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IN THE SUPREME COURT OF MISSOURI

No. SC97730

THE KANSAS CITY CHIEFS FOOTBALL CLUB, INC.,
Appellant, and

JACKSON COUNTY SPORTS COMPLEX AUTHORITY
Intervenor-Appellant

v.

DIRECTOR OF REVENUE,
Respondent.

Appeal from the Administrative Hearing Commission of Missouri
Case No. 14-1973 RS, The Honorable Sreenivasa Rao (Sreenu) Dandamudi

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BRIEF OF APPELLANT THE KANSAS CITY CHIEFS FOOTBALL CLUB, INC.

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TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES iv

JURISDICTIONAL STATEMENT 1

INTRODUCTION 2

STATEMENT OF FACTS 4

The Project Agreements Create a County-Owned Disbursement Fund.........4

The County-Owned Project Fund Paid for the Contested Items 9

Purchases Were Made Using a Project Exemption Certificate 13

The Contested Items 14

The Director's Sales and Use Tax Audit 17

The Commission Proceedings 18

POINTS RELIED ON...20

ARGUMENT 23

I. The Administrative Hearing Commission erred in assessing sales and use tax against the Chiefs for items procured in the course of the Arrowhead Stadium renovation project because those items were not taxable in the first instance in that the Chiefs were neither the purchaser nor the ultimate owner of any of them, but instead obtained them for use in the Stadium Complex on behalf of its owner, Jackson County, Missouri. 23

Standard of Review and Preservation 23

A. The Chiefs never owned the Contested Items. 24

B. The Contested Items were paid for with County funds........................27

II. The Administrative Hearing Commission erred in assessing sales and use tax against the Chiefs for items procured in the course of the

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

Arrowhead Stadium renovation project because those items, even if taxable in the first instance, nevertheless became exempt from taxation in that they were tangible personal property or materials procured for Jackson County's stadium renovation project under a tax exemption certificate that complied in all respects with R.S. Mo. § 144.062, and in transactions that fall within the Authority's tax-exempt functions and activities. 31

Standard of Review and Preservation 31

The Team Does Not Owe Sales or Use Tax Because the Items for the Renovation Were Procured Pursuant to a Valid Exemption Certificate. 32

III. The Administrative Hearing Commission separately erred in assessing sales and use tax against the Chiefs for items procured in the course of the Arrowhead Stadium renovation project because those items could not constitutionally be taxed under Article III, § 39(10) of the Missouri Constitution (and are exempt from tax under R.S. Mo. § 144.030) in that they were paid for out of project funds owned and managed by Jackson County, the Stadium's owner and a political subdivision of the State. 41

Standard of Review and Preservation 41

A. The Missouri Constitution Prohibits Assessment and Collection of Sales and Use Taxes Because the Contested Items were Purchased by a Missouri Political Subdivision. 42

B. The Commission erroneously relied on the Tax Credit statute. 44

IV. The Administrative Hearing Commission alternatively erred in assessing sales and use tax against the Chiefs for certain items procured in the course of the Arrowhead Stadium renovation because those items were not taxable in that to the extent they were ultimately affixed or attached to real property they were no longer tangible personal property but instead became non-taxable fixtures. 46

Standard of Review and Preservation 46

Certain of the Contested Items are Non-Taxable Fixtures. 46

CONCLUSION 50

CERTIFICATE OF COMPLIANCE WITH MISSOURI SUPREME COURT RULE 84.06(b) 52

CERTIFICATE OF SERVICE 50

APPENDIX

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

TABLE OF AUTHORITIES

CASES

Al-Tom Inv., Inc. v. Dir. of Revenue,
774 S.W.2d 131 (Mo. banc 1999)....................23

Am. Airlines, Inc. v. Dir. of Revenue,
389 S.W.3d 653 (Mo. banc 2013)....................1

Becker Elec. Co. v. Dir. of Revenue,
749 S.W.2d 403 (Mo. banc 1988)....................*Passim*

Bridge Data Co. v. Dir. of Revenue,
794 S.W.2d 204 (Mo. banc 1990)....................45

Buchholz Mortuaries, Inc. v. Dir. of Revenue,
No. 2001-0672 RV, 2002 WL 2031356
(Mo. A.H.C. Aug. 29, 2002)....................39

Christeson v. Burba,
714 S.W.2d 183 (Mo. App. 1986)....................49

Concord Pub. House, Inc. v. Dir. of Revenue,
916 S.W.2d 186 (Mo. banc 1996)....................39

Cook Tractor Co., Inc. v. Dir. of Rev.,
187 S.W.3d 870 (Mo. banc 2002)....................31

Farmer's Alliance Mut. Ins. Co. v. Daniels Plumbing,
496 S.W.3d 644 (Mo. App. 2016)....................33

Gate Gourmet, Inc. v. Dir. of Revenue,
504 S.W.3d 59 (Mo. banc 2016)....................23

House of Lloyd, Inc. v. Dir. of Revenue,
824 S.W.2d 914 (Mo. banc 1992)....................48

J.B. Vending Co., Inc. v. Dir. of Revenue,
54 S.W.3d 183 (Mo. banc 2001)....................23, 31

Kansas City Power & Light Co. v. Dir. of Revenue,
83 S.W.3d 548 (Mo. banc 2002)....................29

Marsh v. Spradling,
537 S.W.2d 402 (Mo. 1976) 22

McDonnell Douglas Corp. v. Dir. of Revenue,
945 S.W.2d 437 (Mo. banc 1997)...29

Mobil Oil Corp. v. Dir. of Revenue,
513 S.W.2d 319 (Mo. 1974) 48

Olin v. Dir. of Revenue,
945 S.W.2d 442 (Mo. 1997) 26, 28, 49

Ovid Bell Press, Inc. v. Dir. of Revenue,
45 S.W.3d 880 (Mo. 2001) 26

Scotchman's Coin Shop, Inc. v. Admin. Hearing Comm'n,
654 S.W.2d 873 (Mo. banc 1983)...25

Six Flags Theme Parks, Inc. v. Dir. of Revenue,
102 S.W.3d 526 (Mo. banc 2003)...23, 31

Sports Unlimited, Inc. v. Dir. of Revenue,
962 S.W.2d 885 (Mo. banc 1998).. *Passim*

State ex rel. Agard v. Riederer,
448 S.W.2d 577 (Mo. banc 1969)...33

State ex rel. Otis Elevator Co. v. Smith,
212 S.W.2d 580 (Mo. 1948) 22, 48

State ex rel. Thompson-Stearns-Roger v. Schaffner,
489 S.W.2d 207 (Mo. 1973) 48, 49

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

STATUTES

R.S. Mo. § 64.940 .....21, 34, 35, 39

R.S. Mo. § 100.286 44

R.S. Mo. § 144.010 .....1, 20, 29

R.S. Mo. § 144.018 .....1, 20

R.S. Mo. § 144.030 ..... 1, 21, 35, 38, 41, 42, 43, 45

R.S. Mo. § 144.062 ..... *Passim*

R.S. Mo. § 144.210.1 37

OTHER AUTHORITIES

12 C.S.R. 10-3.330.....22, 48, 50

12 C.S.R. 10-107.100.....35

12 C.S.R. 10-110.955.....42

Mo. Const. Art. III, section 39(10) ..... *Passim*

Mo. Const. Art. V, section 3 1

Mo. R. Civ. P. 100.02(h).....24

U.C.C. §§ 400.2-401(2) 48, 49

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

JURISDICTIONAL STATEMENT

Appellant The Kansas City Chiefs Football Club, Inc. appeals from the January 29, 2019 Final Decision of the Administrative Hearing Commission ("the Commission"), upholding sales and use tax assessments by Respondent the Director of the Missouri Department of Revenue. The Chiefs' petition for review was timely filed on February 28, 2019. This Court has exclusive jurisdiction under Mo. Const. Art. V, section 3 because this appeal concerns the Director's decision to assess sales and use taxes against the Chiefs for items purchased in connection with a renovation project at the government-owned Truman Sports Complex in Jackson County, Missouri, and thus involves the construction of Missouri revenue laws, including R.S. Mo. §§ 144.010, 144.018, 144.030, and 144.062.[1] *See, e.g.*, *Am. Airlines, Inc. v. Dir. of Revenue*, 389 S.W.3d 653, 656 (Mo. banc 2013) (construing §§ 144.010 and 144.020).

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[1] R.S. Mo. citations are to the current version unless otherwise indicated.

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

INTRODUCTION

This appeal concerns sales and use tax assessments by the Director against the Kansas City Chiefs football team. As part of an extensive renovation project at the Truman Sports Complex, including Arrowhead Stadium – which the Chiefs do not own, but lease – the Chiefs entered into transactions with various contractors and vendors on behalf of the County and the Jackson County Sports Complex Authority to further the renovation project. Despite the fact that the money used to pay for all items used in the renovations came entirely from funds owned and managed by the County, despite the fact that the renovations were made to a stadium in which the Chiefs themselves had no ownership interest, and despite the fact that contracts signed and purchases made were for the County's benefit under an express tax exemption certificate, the Director nevertheless assessed sales and use taxes against the Chiefs for items they procured (the "Contested Items"), and the Commission affirmed.

This result stemmed largely from two erroneous assumptions. First, simply because in making purchases on behalf of the County, the Chiefs at times used standard form contracts containing the shorthand term "Owner" to refer to the party contracting for work, both the Director and the Commission ignored the plain economic reality of the transactions and instead assumed that this happenstance actually determined ownership. Second, merely because the Chiefs had initially

contributed sums that were ultimately deposited in a County-owned project fund – the fund that paid for every item used in the renovation project – both the Director and the Commission assumed that the Chiefs effectively became the owner of items used in the renovation, even though the Chiefs had parted with all dominion and control over their contributions, and despite the uncontested fact that either the Authority or the County had to, and did, approve every purchase.

Thus, even though it was undisputed that the renovations were made to the Sports Complex, the actual "owner" of which was the County, and even though the Chiefs had neither control over the County-owned funds used to pay for the renovations nor absolute discretion as to how they were used, both the Director and the Commission ignored Missouri case law – and economic reality – to conclude that the Chiefs were liable for sales and use tax on the purchased items.

As discussed below, the Commission's decision upholding the Director's tax assessments should be reversed because: (1) the Contested Items were procured for and owned by the County, not the Chiefs; (2) the Contested Items were procured using a valid Project Exemption Certificate; (3) Missouri law prohibits the Director from imposing sales or use tax on purchases made from County funds; and (4) certain Contested Items, including scoreboards, stadium signs, video monitors, and other items, are fixtures rather than tangible personal property and thus are not subject to sales or use taxes at all.

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

STATEMENT OF FACTS

The Chiefs operate a professional football club as a member of the National Football League and play their home games at Arrowhead Stadium, one of the stadium facilities within the Harry S Truman Sports Complex in Kansas City, Missouri. A Missouri political subdivision – Jackson County – owns the Sports Complex. (L.F. 00055 ¶ 1; Tr. 58.) The County leases the Sports Complex to the Jackson County Sports Complex Authority – also a Missouri political subdivision (L.F. 00055 ¶ 2) – which in turn subleases certain portions of the Sports Complex to the Chiefs (Ex. 2) and others to the Kansas City Royals baseball team. The portion subleased to the Chiefs includes Arrowhead Stadium, administrative offices adjacent to it, and a training facility. (L.F. 00055 ¶ 3; L.F. 00527; Ex. 5.)

The Project Agreements Create a County-Owned Disbursement Fund

On January 24, 2006, the Chiefs and the Authority entered into an amendment to their 1990 lease that extended the Chiefs' sublease by another 25 years. (Ex. 3; L.F. 00056 ¶ 5.) With the Chiefs firmly committed to playing at Arrowhead Stadium through 2030, the Authority and the Chiefs, with the County's consent and agreement, entered into the Arrowhead Stadium Development Agreement ("Development Agreement") for the purpose of making renovations and improvements to Arrowhead Stadium and other areas of the Sports Complex that the Chiefs sublease. (Ex. 1.) Both the Chiefs and the Authority pledged to

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

make contributions to be used for the renovations. (Ex. 1 § 6.05; Ex. 3 § 1.3.1.) In particular, the Development Agreement required the Authority and Team to fund a Disbursement Account as follows:

- Landlord's Contribution: $250,000,000 in public funds [a combination of bond proceeds, the proceeds from the County's sale of Missouri state tax credits issued by the Missouri Development Finance Board ("MDFB"), and the 3/8-cent County sales taxes].[2]
- Tenant's Contribution: $75,000,000 (plus cash in the amount of any project cost overruns) to be administered and disbursed by the MDFB.

(Ex. 1, § 6.05(b).)

On August 1, 2006, the County and Wells Fargo Bank, N.A. entered into a Trust Indenture that governed the Bonds the County issued. (Ex. 4; L.F. 00056 ¶ 9.) The Indenture created a Project Fund, to be administered by the Bond Trustee, which the Indenture defined as County-owned:

> The following *funds of the County* are hereby created and established with the Trustee:
>
> . . .

[2] In August 2006, the County issued over $447 million in Special Obligation Bonds (the "Bonds") to raise money for the Project, Kauffman Stadium renovations, and other improvements to the Sports Complex. (L.F. 00328; Ex. 4.) Also in 2006, voters in the County approved a 3/8 cent County-wide sales tax. (Tr. 29-30.) The purpose of the 3/8 cent sales tax was to provide the majority of the funds needed to repay the Bonds the County issued to fund the Project. (Tr. 30.)

> (4) **Project Fund**, which shall contain a Chiefs Account (within the Chiefs Account a Bond Proceeds Subaccount, a Non-Bond Proceeds Subaccount and an Investment Earnings Subaccount), a Royals Account (within the Royals Account a Bond Proceeds Subaccount, a Non-Bond Proceeds Subaccount and an Investment Earnings Subaccount), a Tax Credit Capitalization Account and a Cost of Issuance Account . . . .

(Ex. 4, Trust Indenture, § 401(a)) (emphasis added); Tr. 48.)[3] Thus, the Project Fund for Arrowhead Stadium renovations comprised three subaccounts: a Bond Proceeds ("BP") subaccount, a Non-Bond Proceeds ("NBP") subaccount, and an Investment Earnings ("IE") subaccount. (*Id.*) Half of the proceeds from the County's Bond sales ($212.5 million) were placed in the BP subaccount for the Project while the other half was to be used for Kauffman Stadium renovations. (L.F. 00358.) The NBP subaccount contained the proceeds from the sale of Tax Credits authorized by the MDFB and the Chiefs' contributions to the MDFB. (L.F. 00358.) The IE subaccount consisted of the interest earnings from the investments in the other two subaccounts. (L.F. 00366.) The entire Project Fund was to be used to renovate the Sports Complex, including Arrowhead Stadium and Kauffman Stadium. (L.F. 00057.)[4]

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[3] The "Disbursement Account" described in the Development Agreement (Ex. 1) became the "Project Fund" in the Indenture. (Ex. 4, §§ 401, 404; Tr. 74, 81.)

[4] Under the Development Agreement and the 2006 Lease Amendment, the Chiefs, along with the County and Authority, were to be refunded any remaining balance upon completion of the Project based on each entity's "cost contribution ratio" (L.F. 00163), but no money remained for a refund (Tr. 76, 108).

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

The Chiefs (1) were not a party to the Trust Indenture; (2) never directly deposited money into the Project Fund (L.F. 00357, Joint Stipulation ¶¶ 14-17; Tr. 35-37, 38, 137; Ex. 22, Project Funding Flow Chart); (3) did not own or control the Project Fund or its subaccounts (Ex. 4, Trust Indenture, §§ 401 and 404); and (4) could not unilaterally access the Project Fund. (Ex. 1, Development Agreement, §§ 4.01, 6.06(e).)

On October 12, 2006, the Authority, the MDFB, the Chiefs, and the County entered into a Tax Credit Agreement. (L.F. 00057, Joint Stipulation ¶¶ 14, 15; Ex. 5.) The Tax Credit Agreement provided for the MDFB's issuance of Tax Credits to be sold by the County as part of of the previously-described Landlord Contribution ("Tax Credit Proceeds"). (Ex. 1, Development Agreement § 6.05(b); Tr. 31; Ex. 22, Project Funding Flow Chart; Ex. 23, Table of One-Time Revenues.)[5] The Tax Credit Agreement required the Chiefs to relinquish any interest in the Tax Credits to the County and, further, prohibited the Chiefs from receiving any benefit of the Tax Credits. (Ex. 5, § 3.7.)

The Chiefs satisfied their obligation by contributing $75 million over time to the MDFB. (Ex. 1, Development Agreement § 6.05(b); Ex. 5, Tax Credit Agreement § 3.1; Tr. 31-33, 79-80; Ex. 22, Project Funding Flow Chart; Ex. 23,

[5] Because the anticipated Tax Credits exceeded the statutorily authorized limit, a Joint Agreement of the Commissioner of Administration, the Director of the Department of Economic Development, and the Director of the Department of Revenue authorized the Tax Credits issued. (Ex. 28.)

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

Table of One-Time Revenues.) The MDFB deposited these contributions into the infrastructure development fund it administers and separately maintains on its "books and records." (Ex. 5, Tax Credit Agreement §§ 3.1 and 4.1; Tr. 56.) After receiving the Chiefs' funds, the MDFB issued the authorized Tax Credits and transferred the balance to the Bond Trustee to be used for the Project's costs. (Ex. 5, Tax Credit Agreement §§ 3.1, 3.7, and 4.1; Ex. 4, Bond Indenture § 401(b)(3); Tr. 31-33; Ex. 22, Project Funding Flow Chart.) The Trustee deposited the money it received into the Project Fund NBP subaccount along with the Tax Credit Proceeds from the County's sale of the Tax Credits. (Ex. 5, Tax Credit Agreement §§ 3.1, 3.7, and 4.1; Ex. 4, Bond Indenture § 401(b)(3); Tr. 31-33; Ex. 22, Project Funding Flow Chart.) Like the Indenture, the Tax Credit Agreement provided that the Bond Trustee was to disburse amounts from the Project Fund account only upon receipt of executed requisitions pursuant to the Development Agreement. (Ex. 5 § 4.2; Tr. 51, 105.)

On January 7, 2009, the MDFB, the Authority, the County, and the Chiefs entered into a First Amendment to Tax Credit Agreement in order to generate additional funds for the Project. (L.F. 0057, Joint Stipulation ¶¶ 16-17; Ex. 6, First Amendment to Tax Credit Agreement.) The Chiefs contributed an additional $50 million to the MDFB over a period of time. (Ex. 6, First Amendment to Tax Credit Agreement § 3; Tr. 33; Ex. 22, Project Funding Flow Chart; Ex. 23, Table

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

of One Time Revenues.) As before, the MDFB deposited these contributions into the infrastructure development fund that it separately maintains on its "books and records." (Ex. 6, First Amendment to Tax Credit Agreement Recital F and § 3.1A; Tr. 56.) The MDFB also issued additional Tax Credits and transferred the balance to the Bond Trustee. (Ex. 6, First Amendment to Tax Credit Agreement § 3.1A; Ex. 4, Bond Indenture § 401(b)(3); Tr. 31-33; Ex. 22, Project Funding Flow Chart.) The Trustee then deposited the funds into the NBP subaccount and commingled it with the prior Chiefs contribution and the aforementioned Tax Credit Proceeds. (Ex. 6, First Amendment to Tax Credit Agreement § 3.1A; Ex. 4, Bond Indenture § 401(b)(3); Tr. 31-33; Ex. 22, Project Funding Flow Chart.)[6]

The County-Owned Project Fund Paid for the Contested Items

The Chiefs agreed to manage and oversee the Project on behalf of the Authority and with the consent of the County. (Ex. 1, Development Agreement § 5.01(b); Tr. 100-01.) In administering the Project, the Chiefs worked with representatives of the Authority, Burns & McDonnell, and HOK Sports. (Tr. 100-04.) The Chiefs had no unilateral discretion to pick design elements implemented into the Project and all preliminary and final plans developed by HOK Sports had to be and were approved by the Authority and Burns & McDonnell. (Tr. 100-04.)

[6] The 2009 Tax Credits were deposited into a different account not established under the Indenture (Ex. 6), but none of the Contested Items were paid from this account (Ex. 22).

During the subsequent procurement and construction phases of the Project, the Chiefs participated in the selection of tangible personal property, fixtures, and materials for the Project, and also negotiated and contracted with vendors on behalf of the County. (Tr. 100-04.) The Chiefs could not unilaterally pick vendors or select and contract for the procurement of any tangible personal property and materials during the Project without the consent and approval of the Authority and Burns & McDonnell. (Tr. 100-04.) In contracting with vendors, the Chiefs at times used modified purchase order forms typically employed by project managers and administrators in procuring tangible personal property on behalf of a property owner. (Tr. 128-30; Exs. E-G.) Those purchase order forms used the shorthand term "Owner" to refer to the contracting party in the same position as the Chiefs. (*Id.*)

As discussed above, money could only be drawn from the Project Fund to pay Project costs pursuant to written disbursement requests submitted to and approved by the Authority and Burns & McDonnell. (Ex. 1, Development Agreement at § 6.06 and Exhibit G; Ex. 4, Bond Indenture § 404 and Exhibit B; Tr. 33-34, 49-52, 104-05; Ex. 25, Ragsdale Depo. at 10-13.) Using this procedure, the Chiefs submitted monthly disbursement requests to the Authority for payment of contractors and vendors working on the Project. (L.F. 00058, Joint Stipulation ¶ 26; Tr. 33-34, 49-52, and 102-05; Ex. 25, Ragsdale Depo. at 10-13, 86.) Each

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

disbursement request contained a master list of the contractors and vendors working on the Project, a summary sheet of the work, the completion percentage, and all payment applications, invoices, and other supporting documents showing the work performed. (Tr. 104-05; Ex. 25, Ragsdale Depo. at 9-10.) In turn, the Authority and Burns & McDonnell were required to approve each disbursement request before submitting them to the Bond Trustee for payment out of the Project Fund. (Tr. 33-34, 49-52, 104-05; Ex. 25, Ragsdale Depo. at 13-15, 86; Ex. 13, Contested Items List.)

Sometimes the Chiefs made advance payments to accommodate smaller vendors that could not wait for distribution by the Trustee. (L.F. 00058, Joint Stipulation ¶ 26; Ex. 25, Ragsdale Depo. at 14-15, 86.) In those instances, the Trustee reimbursed the Chiefs from the Project Fund after the disbursement requests had been approved by the Authority and Burns & McDonnell and submitted for process and payment. (L.F. 00058 Joint Stipulation ¶ 26; Ex. 25, Ragsdale Depo. at 14-15, 86.)

Both 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.) The Development Agreement expressly states the County has title to the entire leased premises and "shall own the Project." (Ex. 1, Development Agreement, at

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

§§ 2.07(ii), 4.01; Tr. 130.) The County has title to and ownership of all tangible personal property, materials, fixtures, and equipment purchased during the Project, including the Contested Items, and all funds deposited in the Project Fund or its subaccounts were funds of the County; the Project Fund and all its subaccounts were indentured accounts secured for repayment of the Bonds under the Trust Indenture. (Ex. 30, County Representative Depo. at 26, 33-34, 48-58, 62-67; Tr. 48-51, 57-60, 69-70, 79).

While the Bond Trustee administered the Project Fund for the Arrowhead renovations, the Development Agreement provided that the Chiefs would pay for private suite costs and the Chiefs' contribution of funds would be used for the additional suites, interior finishes, training facility and offices, the "KC Football Museum" (*i.e.*, the "Hall of Honor"), specialty food outlets, and the team store. (Ex. 1, § 6.05(b)(iii); Ex. 25, Ragsdale Depo. at 30-31.) The County acknowledged that the Development Agreement permitted the Chiefs' contribution to go to certain aspects of the Plan, and that only the Chiefs' contribution could be used for private suite costs at Arrowhead Stadium and for the Team's training facility and offices that are separate from Arrowhead Stadium. (Ex. 30, County Representative Depo. at 30-32.) However, in all respects, the Trustee made payments from the Project Fund based upon authorized disbursement requests.

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

The Chiefs could not pay for and exercise ownership over materials, equipment, or fixtures purchased during the Project without notice and approval of the Authority. (Ex. 1, Development Agreement, at §§ 4.01 and 6.06(e).)

Purchases Were Made Using a Project Exemption Certificate

Because exempt entities or their designees can purchase materials exempt from sales tax whether or not the exempt entity is directly billed, the Director issued to the Authority a sales and use tax Project Exemption Certificate pursuant to R.S. Mo. § 144.062.2 that allowed the Authority's designee to purchase and pay for materials exempt from sales tax when fulfilling a contract with the Authority. (Ex. 9.) Here, the Development Agreement was the contract to be fulfilled when the Chiefs were purchasing materials for the Project. (Ex. 1 § 4.28.)

The Authority provided its Project Exemption Certificate to the Chiefs on the form that the Director provided. (Ex. 10.)[7] While the Indenture required the Authority to approve all expenditures, its acknowledged role was not to order the items for the renovation. (Ex. 4, Trust Indenture §§ 404 and 408.) Instead, the Authority expected the Chiefs to act on its behalf and provide the Project Exemption Certificate to each of the vendors from whom materials were purchased for the Project, which the Chiefs did. (Tr. 98-99.)

[7] Section 3.2.4.7 of the Lease Amendment obligates the Authority to provide, to the extent legally possible, an exemption from sales taxes for the property and materials used in the Project. (Ex. 3.)

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

The Contested Items

The Project was a substantial undertaking, with renovations to Arrowhead Stadium, administrative offices, and the training complex. However, the particular Contested Items at issue in this appeal on which the Director assessed taxes can be summarized as follows:

Video equipment for the stadium's main scoreboard. (Tr. 95; Ex. 25, Ragsdale Depo. at 36, 67.) Roscor provided technological services and delivered and installed video equipment in a "NASA-like" control center linking the new scoreboards and sound systems at Arrowhead Stadium installed during the Project. (Tr. 95-96; Ex. 25, Ragsdale Depo. at 73 and Exs. 54-63.) The Trustee paid Roscor directly. (Ex. 25, Ragsdale Depo. at 57.)

Scoreboards at the stadium. Daktronics provided technological services and delivered and installed new large LED endzone scoreboards and ribbon boards circling the middle levels of Arrowhead Stadium, including all of the technology and displays. (Tr. 96-97, 120-22; Ex. I at 20-23; Ex. 25, Ragsdale Depo. at 70-71 and Exs. 40-54, 56-60, 62, 65.) The Trustee paid Daktronics directly. (Ex. 25, Ragsdale Depo. at 29, 57.)

Television fixtures throughout the stadium, including the concourses, by the concession stands, and in the suites. Sony supplied and delivered over 800 flat-screen TVs mounted on brackets and affixed to the walls and structure throughout

all levels and common areas of Arrowhead Stadium. (Tr. 92-93, 118-20; Ex. I at 17-19; Ex. 25, Ragsdale Depo. at 37, 75-76 and Exs. 47, 55, 57, 65.) The purchase order with Sony states the "Point of Delivery" as Truman Sports Complex, with seller bearing all risk of loss, responsibility, insurance, and costs and expenses of delivery. (Ex. E, Purchase Order, pp. 1-2.) Sony is identified as the seller and the Team is identified as the owner in the purchase agreement. (Ex. F.) The Trustee made payments directly to Sony. (Ex. 25, Ragsdale Depo. at 38, 57.)

Stadium signs to guide patrons from one place to another in the stadium. Star Signs delivered and installed wayfinding signs and graphics affixed to walls throughout the stadium. (Tr. 97-98; Ex. I at 16; Ex. 25, Ragsdale Depo. at 38-39, 73-74; Exs. 49-51, 53-61, 63-65.) Harmon Signs also delivered and installed wayfinding signs and graphics affixed to walls throughout the stadium. (Tr. 97-98; Ex. I at 16; Ex. 25, Ragsdale Depo. at 33-34, 72-74; Exs. 42-52, 54, 56-60, 64-65.) The Trustee made payments directly to Star Signs and Harmon Signs. (Ex. 25, Ragsdale Depo. at 34, 39, 57.)

Large bronze statue installation of the Chiefs' founder, Lamar Hunt, the work for which included designing the clay molds and bronze artwork used in creating the statue, some of which were sent to Artworks Foundry and others for fabrication. (Tr. 89-90, 113-14; Exhibit I at 7; Ex. 25, Ragsdale Depo. at 79-80; Exs. 42, 51, 55-56, and 61.) Artworks Foundry fabricated the molds for the Lamar

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

Hunt statue at the direction of the artist, Bruce Wolfe, before the statue was delivered and installed at the Project site. (Tr. 89-90, 113-14; Exhibit I-137; Ex. 25, Ragsdale Depo. at 60-62; Exs. 55, 57, 60, and 63.) The Lamar Hunt Statue is located at the Founder's Plaza entry directly outside Arrowhead Stadium and affixed to the property down to the foundation. (Tr. 89-90, 113-14; Ex. I-137.) The Trustee reimbursed the Chiefs for the purchases. (Ex. B, Gardner Depo. at 46-49, 60-62; Ex. 25, Ragsdale Depo. at 57.)

Fixtures and cabinetry affixed to the Arrowhead Stadium Club Level, private suites, concourses, and administrative offices, together with furniture for those areas, provided by Encompas, which also delivered and installed office furniture, workstations, chairs, tables, and cabinets for the training facility offices at the Sports Complex. (Tr. 91-92; Exhibits I-48 to I-50; Ex. 25, Ragsdale Depo. at 61-62 and Exs. 35, 38-40, 42, 45, 47-49, 51, 53, 56-61, and 63.) The purchase order with Encompas lists the "Point of Delivery" as One Wolf Pack Dr., Kansas City, MO 64129, with seller bearing all risk of loss, responsibility, insurance, and costs and expenses of delivery. (Ex. G, Purchase Order, pp. 1-2.) Encompas is identified as the seller and the Chiefs as owner in the purchase contract. (Ex. G.) The Trustee made payments directly to Encompas and also reimbursed the Chiefs for purchases they made. (Ex. 25, Ragsdale Depo. at 32, 57.) John Marshall also provided business furniture, including desks, chairs, and case goods for use in

administrative offices, and furniture for the suites at Arrowhead Stadium. Specifically, John Marshall delivered and installed case-goods, such as cabinets, chairs, and tables, for the renovated suites and Club Level of Arrowhead Stadium. (Tr. 90-91; Ex. I-2; Ex. 25, Ragsdale Depo. at 65-66 and Exs. 35 and 36, 38-40, 44 and 62.) The purchase order with John Marshall identifies the "Point of Delivery" as One Wolf Pack Dr., Kansas City, MO 64129, the location of Arrowhead Stadium, with seller bearing all risk of loss, responsibility, insurance, and costs and expenses of delivery. (Ex. E, Purchase Order, pp. 1-2.) John Marshall is identified as the seller and the Chiefs are identified as the owner in the purchase contract. (Ex. E.) The Trustee made payments directly to John Marshall. (Ex. 25, Ragsdale Depo. at 36, 57.)

The Director's Sales and Use Tax Audit

The Director conducted a sales and use tax audit of the Chiefs for the following tax periods: (a) sales tax for February 1, 2008 through January 31, 2011; and (b) use tax for January 1, 2008 through December 31, 2010 (hereinafter "Tax Periods"). (L.F. 00057 ¶ 18.) Because the Chiefs had provided the sellers of the Contested Items with the Project Exception Certificate (Tr. 99; Ex. 10), the Chiefs did not pay sales or use tax on any of the Contested Items (Ex. 25, Ragsdale Depo. at 82). On November 21, 2014, the Director issued sales and use tax assessments against the Team. (L.F. 00009.)

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

The Commission Proceedings

The Chiefs contested the Director's assessments. (L.F. 00001-03.) Following a lengthy discovery period, the Commission held a hearing on October 10, 2017. After testimony and briefing, the Commission issued its Final Decision on January 29, 2019, finding that the Team should be assessed sales and use tax on certain Contested Items. (L.F. 00589; Appendix ("A") 29.) The Commission found that neither the County nor the Authority purchased 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. 00565; A5; Ex. J, questions 9, 12.) Rather, it found the Chiefs placed all of the orders for the Contested Items (L.F. 00574; A14) and was the "owner" of certain Contested Items because it was identified as such in the purchase contracts with Encompas, John Marshall, and Sony. (L.F. 00576; A16; Exs. E, F, G.)

The following chart shows the total amount of disbursements from the Project Fund for the purchase of the Contested Items to each of the vendors and the Commission's determination of tax that are at issue on appeal:

Vendor	Total Disbursements from Subaccounts	Tax Due
Artworks Foundry	$22,418.98 (NBP)	$1,479.65 (use tax)
Bruce Wolfe	$349,494.97 (NBP)	$23,066.67 (use tax)
John Marshall	$267,971.90 (NBP)	$17,686.15 (use tax)
Encompas	$3,272,173.27 (NBP)	$252,775.39 (sales tax)
Sony	$995,920 (NBP)	$65,730.72 (use tax)

Vendor	Total Disbursements from Subaccounts	Tax Due
Roscor	$3,998,818.54 (NBP); $120.96 (BP); $559.60 (IE)	$263,958.96 (use tax)
Star Sign	$1,377,814.45 (NBP); $103,733.35 (BP)	$90,935.75 (use tax)
Harmon Sign	$682,882.12 (NBP); $43,219.80 (BP); $295,882.25 (IE)	$64,598.45 (use tax)
Daktronics	$1,496.670.06 (NBP); $771,742.00 (IE); $7,250,134.95 (BP)	$149,715.20 (use tax)

(L.F. 00588; A28.)[8] This appeal followed.

[8] The Commission found no tax due on purchases from three vendors. (L.F. 00588; A28.) As the Director has not appealed these determinations, they are not at issue in this appeal and are not addressed herein.

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

POINTS RELIED ON

I. The Administrative Hearing Commission erred in assessing sales and use tax against the Chiefs for items procured in the course of the Arrowhead Stadium renovation project because those items were not taxable in the first instance in that the Chiefs were neither the purchaser nor the ultimate owner of any of them, but instead obtained them for use in the Stadium Complex on behalf of its owner, Jackson County, Missouri.

- *Becker Elec. Co. v. Dir. of Revenue*, 749 S.W.2d 403 (Mo. banc 1988)
- R.S. Mo. § 144.010
- R.S. Mo. § 144.018

II. The Administrative Hearing Commission erred in assessing sales and use tax against the Chiefs for items procured in the course of the Arrowhead Stadium renovation project because those items, even if taxable in the first instance, nevertheless became exempt from taxation in that they were tangible personal property or materials procured for Jackson County's stadium renovation project under a tax exemption certificate that complied in all respects with R.S. Mo. § 144.062, and in transactions that fall within the Authority's tax-exempt functions and activities.

- *Sports Unlimited, Inc. v. Dir. of Revenue*, 962 S.W.2d 885 (Mo. banc 1998)
- R.S. Mo. § 64.940
- R.S. Mo. § 144.030
- R.S. Mo. § 144.062

III. The Administrative Hearing Commission separately erred in assessing sales and use tax against the Chiefs for items procured in the course of the Arrowhead Stadium renovation project because those items could not constitutionally be taxed under Article III, § 39(10) of the Missouri Constitution (and are exempt from tax under R.S. Mo. § 144.030) in that they were paid for out of project funds owned and managed by Jackson County, the Stadium's owner and a political subdivision of the State.

- Mo. Const. art. III, § 39(10)
- R.S. Mo. § 144.030

IV. The Administrative Hearing Commission alternatively erred in assessing sales and use tax against the Chiefs for certain items procured in the course of the Arrowhead Stadium renovation project because those items were not taxable in that to the extent they were ultimately

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

affixed or attached to real property they were no longer tangible personal property but instead became non-taxable fixtures.

12 C.S.R. 10-3.330 (repealed Feb. 28, 2011)

Marsh v. Spradling, 537 S.W.2d 402 (Mo. 1976)

State ex rel. Otis Elevator Co. v. Smith, 212 S.W.2d 580 (Mo. 1948)

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

ARGUMENT

I. The Administrative Hearing Commission erred in assessing sales and use tax against the Chiefs for items procured in the course of the Arrowhead Stadium renovation project because those items were not taxable in the first instance in that the Chiefs were neither the purchaser nor the ultimate owner of any of them, but instead obtained them for use in the Stadium Complex on behalf of its owner, Jackson County, Missouri.

Standard of Review and Preservation

Revenue laws are construed strictly against the Director in favor of the taxpayer. *Becker Elec. Co. v. Dir. of Revenue*, 749 S.W.2d 403, 406 (Mo. banc 1988). It is the Director's burden to show the existence of a tax liability. *Six Flags Theme Parks, Inc. v. Dir. of Revenue*, 102 S.W.3d 526, 529 (Mo. banc 2003). A Commission decision will be affirmed if it is supported by competent and substantial evidence on the record as a whole and is not unlawful, unreasonable, arbitrary, or capricious. *J.B. Vending Co., Inc. v. Dir. of Revenue*, 54 S.W.3d 183, 185 (Mo. banc 2001).

The Commission's interpretation of revenue law is an issue reviewed *de novo*. *Id.*; *Gate Gourmet, Inc. v. Dir. of Revenue*, 504 S.W.3d 59, 61 (Mo. banc 2016). "Where the decision is based upon an interpretation or application of the

law, this Court is not precluded from exercising its independent judgment." *Al-Tom Inv., Inc. v. Dir. of Revenue*, 774 S.W.2d 131, 132 (Mo. banc 1999). Indeed, if the Commission's decision is not authorized by law, this Court must reverse. *Becker Elec. Co.*, 749 S.W.2d at 407.

The Chiefs raised and preserved this issue for review by timely filing their Complaint challenging the Director's assessments with the Commission (*see generally* L.F. 00001-3), in its arguments to the Commission (*see, e.g.*, L.F. 00561-62, 573, 583-85; A1-2, A13, A23-25; Tr. 16, 18-19),[9] by relying on the stipulated facts, admitted exhibits, and testimony (including but not limited to that cited herein), and by timely filing a Petition for Review with this Court.

A. The Chiefs never owned the Contested Items.

This Court in *Becker Electric* held that a purchaser for purposes of sales and use tax is one who (1) acquires title to, or ownership of, tangible personal property, or to whom is rendered services, (2) in exchange for a valuable consideration. 749 S.W.2d at 407. The economic reality here is plain: the Chiefs never owned the Contested Items, but instead procured them on behalf of the County, the owner of the facility.

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[9] In addition to these record references, the arguments asserted herein were set forth in the Chiefs' post-hearing written submissions, which the Commission did not include in the legal file it certified to this Court; this Court may direct it to do so under Rule 100.02(h) if necessary to make a determination as to preservation.

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

The County unquestionably owns the Sports Complex, including Arrowhead Stadium and the training facility, as shown by both the 1990 Lease and the 2006 Lease Amendment. The Contested Items consist entirely of fixtures and tangible personal property acquired for improvements to that same County-owned property. County ownership is confirmed by the Development Agreement, which specifically states that the Project, which includes all the Contested Items, is owned by the County. (Ex. 1, Development Agreement, at § 4.01.) The Chiefs could only own items purchased for the Project by following a specific provision in the Development Agreement that required written notification to and approval by the Authority, and payment by the Chiefs with their own funds. (*Id.*) But the Chiefs never requested or received any such approval, and never paid for the Contested Items on their own.

The Commission erroneously concluded that the Team took title to or owned the Contested Items simply because some of the standard form purchase contracts used the term "owner" to identify one of the parties to the contract. (L.F. 00578; A18.) But Missouri law is clear that the "economic realities" of the case must control the ownership question. *See Becker Elec. Co.*, 749 S.W.2d at 408; *Scotchman's Coin Shop, Inc. v. Admin. Hearing Comm'n*, 654 S.W.2d 873, 875 (Mo. banc 1983) ("When determining the merits of revenue cases, it is important to look beyond legal fictions and academic jurisprudence in order to discover the

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

economic realities.”). Here the particular form language on some purchase agreements cannot overcome the undisputed substance of the transactions, as set forth in the uncontradicted testimony, and as reflected in the 1990 Lease, 2006 Lease Amendment, Bond Indenture, and Development Agreement.

Consistent with these contracts and the intent of the parties, the County’s representative affirmatively testified the County has title to and ownership of the Contested Items. (Tr. 48-51, 57-60, 69-70, 79, 130; Ex. 30 at 26, 33-34, 48-58.) The Director did not offer any contradictory testimony. And although the Chiefs entered into some of the modified form purchase agreements as “owner,” the intent of the parties as to title and ownership never changed, and therefore controls. *Olin v. Dir. of Revenue*, 945 S.W.2d 442, 444 (Mo. 1997); *Ovid Bell Press, Inc. v. Dir. of Revenue*, 45 S.W.3d 880, 885 (Mo. 2001) (finding passage of title and ownership occurs upon delivery; the key is the intent of the parties, as evidenced by all relevant facts).

The Commission also erred by concluding that, merely because the Chiefs leased certain facilities within the Sports Complex, they could never act as the Authority’s or County’s representative in procuring materials for the Project. (L.F. 00574; A14.) No law or fact compels this conclusion. Instead, the Authority delegated responsibility to the Chiefs to obtain the necessary items for the Project improvements and renovations. This authorization to procure the items is reflected

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

in the Development Agreement and (as discussed above) the Project Exemption Certificate the Authority provided to the Chiefs. There was no evidence that the Authority had the expertise or ability to acquire the materials and other items for the Arrowhead improvements. Because the Chiefs acted on behalf of the Authority as a contractor for the Project, its separate status as a lessee under the 2006 Lease Amendment is irrelevant for purposes of sales and use taxes.

The Chiefs never took title to or owned any of the Contested Items, and the purchase of the Contested Items for use in a County-owned project cannot give rise to a taxable event. The Commission's decision should be reversed on this ground alone.

B. The Contested Items were paid for with County funds.

Even if the Chiefs had taken title to or owned the Contested Items at some point – they did not – they still did not engage in transactions subject to sales or use tax because they did not purchase the items. The Commission erred in finding otherwise because the Contested Items were purchased with County funds. *Becker Electric* controls on this point—it held that when an exempt entity pays for tangible personal property with its funds, it becomes the purchaser for purposes of sales and use tax. 749 S.W.2d at 407-08.

In *Becker Electric,* an electrical contractor agreed with an exempt entity to renovate a building for a set amount. Becker Electric was to bear the cost of all

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

materials and labor, and its subcontractors ordered all materials using the exempt entity's exemption certificate. The issue was whether Becker Electric was the "purchaser" engaged in a transaction subjecting it to sales or use tax liability. This Court held that because the exempt entity – the Housing Authority – ultimately paid for the items, Becker did not part with valuable consideration and therefore was not a "purchaser" subject to sales or use tax liability. *Id*.

Here, under the Trust Indenture, all disbursements required the Authority's approval. Once approved and submitted, only the Trustee could make payments from the Project Fund. Just as in *Becker Electric,* the Chiefs were not the purchaser of any of the Contested Items. The Trustee paid John Marshall, Sony, Roscor, Star Sign, Harmon Sign, and Daktronics *directly and entirely* from the Project Fund. (Ex. 25, Ragsdale Depo. at 86-87.) The Chiefs were not the "purchaser" of those items under sales or use tax laws, which are strictly construed against the Director, because the Trustee used County funds to make the payments. *Olin*, 945 S.W.2d at 443; *Becker Elec. Co.*, 749 S.W.2d at 406. The same is true for those Contested Items where the Chiefs advanced payments to the vendors – Artworks Foundry and Bruce Wolfe (Lamar Hunt Statue), and a small fraction of the payments to Encompas (office furniture) – because the undisputed evidence shows that the

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

Trustee reimbursed all such advances from the Project Fund. (Ex. 25, Ragsdale Depo. at 57.)[10]

This Court has previously rejected the Director's virtually identical arguments on these same points. In *Becker Electric*, the Director argued the parties' procedure was "merely a scheme to circumvent payment of sales and use taxes." 749 S.W.2d at 408. But this Court recognized the economic reality—because the purchases would have been exempt had the exempt entity ordered them on its own, any such "scheme" was not only lawful, but fully expected:

> The procedure followed merely reflects the economic realities of the situation; the Housing Authority lacks the expertise to purchase such materials on its own, and it is doubtful the exemption would ever be invoked if, as a prerequisite, the Housing Authority were required to perform all of the purchasing functions. Furthermore, neither [Becker] nor [its general contractor] benefited from this procedure. *The net result is a tax exemption for the Housing Authority, a result consistent with the reasonable expectations of the General Assembly.*

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[10] Even if the Chiefs met the definition of "purchaser" under the taxing statutes for these limited transactions in a technical sense, the purchases would still not be subject to tax because both title and ownership plainly were transferred to the County for value. R.S. Mo. §§ 144.010.1(13) (A35), 144.018.1(3) and (4) (A38). The elements of the resale exemption are: (1) a transfer, barter, or exchange, (2) of the title or ownership of tangible personal property or the right to use, store, or consume the same, (3) for a consideration paid or to be paid. *McDonnell Douglas Corp. v. Dir. of Revenue*, 945 S.W.2d 437, 440 (Mo. banc 1997) (holding taxpayer's purchases on project were for resale and exempt from use tax where contracts provided for vesting of title in the government of any property purchased); *see also Kansas City Power & Light Co. v. Dir. of Revenue*, 83 S.W.3d 548, 552-53 (Mo. banc 2002). At best, these Contested Items fall under the resale exemption and are still not taxable since title was transferred to the County.

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

Id. at 408 (emphasis added).

If the Authority or the County had directly contracted for the Contested Items, instead of the Chiefs as the Authority's representative, the transactions would plainly have been tax exempt. That the tax-exempt entities received purchasing help from the Chiefs (using the validly issued Project Exemption Certificate) does not change the net result, which is a tax exemption for the purchases "consistent with the reasonable expectations of the General Assembly." *Becker Elec. Co.*, 749 S.W.2d at 408.

Because the Chiefs neither purchased nor owned the Contested Items, they cannot be subject to sales or use taxes, and the decision below should be reversed.

II. The Administrative Hearing Commission erred in assessing sales and use tax against the Chiefs for items procured in the course of the Arrowhead Stadium renovation project because those items, even if taxable in the first instance, nevertheless became exempt from taxation in that they were tangible personal property or materials procured for Jackson County's stadium renovation project under a tax exemption certificate that complied in all respects with R.S. Mo. § 144.062, and in transactions that fall within the Authority's tax-exempt functions and activities.

Standard of Review and Preservation

Revenue laws are construed strictly against the Director in favor of the taxpayer. *Becker Elec. Co.*, 749 S.W.2d at 406. It is the Director's burden to show the existence of a tax liability. *Six Flags Theme Parks, Inc.*, 102 S.W.3d at 529. An Commission decision will be affirmed if it is supported by competent and substantial evidence on the record as a whole and is not unlawful, unreasonable, arbitrary, or capricious. *J.B. Vending Co., Inc.*, 54 S.W.3d at 185.

While "exemptions are strictly construed against the taxpayer and, as such, it is the burden of the taxpayer claiming the exemption to show that it fits the statutory language exactly," *Cook Tractor Co., Inc. v. Dir. of Rev.*, 187 S.W.3d 870, 872 (Mo. banc 2002), the primary argument in this appeal is the interpretation

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

of the tax statutes which is an issue of construction that must be resolved in the manner most favorable to the Chiefs. To the extent that the project exemption statute and certificate applies, then it is applicable only if the Court finds that the Chiefs were the purchaser and owner of the Contested Items. *See Becker Elec. Co.*, 749 S.W.2d at 406 (explaining that "the question of exemption will arise only if we find that appellant was the purchaser of the [] materials and was thus subject to sales and use taxes. Therefore, in determining whether appellant was the purchaser, the sales and use tax laws will be strictly construed against respondent.").

The Chiefs raised and preserved this issue for review by timely filing their Complaint challenging the Director's assessments with the Commission (*see generally* L.F. 00001-3), in its arguments to the Commission (*see, e.g.*, L.F. 00579-81; A19-21; Tr. 15-16, 20-21),[11] by relying on the stipulated facts, admitted exhibits, and testimony (including but not limited to that cited herein), and by timely filing a Petition for Review with this Court.

The Team Does Not Owe Sales or Use Tax Because the Items for the Renovation Were Procured Pursuant to a Valid Exemption Certificate.

The Commission separately erred in upholding the Director's tax assessments because the purchases at issue occurred under the flow-through project exemption in R.S. Mo. § 144.062. That statute exempts from sales and use

[11] *See* n.9, *supra*.

tax all purchases of tangible personal property and materials to be incorporated into or consumed in the construction, repair, or remodeling of facilities for a political subdivision or sports complex authority, so long as the purchases are "related to the entities' exempt functions and activities." R.S. Mo. § 144.062.1 (A51).

Section 144.062.1[12] provides in relevant part:

> With respect to exempt sales at retail of tangible personal property and materials for the purpose of constructing, repairing or remodeling facilities for:
>
> (1) A county, other political subdivision or instrumentality thereof exempt from taxation under subdivision (10) of Section 39 of Article III of the Constitution of Missouri . . . .
>
> (5) Any authority exempt from taxation under subdivision (40) of subsection 2 of Section 144.030 . . . .
>
> hereinafter collectively referred to as exempt entities, such exemptions shall be allowed for such purchases if the purchases are related to the entities' exempt functions and activities. In addition, the sales shall not be rendered nonexempt . . . due to such purchases being

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[12] The Commission also appears to have erroneously placed undue significance on the heading title of § 144.062, which contains the words "construction materials." However, the language within the section plainly reflects that it is broader than "construction materials" and applies to any "tangible personal property and materials" for purposes of "constructing, repairing or remodeling." R.S. Mo. § 144.062.1 (A51). Under Missouri law, the headings of statutes are neither controlling nor relevant to statutory construction. *See Farmer's Alliance Mut. Ins. Co. v. Daniels Plumbing*, 496 S.W.3d 644, 650 (Mo. App. 2016); *see also State ex rel. Agard v. Riederer*, 448 S.W.2d 577, 581 (Mo. banc 1969). Accordingly, while the Commission may not have believed the Contested Items were common "construction materials" such as lumber or concrete, section 144.062 is not so limited in application.

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

billed to or paid for by a contractor or the exempt entity contracting with any entity to render any services in relation to such purchases, including . . . use of materials or other purchases for construction of the building or other facility . . . whether or not the contractor or other entity exercises dominion or control in any other manner over the materials in conjunction with services or labor provided to the exempt entity.

The exempt functions and activities of the Authority are spelled out in R.S. Mo. § 64.940 which provides in relevant part:

1. The authority shall have the following powers:

(1) To acquire by gift, bequest, purchase or lease from public or private sources and to plan, *construct, operate and maintain, or to lease to others for construction, operation and maintenance a sports stadium,* field house, indoor and outdoor recreational facilities, centers, playing fields, parking facilities and other suitable concessions, and all things incidental or necessary to a complex suitable *for all types of sports and recreation, either professional or amateur, commercial or private,* either upon, above or below the ground; . . .

(6) To borrow money for the acquisition, planning, construction, equipping, operation, maintenance, repair, extension and improvement of any facility, or any part or parts thereof, which it has the power to own or to operate, . . .

(8) To perform all other necessary and incidental functions; and to exercise such additional powers as shall be conferred by the general assembly or by act of Congress.

2. The authority is authorized and directed to proceed to carry out its duties, functions and powers in accordance with sections 64.920 to 64.950 as rapidly as may be economically practicable and is vested with all necessary and appropriate powers not inconsistent with the constitution or the laws of the United States to effectuate the same, except the power to levy taxes or assessments.

R.S. Mo. § 64.940 (A31-32) (emphasis added).

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

The County and Authority are exempt entities within the project exemption statute. R.S. Mo. §§ 144.062.1(1) (A51), 64.940 (A31). The Director issued the Authority a continuing Exemption Letter in 2002 "pursuant to section 144.030.1." (Ex. 9.) Likewise, the Director issued a Letter Ruling to the Team in 2010 stating the project exemption in § 144.062.1 authorizes the Team to purchase tangible personal property or materials tax-free on behalf of the Authority for the purpose of constructing, repairing, or remodeling of the County's facilities. (Ex. 20.) As contemplated by the 2002 Exemption Letter and 2010 Letter Ruling, the Authority issued the Team a Project Exemption Certificate (Ex. 10) for the Project, and the Chiefs gave all contractors and vendors a copy of both the Authority's Exemption Letter and Project Exemption Certificate prior to entering into purchase orders for the Contested Items. (Tr. 98.)[13]

Thus, even if the Chiefs had been a purchaser, § 144.062.1 exempts the Contested Items from sales and use tax. The project exemption statute makes *no distinction* between purchases made by the team and those made by the Authority:

> [S]ales shall not be rendered nonexempt nor shall any material supplier or contractor be obligated to pay, collect or remit sales tax with respect to such purchases made by or on behalf of an exempt

[13] A copy of an exemption letter issued to an exempt entity and delivered to a seller is equivalent to an exemption certificate for purposes of the project exemption statute. 12 C.S.R. 10-107.100. The Authority's issuance of the Project Exemption Certificate (Ex. 10) is further proof that the Authority contemplated (in fact directed) the Team to act on its behalf in procuring materials and items for the Project, designating the Team as contractor.

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

> entity due to such purchases being billed to or paid for by a contractor or the exempt entity contracting with any entity to render any services in relation to such purchases, including but not limited to selection of materials, ordering, pickup, delivery, approval on delivery, taking of delivery, transportation, storage, assumption of risk of loss to materials or providing warranties on materials as specified by contract, use of materials or other purchases for construction of the building or other facility, providing labor, management services, administrative services, design or technical services or advice to the exempt entity, *whether or not the contractor or other entity exercises dominion or control in any other manner over the materials in conjunction with services or labor provided to the exempt entity.*

R.S. Mo. § 144.062.1 (A52) (emphasis added).

The effect of this language – to exempt the Contested Items from sales and use tax – is evident from this Court's decision in *Sports Unlimited, Inc. v. Director of Revenue*, 962 S.W.2d 885 (Mo. banc 1998). Sports Unlimited was in the business of supplying and installing gymnasium floors, racquetball and squash courts, lockers, and locker rooms during the course of construction projects for various tax exempt entities such as schools, churches, and municipalities. After an audit, the Director assessed use taxes against Sports Unlimited in regard to substantially the same types of transactions at issue here, including the purchase of tangible personal property and materials from its suppliers.

The Director argued in *Sports Unlimited* that Sports Unlimited, not the exempt entities, was the actual purchaser. *Id*. at 887. This Court disagreed, finding Sports Unlimited "acted as an intermediary that, upon receipt of the supplier's bill, would, in turn, bill the exempt entity" or its general contractor. *Id*. at 886-87. In

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

holding such purchases exempt under the project exemption statute, the Court stated:

> The section 144.062 exemption . . . sets out in the clearest terms a scheme of application that . . . [e]ach purchase of materials must be "billed to and paid for by the exempt entity." That is all the statute requires. There are no restrictions or qualifications. Operation of the statute focuses solely on the exempt entity: Was the exempt entity billed? Did the exempt entity pay the bill? The party from which the purchases are made and to which the payments are made—whether an original supplier, or a contractor or other intermediary—is irrelevant.
>
> Reinforcing this conclusion is the fact that section 144.062 also provides that the exemption is allowed "notwithstanding that the contractor or other entity exercises dominion or control [in any manner] over the materials in conjunction with services or labor provided to the exempt entity." The effect of this provision is to negate any claim . . . that a contractor, like Sports Unlimited, who in any way "exercises dominion or control" over the materials would thereby become the actual purchaser of those materials.
>
> *From the record in this case, it is uncontested that the materials for each construction project were ultimately billed to the exempt entity and that the exempt entity paid the bills. Our inquiry need go no further. On these facts alone, the exemption applies* **. . . .**

Id. at 887 (emphasis added).

This same reasoning applies here. The Director may not collect sales and use tax from the Chiefs unless the use of the Project Exemption Certificate was "improper." R.S. Mo. § 144.210.1. But the Director presented no such evidence at the hearing. It was uncontested that the Authority and the County specifically authorized and approved all of the transactions at issue during the Project. There is also no dispute that if the Authority or the County had directly purchased the

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

Contested Items themselves, they would have been exempt under R.S. Mo. §§ 144.030.1 and 144.030.2(40). As in *Sports Unlimited*, the Chiefs were performing obligations and duties assigned by the Authority and the County in the Development Agreement. Most invoices for the Contested Items were submitted to and directly paid by the Trustee from the Project Fund. While a few payments were advanced by the Chiefs, those were submitted for reimbursement shortly afterward. As this Court made clear in *Sports Unlimited*, the project exemption statute applies to exempt either type of transaction from sales and use tax because the purchases were made for a project owned by an exempt entity. Moreover, there is no "direct" billing requirement in the statute. *Id*. at 886 n.1.

Finally, the plain language of the statute states an exemption applies "to exempt sales at retail of *tangible personal property*" purchased for the purpose of "constructing, repairing or remodeling facilities." R.S. Mo. §§ 144.062.1, 144.062.2 (A51-52) (emphasis added). Other language in the statute only requires tangible personal property to be *either* "incorporated into *or* consumed in the construction of" such projects. R.S. Mo. § 144.062.2 (A52) (emphasis added). The only specific items the statute excludes are "construction machinery, equipment or tools used in constructing, repairing or remodeling facilities for the exempt entity." *Id*. None of the Contested Items fall into those categories.

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

There is no reasonable construction of the statute that limits its application to items "used and consumed in improving real property." And the Director's unilateral attempts to limit application of an exemption to "improvements to real property" have been rejected by the Commission in the past. *Buchholz Mortuaries, Inc. v. Dir. of Revenue*, No. 2001-0672 RV, 2002 WL 2031356, at *4 (Mo. A.H.C. Aug. 29, 2002). Such a construction here would render the language "tangible personal property" in the statute meaningless. And in *Sports Unlimited*, this Court drew no distinction between tangible personal property, such as lockers, versus construction materials, such as flooring.

Here the Contested Items, including the scoreboard, ribbon boards, built-in controls, bolted-in televisions, and furniture throughout the leased premises and system furniture (cubicles) attached to the office complex were all purchased for "constructing, repairing or remodeling facilities" as provided in R.S. Mo. § 144.062(1) and are exempt. Statutes must be given a "common sense and practical interpretation," and both the plain language of section 144.062 and common sense dictate the exemption applies to all of the Contested Items. *Concord Pub. House, Inc. v. Dir. of Revenue*, 916 S.W.2d 186, 194 (Mo. banc 1996) (citing *Dravo Corp. v. Spradling*, 515 S.W.2d 512, 516 (Mo. 1974)).

The transactions at issue here fall clearly within the tax exempt functions and activities of the Authority. *See* R.S. Mo. § 64.940.1(1) (A30). The Commission

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

erred in concluding otherwise, and its decision should be reversed for this separate reason.

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

III. The Administrative Hearing Commission separately erred in assessing sales and use tax against the Chiefs for items procured in the course of the Arrowhead Stadium renovation project because those items could not constitutionally be taxed under Article III, § 39(10) of the Missouri Constitution (and are exempt from tax under R.S. Mo. § 144.030) in that they were paid for out of project funds owned and managed by Jackson County, the Stadium's owner and a political subdivision of the State.

Standard of Review and Preservation

The standard of review for this point is identical to the Point I standard, which is incorporated herein by reference.

The Chiefs raised and preserved this issue for review by timely filing their Complaint challenging the Director's assessments with the Commission (*see generally* L.F. 00001-3), in its arguments to the Commission (*see, e.g.*, L.F. 00576-79; A16-19; Tr. 16-20, 23),[14] by relying on the stipulated facts, admitted exhibits, and testimony (including but not limited to that cited herein), and by timely filing a Petition for Review with this Court.

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[14] *See* n.9, *supra*.

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

A. The Missouri Constitution Prohibits Assessment and Collection of Sales and Use Taxes Because the Contested Items were Purchased by a Missouri Political Subdivision.

The Director's assessments of sales and use tax, as affirmed by the Commission, are also improper here because the Contested Items were paid out of the Project Fund, which consisted entirely of Jackson County funds administered and disbursed by a Bond Trustee for payment of the Project costs.

As explained, all of the transactions here were either directly paid out of the Project Fund, or initially paid by the Chiefs and reimbursed out of the Project Fund. Article III § 39(10) of the Missouri Constitution prohibits the Director from imposing sales or use tax on "the use, purchase or acquisition of property paid for out of the funds of any county or other political subdivision." These transactions also are specifically exempt from sales tax by reference in R.S. Mo. § 144.030.1. The Director's own regulations state explicitly that all purchases of tangible personal property or taxable services by the County are exempt from sales and use tax. 12 C.S.R. 10-110.955.

The Commission also concluded that funds expended by the Trustee from the BP account and NBP account, *i.e.*, split payments, should be excludable as to the County but taxable as to the Chiefs. (L.F. 00575; A15.) But under the circumstances here, all of the payments are non-taxable. The Director's suggestion

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

below that the Contested Items should be taxable if purchased with funds from the NBP subaccount is incorrect. The exclusion from tax provided in Article III § 39(10) of the Missouri Constitution, and the exemption in section 144.030.1, apply *regardless* of whether the Contested Items were paid for out of a particular subaccount because *all* of the money administered by the Trustee was part of the overall Project Fund owned by the County. The Chiefs had no control over the Project Fund or how its subaccounts were set up. Pursuant to section 401(a)(4) of the Bond Indenture, all money placed in the Project Fund, *including any of its subaccounts*, became indentured "funds of the County" impressed with a trust for the benefit of the bond holders. (Ex. 4; Tr. 17, 48.) Once the money, *regardless of source*, was deposited in the Project Fund, the County owned it.

The Chiefs never directly deposited any private money into the Project Fund. Their contributions were instead paid to the MDFB pursuant to the Tax Credit Agreements, which were approved by the Director. (*See, e.g.*, Ex. 5, Tax Credit Agreement § 3.1.) These contributions were then deposited by the MDFB into the infrastructure development fund that the MDFB administered and separately maintained on its "books and records." (Ex. 5, Tax Credit Agreement § 4.1.) They were state funds at that point. Further, after deducting a fee, the MDFB issued the Tax Credits and transferred the balance of the infrastructure development fund to the Bond Trustee to be placed in the Project Fund. (*Id.*) They

became County funds at that point. Rather than being segregated from all other money, the funds were deposited and commingled with the Tax Credit Proceeds generated from the County's Tax Credit sales. The Chiefs were not an account holder of the MDFB's infrastructure development fund or the Project Fund that the Trustee administered. The Chiefs had no independent access to the Project Fund and could not seek payments for any items purchased for the Project unless a Disbursement Request was approved by the Authority.

B. The Commission erroneously relied on the Tax Credit statute.

Purporting to rely on R.S. Mo. § 100.286, the Commission thought the Tax Credits never became the County's funds because that statute permits a taxpayer to assign, sell, or transfer credits for a period of five years. (L.F. 00578; A18.) Here, however, by contract the Chiefs never benefited from the tax credits. (Ex. 5, § 3.7.) They instead inured to the County's benefit as part of the Landlord's contribution under the Development Agreement. This Agreement also prohibited the Chiefs from benefiting from the Tax Credits. (*Id.*) Because the Chiefs could not unilaterally access the Project Fund, they could not act upon the Tax Credits any more than they could have accessed their earlier contributions. The Chiefs voluntarily surrendered any rights to monetary contributions and Tax Credits upon signing the Tax Credit Agreements. (*Id.*) And only the Bond Trustee had authority under the Indenture to make payments from the Project Fund.

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

Again, “taxes may be authorized only by statute, and the director may not add to, subtract from, or modify the revenue statutes by regulation.” *Bridge Data Co. v. Dir. of Revenue*, 794 S.W.2d 204 (Mo. banc 1990), *abrogated in part on other grounds by Int'l Bus. Machine Corp. v. Dir. of Revenue*, 958 S.W.2d 554 (Mo. banc 1997). No regulation can invalidate the exclusion provided in Article III § 39(10) or the exemption in § 144.030.1, even if funds of the County could be remotely and historically connected to private sources. Such construction would render the exclusions and exemptions meaningless, as all public funds can eventually be traced back to private sources. All transactions here were billed to the Project Fund through disbursement requests submitted by the Chiefs. The Authority and County approved all of the transactions, and all payments for all Contested Items were paid for with County funds.

The Director is thus precluded by the Missouri Constitution from imposing sales or use tax on the Contested Items, and the Commission's decision should be reversed on this separate ground.

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

IV. The Administrative Hearing Commission alternatively erred in assessing sales and use tax against the Chiefs for certain items procured in the course of the Arrowhead Stadium renovation project because those items were not taxable in that to the extent they were ultimately affixed or attached to real property they were no longer tangible personal property but instead became non-taxable fixtures.

Standard of Review and Preservation

The standard of review for this point is identical to the Point I standard, which is incorporated by reference herein.

The Chiefs raised and preserved this issue for review by timely filing their Complaint challenging the Director's assessments with the Commission (*see generally* L.F. 00001-3), in their arguments to the Commission (*see, e.g.*, Tr. 141),[15] by relying on the stipulated facts, admitted exhibits, and testimony (including but not limited to that cited herein), and by timely filing a Petition for Review with this Court.

Certain of the Contested Items are Non-Taxable Fixtures.

The Commission, like the Director, assumed that the Contested Items were tangible personal property in deciding whether to assess sales and use taxes. But a number of the Contested Items were actually affixed to Arrowhead Stadium.

[15] *See* n.9, *supra*.

Because these items were fixtures, they were never subject to sales or use taxes in the first instance.

The Director's own regulations in effect during the assessment periods establish that certain of the Contested Items (including the items procured from Sony, Roscor, Daktronics, Harmon Sign, Bruce Wolfe, and Artworks Foundry as well as some of the items such as built-in cabinets or furniture obtained from Encompas and John Marshall) are fixtures not subject to sales or use tax.

The Director argued that the Contested Items are not the types of items permitted to be purchased by the holder of a project exemption certificate because they were not "consumed in real property improvements." However, the Director admitted that improvements to real property are not taxable. (Ex. 20.) The Project entailed construction, repair, and remodeling of Arrowhead Stadium and other portions of the Sports Complex, which is real property, and all the Contested Items were purchased for that Project's construction, repair, and remodeling. And the Director improperly assessed taxes on *fixtures* such as the new 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. (*See, e.g.*, Tr. 89-98, 113-22). Likewise, the televisions at issue were bolted to the structures in the concourses and installed with brackets in other areas. (*See id.*)

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

Importantly, before March 2011, while the Project improvements and renovations were taking place, the Director's regulation 12 C.S.R. 10-3.330 provided that "fixtures and improvements to realty" are not subject to tax:

> (1) Sales tax does not apply to the sale of realty or an interest in realty. *Nor does it apply to fixtures or improvements to realty where title does not pass until after the property has been attached to and become commingled with and part of the realty***.**
>
> (2) Example: A cabinet maker is not subject to sales tax for the moneys received under a contract where s/he constructs and installs kitchen cabinets in a home under construction.

(A54) (emphasis added.)[16]

Buyers and sellers may control when title to property passes in their contracts. *See House of Lloyd, Inc. v. Dir. of Revenue*, 824 S.W.2d 914, 923 (Mo. banc 1992), *abrogated in part on other grounds by Sipco, Inc. v. Dir. of Revenue*, 875 S.W.2d 539 (Mo. 1994); U.C.C. §§ 400.2-401(2). As this Court stated in *State ex rel. Otis Elevator Co. v. Smith*, 212 S.W.2d 580, 582-83 (Mo. banc 1948):

> If the materials have the legal status of tangible personal property when the title passes, they are subject to sale tax. On the other hand, if by the act of attaching them to the real estate they are converted into realty and the title passes to the landowner they will not be subject to the tax because it does not go against real estate.

In *State ex rel. Thompson-Stearns-Roger v. Schaffner*, 489 S.W.2d 207, 215 (Mo. 1973), this Court later disavowed its reliance on passage of title as the taxable

[16] Although 12 C.S.R. 10-3.330 has since been repealed, it was in effect during the times in question, and therefore must be considered when deciding this case. *See Mobil Oil Corp. v. Dir. of Revenue*, 513 S.W.2d 319 (Mo. 1974).

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

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event, noting that § 144.010.1(8) also applied to transfers of "ownership." This Court held that contractors who exercised dominion and control over the property could be subject to sales tax as owners, even though title did not pass to them. *Id.*, *overruled in part*, *Olin*, 945 S.W.2d at 444; *see also Becker Elec. Co.*, 749 S.W.2d at 408. Here, however, the Chiefs never had dominion or control over the Contested Items that were affixed to the Project's realty.

The agreements here plainly provide that title to *and* ownership of the Contested Items passed upon permanent and complete installation. The undisputed testimony in evidence also confirms that the County is the owner. As this Court recognized in *Schaffner*, 489 S.W.2d at 215, the concepts of "title" and "ownership" are distinct. *See also Olin*, 945 S.W.2d at 444 (finding no taxable transaction where taxpayer did not acquire title or ownership to personal property purchased in the performance of a government contract). Passage of title is determined by the Uniform Commercial Code, §§ 400.2-401(2), but that provision specifically provides that the parties may otherwise agree when title passes.

Parties are free to govern their transactions by the provisions of their contracts. *See Christeson v. Burba*, 714 S.W.2d 183, 195 (Mo. App. 1986). Because the County, Authority, and Chiefs controlled the passage of title by contractual provisions, and also controlled the transfer of ownership by their

contracts, title and ownership passed after the Contested Items became affixed to, and thus a part of, the real property.

Under the applicable version of 12 C.S.R. 10-3.330, the Director could not assess sales or use taxes on those Contested Items that were fixtures. The Commission's Decision thus should be reversed at a minimum with respect to the Contested Items incorporated into or affixed to the Sports Complex facilities.

CONCLUSION

This Court should reverse the Administrative Hearing Commission's ruling in its entirety and hold that the Chiefs are not liable for the Director's sales and use tax assessments. Alternatively, the Commission's Decision should be reversed at a minimum with respect to the Contested Items incorporated into or affixed to the Sports Complex facilities.

Electronically Filed - SUPREME COURT OF MISSOURI - May 03, 2019 - 10:13 AM

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CERTIFICATE OF COMPLIANCE WITH MISSOURI SUPREME COURT RULE 84.06(B)

The undersigned certifies that the foregoing brief complies with the limitations contained in Missouri Supreme Court Rule 84.06(b) in that according to the word count function of Microsoft Word by which it was prepared, contains 11,265 words, exclusive of the cover, the Certificate of Service, this Certificate of Compliance, the signature block, and the accompanying Appendix.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 3rd day of May, 2019, the foregoing brief and its accompanying Appendix were filed electronically with the Clerk of the Court, and served electronically by the Court's electronic filing system on the following:

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