contractor without nullifying the statutory language limiting who may use the exemption certificate, since receipt would be the determining factor rather than the identity of the entity. *See, e.g.*, § 144.062.1, RSMo ("contractor or the exempt entity contracting with any entity to render any services in relation to such purchases"); § 144.062.2, RSMo ("furnish to the contractor"); § 144.062.3, RSMo ("The contractor shall

furnish the certificate prescribed in subsection 2 of this section to all subcontractors"). The Court must give meaning to every word of a statute. *State ex rel. SSM Health Care St. Louis v. Neill*, 78 S.W.3d 140, 144 (Mo. banc 2002); *see also Sun Aviation, Inc. v. L-3 Commc'ns Avionics Sys., Inc.*, 533 S.W.3d 720, 726 (Mo. banc 2017) ("Because each word of a statute is presumed to have been included for a particular purpose, an interpretation rendering statutory language redundant or without meaning is disfavored.") (internal citation omitted). Accordingly, the Chiefs cannot be considered a contractor that is constructing, repairing, or remodeling under § 144.062.

B. The Chiefs did not purchase qualifying items.

To qualify for the tax exemption, Section 144.062 requires a contractor to purchase "tangible personal property and materials for the purpose of constructing, repairing or remodeling facilities." § 144.062.1, RSMo. Despite the Chiefs' arguments to the contrary, the Contested Items must relate to construction materials used for real property improvements in order to qualify under Section 144.062.

Section 144.062 requires that the materials be "incorporated into or consumed in the construction of the project . . . ." § 144.062.2, RSMo. "Incorporated into" means to be combined into one consistent whole or to be unified with something so as to become a composite whole with the idea of being changed from its original state or no longer separable." Webster's Third

New International Dictionary 1145, 1184-85 (1993). "Consumed" means "used up." *Id.* at 490. "Construction" is defined as "the act of putting parts together to form a complete integrated object[.]" *Id.* at 489.

The statute's construction materials requirement was reflected in both the exemption certificate and Department regulation. Under the exemption certificate, "A contractor may purchase and pay for construction materials . . . ." Pet & Int. Jnt. Ex. 10. Likewise, the Department mandates that the materials "can only be used for one (1) construction, repair or remodeling job which are actually used up in performing the contract are consumed." 12 CSR 10-112.010(3)(D). According to the Department, "Examples include sandpaper, fuel to run equipment and drill bits that are actually used up in the performance of the exempt contract. Items that are not consumed are hand tools, drinking water coolers, hardhats and bulldozers." *Id.* Without relying on the statute's header, App. Br. at 33 n.12, Section 144.062 requires the materials to be used in construction. As the Commission found, "none of the Contested Items were 'construction materials' that were 'incorporated into or consumed in the construction of a project.'" L.F. 582 (Commission Decision at 22).

The Chiefs rely heavily on a case that did not address whether the items at issue were construction materials, or whether they were incorporated into or consumed in construction. *See Sports Unlimited, Inc. v. Director of*

Revenue, 962 S.W.2d 885, 887 (Mo. banc 1998). Further, the *Sports Unlimited* parties did not dispute that the exempt entity was billed and paid for the construction materials, and "on these facts alone" under an earlier version of the statute, the Court determined that Section 144.062 applied. *Id.* at 887. Earlier evidence demonstrated that the Chiefs, not the Authority, were billed and paid for the Contested Items.[11]

The incorporation or consumption requirement is reinforced by Section 144.062's separate requirement that any excess resalable tangible personal property or materials that were not incorporated or consumed in construction must either be returned or taxed. § 144.062.4, RSMo. This prohibition of a contractor acquiring items or materials that it could use again on another project is reasonable, and the Chiefs' retention and use of the Contested Items in their for-profit business demonstrate why Section 144.062 does not apply. The Contested Items are resalable and have not been returned to the sellers, and thus are subject to tax.

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[11] The Chiefs' reliance on Section 144.062 is further muddled by their earlier ownership arguments. Section 144.062 requires the exempt entity (here, the Authority) to issue the exemption certificate to the contractor, who must use the certificate "on behalf of the exempt entity." §§ 144.062.2, 144.062.3, RSMo. Despite these statutory requirements, the Chiefs admit that they did not purchase the Contested Items on behalf of the Authority. App. Br. at 24. Instead, the Chiefs assert that they "procured them on behalf of the County." *Id.*

The Chiefs may not take advantage of the exemption provided by Section 144.062.[12]

III. The Contested Items are not exempt from tax as purchases with public funds.

A. The County did not own the Contested Items.

The Chiefs' constitutional argument is based on the same facts and arguments as its ownership argument in Point I, and is incorrect for the same reasons discussed above. As the Commission concluded, "the funds from the NBP subaccount were not the funds of the County or the Authority. Rather, the funds placed in the NBP subaccount were the [Chiefs'] funds." L.F. 579, App. 19.

The IE subaccount, which accounted for only a small amount of the disbursements at issue on appeal, contained interest earned from investments from both the Chiefs' contributions and the bond proceeds. L.F. 563, App. 3. The record does not indicate what portion of interest in the IE subaccount was earned from the Chiefs' contributions, nor whether both the Chiefs' contributions and the bond proceeds were invested in the same funds in order to calculate the interest from the Chiefs' contributions. Since the record

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[12] To the extent that any Letter Ruling issued by the Director suggests otherwise, it should be ignored, as Letter Rulings are only based upon the facts presented contemporaneously to the Director, and do not include facts found through audits such as the one performed upon the Chiefs. *See* 12 CSR 10-1.020(8)(D).

indicates the IE subaccount contains commingled funds from the Chiefs' contribution and the bond proceeds, the Chiefs have not met their burden to demonstrate that they are exempt from taxation.

The Chiefs observe that "all public funds can eventually be traced back to private sources." App. Br. at 45. The NBP subaccount in particular is different than general tax revenue, however. The NBP subaccount kept the Chiefs' contribution separate from other funds, and the Development Agreement set forth specific purposes from which the Chiefs' fund could be used. L.F. 259-60, Stip. Ex. 3, § 6.05(b)(iii), 6.05(c); L.F. 357, Stip. Ex. 4, § 401. Disbursements from the NBP subaccount were tracked until the Chiefs' contribution had been exhausted. L.F. 260, Stip. Ex. 3, § 6.05(b)(iii). The Chiefs also could receive leftover money back. Pet & Int. Jnt. Ex. 30, Sept. 7, 2017 Dep. Tr. 32:23-33:19.

Article III, Section 39 should not be converted into a shield for a private company to purchase items exempt from tax for use in its for-profit business.

B. The County did not own the tax credits.

The Chiefs' tax credit argument is unavailing because it sidesteps the Commission's statutory analysis in favor of an unsupported contractual argument. App. Br. at 44-45. Instead of disputing the Commission's interpretation of Section 100.286, the Chiefs argue that "by contract the Chiefs never benefited from the tax credits," which instead "inured to the County's

benefit as part of the Landlord's contribution under the Development Agreement." App. Br. at 44.

As the Commission found, Section 100.286.6 and .7 provided the Chiefs with the ability to "carry forward the tax credits for up to five years, or 'sell, assign, exchange, convey or otherwise transfer tax credits allowed in subsection 6 of this section.'" L.F. 578, App. 18. By statute, the Chiefs had ownership of the tax credits at the moment they were issued, not the County or the Authority. The Chiefs do not present any argument relating to Section 100.286.

Though the Chiefs point to Section 3.7 of the Tax Credit Agreement for support, App. Br. at 44, it further supports the Commission's determination that the Chiefs had ownership of the tax credits. Under Section 3.7, the Chiefs were responsible for selling the tax credits. L.F. 507, Stip. Ex. 6, § 3.7. The Chiefs either could sell the tax credits directly or transfer them to the Authority. *Id.* However, the Tax Credit Agreement did not allow the Chiefs to transfer the tax credits to the County. *See id.*

The Chiefs also omit an important clause included in Section 3.7. While the Chiefs state that the Tax Credit Agreement "prohibited the Chiefs from benefiting from the Tax Credits," the complete provision allows for benefit: "The Donors shall not benefit from the Tax Credits, except for any benefit resulting from the Development and Lease Documents." *Id.* By placing the

tax credits in the NBP subaccount, the Chiefs benefitted by using the funds generated by the tax credits to purchase its own business assets under the terms of the Development Agreement.

IV. The Contested Items are not exempt from tax as non-taxable fixtures.

The Chiefs' final argument on fixtures may be rejected because the Chiefs did not preserve the argument. Even if the Court reaches the argument's merits, the Chiefs have not presented evidence that any Contested Item is a fixture.

A. The Chiefs waived their fixtures argument.

The Chiefs claim they "raised and preserved this issue" in four ways. App. Br. at 46. None of these ways, however, properly preserved the issue.

The Chiefs first note their timely filed Complaint. *Id.* However, the Complaint does not even use the word "fixtures." L.F. 1-3. The Complaint only refers to "personal property and materials," not fixtures. The Complaint did not preserve the fixture argument.

The Chiefs next point to a single page of the hearing transcript. App. Br. at 46. This page involves an objection to an exhibit and related discussion in which counsel for the Chiefs utters the word "fixtures." Hearing Tr. 141. However, a response to a document objection that merely used the word, and

made no argument regarding the issue, did not preserve the fixture argument.[13]

The Chiefs then point to "stipulated facts, admitted exhibits, and testimony (including but not limited to that cited herein)." App. Br. at 46. This broad catch-all provision is not sufficient to preserve the fixture argument. *Cf. United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991) ("Judges are not like pigs, hunting for truffles buried in briefs.").

Finally, the Chiefs note their timely filed petition for review with this Court. App. Br. at 46. However, the petition for review does not identify any particular argument. Timely filing a petition for review cannot preserve any argument a party chooses to assert in its brief, but did not raise below. The petition for review did not preserve the fixture argument.

"It is well recognized that a party should not be entitled on appeal to claim error on the part of the trial court when the party did not call attention to the error at trial and did not give the court the opportunity to rule on the question." *Mayes v. Saint Luke's Hosp. of Kansas City*, 430 S.W.3d 260, 267

[13] Without taking a position on the Chiefs' reference to an earlier footnote that the Court may exercise authority under Rule 100.02(h) to review the Chiefs' post-hearing written submissions, the Chiefs do not identify, nor has the Director, any relevant portions in those post-hearing written submissions to direct the Court if it chose to review them.

(Mo. banc 2014). The Chiefs failed to preserve their fixtures argument by not raising it before the Commission.

B. The Chiefs' fixtures argument fails on the merits.

Even if the Court considers the Chiefs' fixtures argument, the argument still fails. The Chiefs again repeat their ownership arguments, which already have been addressed. App. Br. at 48-49. This time, however, the Chiefs attempt to rely on the purchase agreements for when title passed. This argument fails. First, the Chiefs cannot rely on the purchase agreement for when title transferred, but not the provisions that identify the Chiefs as the "Owner" to whom title transferred. Second, the Chiefs do not cite to any purchase agreement as evidence of when title transferred. And third, the Chiefs identify "scoreboard-related equipment, the Lamar Hunt Statue, the Hall of Honor exhibits, and the wayfinding and other signage in the stadium that were affixed to the structures." App. Br. at 47. The Chiefs do not cite to any purchase agreements for these transactions, and the purchase agreements in Respondent's Ex. E, Ex. F, and Ex. G relate to furniture, not any of the Contested Items identified by the Chiefs.

Because the Chiefs have not presented evidence of when title passed on each item they assert is a fixture, the Chiefs' argument relating to the Department's repealed regulation also fails. App. Br. at 48. For that matter,

this particular regulation only applied to sales tax. 12 C.S.R. 10-3.330 ("Sales tax does not apply . . . .").

The Chiefs also highlight an admission that does not bind the Department or even admit what the Chiefs suggest. App. Br. at 47. Internal correspondence contained in Exhibit 20 cannot bind the Department. Moreover, the correspondence shows the auditors confirming Contested Items were tangible personal property before issuing tax assessments. Pet & Int. Jnt. Ex. 20 at 1, 5 (DOR1755, 1759).

Finally, none of the Contested Items identified by the Chiefs qualify as fixtures. "Personal property may be so annexed to real estate that it is part of the land, a 'fixture.'" *Buchholz Mortuaries, Inc. v. Director of Revenue*, 113 S.W.3d 192, 193 (Mo. banc 2003). "This is shown by: (1) annexation to the land; (2) adaptation to the location; and (3) intent of the annexor at the time of annexation." *Id.* The Chiefs have not presented evidence demonstrating any of these points. In addition, there is no evidence that the televisions, wayfinding signs, Lamar Hunt Statue, and other items could not be removed and taken with the Chiefs.

The Chiefs have failed to meet their burden to show that any Contested Items were fixtures, rather than tangible personal property subject to tax.

CONCLUSION

For the foregoing reasons, the Director of Revenue respectfully requests that this Court affirm the judgment of the Administrative Hearing Commission.

June 3, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

I certify that a copy of the above Respondent's Brief was served electronically by Missouri CaseNet e-filing system on June 3, 2019, to all parties of record.

I also certify that the foregoing brief complies with the limitations in Rule No. 84.06(b) and that the brief contains 9,767 words.

/s/ *Justin D. Smith*
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