

SC98444

IN THE SUPREME COURT OF MISSOURI

JOHN CHARLES GOTT, D/B/A GOTT'S TO GO,

Appellant,

v.

DIRECTOR OF REVENUE,

Respondent.

Appeal from the Administrative Hearing Commission
The Honorable Audrey Hanson McIntosh, Commissioner

BRIEF OF RESPONDENT

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INTRODUCTION

John Charles Gott, doing business as Gott's To Go (Gott's)¹, is liable for sales tax assessed on the amounts he received from renting portable toilets to his customers. The law is clear: §§ 144.020.1(8) and 144.010.1(4), RSMo, impose a sales-tax collection obligation on the gross receipts from rentals of tangible personal property, so long as the transaction includes consideration and continuous possession during the rental period. The elements of a taxable personal-property rental transaction are clearly met here. Gott's charges its customers a fixed fee in exchange for their exclusive use of Gott's portable toilets for a definite time, the very nature of an ordinary rental transaction.

Though Gott's argues the rental price of its portable toilets is not separable from other ancillary cleaning services it provides to customers, the true object of the transactions is the rental of portable toilets, not cleaning services. In fact, there is no evidence in the record that Gott's separately calculates its rental fees and its cleaning fees per transaction. Gott's holds itself out to the public as a portable toilet rental company. Without the portable toilets, there would be no units to service.

Gott's failed to collect and remit sales taxes for years on hundreds of thousands of dollars in gross receipts from its rentals. The Administrative Hearing Commission correctly ruled Gott's is liable for \$56,905.27 in unpaid sales taxes.

¹ Respondent's Brief will use "Gott's" when referring to the taxpayer business and identify Mr. Gott, the person, separately when necessary.

STATEMENT OF FACTS

John Charles Gott has operated Gott's To Go since 1984 as a sole proprietorship principally engaged in renting portable toilets, providing related waste-disposal services for the units, and renting mobile offices to worksites. (Tr. 19:2-4; 63:7-11; 91:24-92:10). Gott's holds itself out to the public as a portable toilet rental company. (Tr. 118:13-18). For example, the company's website states "When you need portable toilets in the Springfield, MO area, Gott's To Go is your dependable choice for quick deliveries of clean sanitary units whenever you need them." (Ex. 8; Tr. 112:20-113:1). In Mr. Gott's own view, customers contact his company primarily in order to have a portable restroom available at a site. (Tr. 105:7-10).

Gott's owns three trucks used to deliver and service its portable toilets. After delivery, Gott's puts odor-reducing chemicals in units' water tanks and stocks the units with toilet paper. (Tr. 66:10-20). To service the toilets, the company's trucks have "the tank and the pump on the tank and hoses" to collect waste accumulation. (Tr. 67:15-19). Gott's provides cleaning and waste disposal services to the portable toilets depending on the nature of the rental and site installation. For example, Gott's will service and clean the units generally on a weekly basis for longer-term rentals, such as those placed at construction sites. (Tr. 65:19-66:3; 107:15-20). But in the case of rentals for special events and other shorter-term rentals, such as for a single-day or a weekend, Gott's will usually not provide additional services beyond the units' delivery and ultimate removal. (Tr. 107:1-25). For those rentals, Gott's employees will service the units only upon special request. (Tr. 108:1-2).

Following delivery and set up, the portable toilets are generally fully usable by the customer for the duration of the rental period. Only during brief moments when the company might be cleaning the unit are the units not usable for their intended function. (Tr. 106:16-25). Gott's does not monitor its customers' use of the portable toilet during the rental period. (Tr. 105:10-106:1). In other words, Gott's does not interfere with the customer's use of the unit after delivery. (*Id.*).

Gott's purchases the portable toilets rented to customers from out-of-state suppliers, and it elects not pay sales tax on the units at the time of purchase. (LF 2, AHC Decision; Tr. 70:13-17). In recent years, the cost of purchasing one portable toilet has been approximately \$500. (Tr. 69:25-70:8). Most of the company's portable toilets are older, including some that are over 20 years old, but it purchased several new units in 2017 and 2018.² (Tr. 69:2-15).

When a customer calls to rent a portable toilet, Gott's provides the customer with a fixed price representing the number of units desired. The price may be higher if the customer rents multiple units or if the delivery site is located far from Gott's office. (Tr. 100:8-24). Aside from a separate delivery fee, the only fee customers pay to Gott's is a single fee representing rental and ancillary services. (Tr. 101:16-103:14; Ex. 6). Gott's does not calculate or otherwise separate the costs of renting and servicing the portable toilets.³

² These additional purchases occurred after the audit period ended.

³ Though Mr. Gott testified at the AHC hearing that distance or the number of times the company has to service a portable toilet affect the pricing (Tr. 66:4-7), there is no

(*Id.*). Though some customers pay Gott's up front before the rental period begins, the vast majority of customers pays Gott's after the rental period concludes and the company removes the toilets from the site. (Tr. 108:19-109:17). Gott's does not provide a formal, written rental agreement to its customers. (Tr. 66:24-67:1).

The Department of Revenue conducted a three-year sales tax audit for the period January 1, 2014 through December 31, 2016. (Ex. 1; Tr. 16:25-17:3). Gott's did not provide the Department's auditor with invoices showing taxes paid or collected on the rentals. In fact, Gott's has never imposed or collected taxes on its portable toilet rentals. (Tr. 63:12-15; Tr. 64:1-4). Over the years, some customers have purchased Gott's portable toilets after completion of the rental period. In those situations, Gott's will charge sales tax on the purchases. (Tr. 110:23-111:7). After an extensive audit, the Department determined Gott's total taxable sales on its portable toilet rentals during the audit period was \$678,884.60. (Tr. 27:4-7; Ex. 1, p.1). The auditor also determined Gott's had underreported other taxable sales after identifying unexplained bank deposits in excess of the sales identified. This amount totaled \$69,872.07. (Tr. 25:16-27:24).

Gott's appealed the Director's determinations to the Administrative Hearing Commission. (LF 1-128, AHC Complaint). After the hearing, the AHC upheld the

evidence—whether in testimony or invoices—establishing what those costs are. Gott's invoices do not separate the costs of the toilet rental from providing cleaning services.

Director's conclusion that the gross receipts from Gott's rentals are subject to tax, finding Gott's total tax liability to be \$56,905.27. (LF 131-44, AHC Decision).⁴

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); § 621.193.

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). “Substantial evidence” is “evidence which has probative force on the issues, and from which the trier of facts can reasonably decide the case.” *Lagud v. Kansas City Bd. of Police Comm'rs*, 272 S.W.3d 285, 290 (Mo. App. W.D. 2008) (quoting cases) (internal quotation marks omitted). This Court will review the record as a whole in determining whether the Commission's decision is supported by competent and substantial evidence and “determine whether the AHC's

⁴ As part of the Department's audit, the Department concluded that Gott's was also liable for delinquent use taxes. Gott's does not challenge the AHC's findings on Gott's liability to pay use tax or the amount of use tax imposed. And Gott's does not challenge the AHC's decision to impose additional interest due to Gott's delinquency under § 144.205.3.

decision is against the overwhelming weight of the evidence.” *Schrock v. Gan*, 563 S.W.3d 127, 130 (Mo. App. W.D. 2018) (quoting cases).

This Court reviews the Commission’s interpretation of revenue statutes de novo. *Brinker*, 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.” *Emerson Elec. Co., v. Dir. of Revenue*, 204 S.W.3d 642, 644 (Mo. banc 2006); *see also Bartlett Int’l, Inc. v. Dir. of Revenue*, 487 S.W.3d 470, 472 (Mo. banc 2016); § 163.300.1. 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); *see also* §§ 163.300.1; 621.050.2.

ARGUMENT

I. Gott’s transactions with its customers are subject to sales tax because Gott’s collected gross receipts from qualifying rentals of tangible personal property under the plain language of Missouri’s revenue laws. (Responding to Appellants’ Point Relied On I).

A. The plain language of § 144.020.1 supports classifying the gross receipts of Gott’s rentals as taxable tangible personal property transactions.

The critical question on appeal is whether Gott’s rental of portable toilets and provision ancillary cleaning services is a taxable transaction under Chapter 144, RSMo. The plain language of the law, and the competent and substantial evidence before the AHC, supports the imposition of sales tax because Gott’s collected gross receipts on the rentals of tangible personal property. The transactions do not, as Gott’s contends, qualify for an

exemption because Gott's is not primarily providing non-taxable services to its customers. Gott's interpretation of Missouri's revenue laws violate a number of principles of statutory construction, and Gott's characterization of its business are contrary to the evidence in the record.

In Missouri, the "primary rule of statutory interpretation is to give effect to legislative intent as reflected in the plain language of the statute at issue." *Parktown Imports, Inc. v. Audi of Am., Inc.*, 278 S.W.3d 670, 672 (Mo. banc 2009). Relevant here, §§ 144.010.1(4) and 144.020.1(8) set out the general rules to govern whether the gross receipts from Gott's transactions are subject to sales tax. Section 144.010.1(4) defines gross receipts," in relevant part, as:

"[T]he total amount of the sale price of the sales at retail including any services other than charges incident to the extension of credit that are a part of such sales made by the businesses herein referred to, capable of being valued in money, whether received in money or otherwise[.] . . . ***It shall also include the lease or rental consideration where the right to continuous possession or use of any article of tangible personal property is granted*** under a lease or contract and such transfer of possession would be taxable if outright sale were made and, in such cases, the same shall be taxable as if outright sale were made and considered as a sale of such article, and the tax shall be computed and paid by the lessee upon the rentals paid[.]

(emphasis added). And § 144.020.1 provides:

A tax is hereby levied and 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. The rate of tax shall be as follows:

...

(8) A tax equivalent to four percent of the amount paid or charged for *rental or lease of tangible personal property*, provided that if the lessor or renter of any tangible personal property had previously purchased the property under the conditions of sale at retail or leased or rented the property and the tax was paid at the time of purchase, lease or rental, the lessor, sublessor, renter or subrenter shall not apply or collect the tax on the subsequent lease, sublease, rental or subrental receipts from that property.

(emphasis added). Reading §§ 144.010.1(4) and 144.020.1(8) together, the general rule is that appropriate tax must be imposed on a taxpayer's qualifying gross receipts from the rental of tangible personal property.

1. Gott's provision of portable toilets are taxable rentals of tangible personal property.

For the first part of the statutory analysis, Gott's portable toilets are "tangible personal property" under the commonly understood meaning of the phrase as used in §§ 144.010.1(4) and 144.020.1(8). This Court has defined tangible personal property as "property which may be felt or touched; such property as may be seen, weighed, measured, and estimated by the physical senses." *Norris v. Norris*, 731 S.W.2d 844, 845 (Mo. banc 1987) (citing cases and Black's Law Dictionary); *see also* § 144.605(11) (defining tangible personal property to include "all items subject to the Missouri sales tax as provided in subdivisions (1) and (3) of section 144.020."). In fact, Gott's does not dispute that the portable toilets are tangible personal property. *See* App. Br. at 19 ("... the tangible personal property, the portable toilets, supplies and materials consumed in using the device . . ."). Gott's disputes only whether fees from the rentals are taxable.

Under § 144.010.1(4), for a rental of tangible personal property to be subject to sales tax it should generally include (1) “consideration,” and (2) “the right to continuous possession or use.” *Id.* Both elements are present here.

First, consideration is present because Gott’s charges its customers a fee for the rentals. The fees are based on the number of units rented and the rental period; the fee increases as the number of units increases. (Tr. 65:19-66:3; 103:25-104:9). For example, in 2014, Gott’s charged customers \$83 for a monthly rental. (Tr. 102:20-103:14). Gott’s also charges, and separately itemizes, the delivery fee associated with the portable toilets. (*Id.*). A portable toilet must be delivered to the customer; there is no evidence in the record of a customer picking up a portable toilet from Gott’s business.

Second, Gott’s customers retain continuous use of the portable toilets during the rental period. In exchange for the consideration paid, Gott’s will deliver the units, which are then fully usable by the customer for the duration of the rental period, except during brief moments if the company is cleaning the unit. (Tr. 106:16-25). The units are self-contained, are not part of any septic system or affixed to any real estate, and are regularly delivered, transported, and moved. (Tr. 101:1-18; Ex. 15). Gott’s does not monitor the customer’s use of the portable toilet during the rental period. (Tr. 105:10-106:1). In other words, Gott’s does not interfere with the customer’s use of the unit after delivery. (*Id.*).

And there is no evidence in the record demonstrating that Gott’s allows other customers to use a portable toilet already rented and installed at a customer’s location. Once the customer takes delivery, the customer effectively has absolute use—to the exclusion of other customers—of the units. Gott’s has cited no authority holding that a

service call to a rented unit breaks the chain of continuous use, and any argument to the contrary would produce absurd results. Gott's customers have the "right to continuous possession" of tangible personal property under § 144.010.1(4).

2. Gott's provision of portable toilets generated taxable gross receipts, and its cleaning services are nonseparable from its rentals.

It is undisputed that Gott's income is derived from its rentals of portable toilets. The Director determined Gott's collected \$678,884.60 from its portable toilet rentals during the audit period. (Tr. 27:4-7; Ex. 1). Gott's has not disputed the Director's calculation of gross receipts or the Director's methodologies. Rather, Gott's argues the gross receipts primarily represent nontaxable services. This Court should reject Gott's argument.

Sometimes, a taxpayer's gross receipts represent revenue from both products and services. This Court has frequently held that taxable gross receipts include all services part of the sale or rental of tangible personal property. *E.g., Alberici Constructors, Inc. v. Dir. of Revenue*, 452 S.W.3d 632, 639 (Mo. banc 2015) ("taxability depends on whether the parties intended the provision of the service to be part of the sales *transaction*") (emphasis in original). For example, in *Bartlett*, a taxpayer claimed it did not owe use tax on service charges it paid to install a grain conveyer, which it had purchased, at a grain elevator in part because the service charges were "separately stated in the contract and invoices." 487 S.W.3d at 473. This Court rejected that argument because the nature of the transactions "clearly evinced" treating the "services as part of the sale of the tangible components of the contract." *Id.* at 474.

Though the amount of the services were separately itemized in *Bartlett*, “[s]eparately stating the charges for different materials and services in this case was merely a consequence of the size and complexity of the transaction, which necessitated careful bookkeeping and detailed invoices and records.” 487 S.W.3d at 473. Instead, “the very terms of the parties’ contract indicated that they conceptualized their transaction as a single sale, which included labor, materials, and rents to install the grain conveyor[.]” *Id.* This Court held the definition of “sales price” in § 144.605(8) necessarily includes “charges for any services that are part of the sale of tangible personal property[.]” *Id.* at 472.

The definition, and therefore the analysis, of “gross receipts” under § 144.010(4) is similar to the definition of “sales price” in § 144.605(8) construed in *Bartlett*. See *Brinson Appliance, Inc. v. Director of Revenue*, 843 S.W.2d 350, 352 (Mo. banc 1992) (holding that “[t]he definition of ‘sales price’ under the use tax statute echoes the definition of ‘gross receipts’ under the sales tax statute.”). *Brinson* is instructive. In that case this Court held that taxable sales of appliances did not include the separately-calculated amounts paid by customers for delivery because “the delivery charges were not intended by the parties to be part of the sales price.” *Id.* at 352. And “the cost and means of delivery of the appliances were entirely up to the customer.” *Id.*

Unlike *Brinson*, the evidence here suggests that Gott’s and its customers fully intend for Gott’s ancillary cleaning services—the costs of which Gott’s does not appear to calculate, in any event—to be included in the total transaction. See also *Alberici*, 452 S.W.3d at 640 (holding that the parties intended separately-calculated delivery fees associated with the rental of a construction crane be *included* in the sale transaction, and

were therefore taxable, because the parties intended them to be part of the rental and customers did not exercise an option to select alternative means of delivery). As Mr. Gott testified at the AHC hearing, “you have to have a porta potty to do the service.” (Tr. 89:4-7).

Imposing sales tax on the gross receipts from Gott’s rentals is straightforward under *Bartlett* and *Brinson*. In fact, it is more straightforward. In each of those cases, the taxpayer had actually separated clearly taxable receipts from receipts representing potentially non-taxable services, such as the grain conveyor installation services in *Bartlett* and the appliance delivery services in *Brinson*. Unlike the taxpayers in those cases, Gott’s does *not* calculate or otherwise separate any amounts representing the cleaning or servicing of the portable toilet units from rental fees. (Tr. 102:1-103:25).⁵ Thus, it would be impossible to determine what portion is taxable and what is excluded. As the taxpayer, Gott’s carries that burden. It has failed to do so.

What is more, Gott’s provided no evidence that customers have an option to select other service providers for the portable toilets Gott’s rents, and it provided no evidence that the company charges a lower fee if it were not be the service provider. Similarly, there is no evidence demonstrating Gott’s charges more if a customer requests increased services

⁵ As noted in Footnote 3 *supra*, while Mr. Gott testified that the number of times the company services a rented unit factors into his pricing, there is no evidence in the record establishing what those costs are, that Gott’s separately calculates them, or that Gott’s pricing quotes to customers are changed based on actual number of service calls made.

during the rental period. The competent and substantial evidence in the record supports classifying the entire rental transaction as taxable.

Gott's claims its business principally provides services, not rentals of tangible personal property, because the toilets "remain[] the property of Appellant," "Appellant retains risk of loss," and the "customer does not have continuous possession and use of the portable toilet[.]" App. Br. at 14. These arguments are either irrelevant to the analysis or not supported by the record. That the portable toilets remain Gott's property and Gott's bears the risk of loss is irrelevant, because as in *Alberici*, "this case involves a rental rather than a sale" and "[c]onsideration of other factors, however, shows that the parties intended the [] services to be a part of the [] rental." 452 S.W.3d at 639.

And Gott's proposed interpretation of Chapter 144 to *entirely* exclude the contested transactions from gross receipts because Gott's provides some services during the rental period contradicts the plain and ordinary meaning of the statutory language. Adopting Gott's argument that providing some cleaning services renders the entire rental transaction non-taxable would make an exception that swallows the entire statutory language. Were that the rule, it would call into question the taxability of fees from any rented item simply because the leasing company makes service calls.

In fact, Gott's own business practices undermine its claims that the units are not taxable tangible personal property. Gott's collects sales taxes on the units if a customer purchases them after a rental period has ended. (Tr. 110:23-111:7). Under § 144.010.1(4), gross receipts include rental income "as if outright sale were made and considered as a sale of such article."

For these reasons, under the plain language of §§ 144.010.1(4) and 144.020.1(8), this Court should affirm the AHC and conclude that the gross receipts from Gott’s rentals of portable toilets are subject to sales tax.

C. In addition, Gott’s rentals of its portable toilets are the true object of its transactions, not the servicing of the units.

Though this Court can affirm the AHC’s decision under the plain language of § 144.020.1(8), it can also do so under the “true object” test for taxable transactions. This test is derived from 12 CSR 10-103.600(1), which states:

In general, the sale of tangible personal property is subject to tax unless a specific statute exempts it. The sale of a service is not subject to tax unless a specific statute authorizes the taxation of the service. When a sale involves both tangible personal property and a nontaxable service, the sale of the tangible personal property will be subject to tax, and the service will not be subject to tax, if the sale of each is separate. When the sale of tangible personal property and a nontaxable service are not separable, the entire sale price is taxable if the true object of the transaction is the transfer of tangible personal property. None of the sale price is taxable if the true object of the transaction is the sale of the nontaxable service.

The true object test determines “whether to treat a transaction as a taxable transfer of tangible personal property or the nontaxable performance of a service.” *Sneary v. Dir. of Revenue*, 865 S.W.2d 342, 345 (Mo. banc 1993). This Court “has applied the true object test “only in cases in which the intangible element of the transaction is accompanied by or transferred through an item of tangible personal property that has relatively little value on its own.” *Bartlett*, 487 S.W.3d at 475 (reasoning that even if the true object test applied,

“the transaction between Bartlett and CRC was a sale of both substantial tangible goods and intangible services.”).

While the AHC below applied the true object test to conclude that Gott’s transactions are taxable, applying the test is not called for in all tangible personal-property taxation disputes, such as—like here—when the plain language of the statute requires the imposition of taxes. That is exactly what happened in *Bartlett*. 487 S.W.3d at 475-76 (“The plain language of section 144.605(8) resolves the dispute in this case without having to look to the ‘true object’ test.”). But if this Court applies the true object test, it should conclude, as the AHC did, that the true object of Gott’s transactions is the rental of portable toilets, not the ancillary services Gott’s provides. Competent and substantial evidence supports the AHC’s decision. Indeed, it is the same evidence that supports affirming the AHC’s decision based on the plain language of §§ 144.010.1(4) and 144.020.1(8).

Gott’s customers contact the business because they desire to have a portable restroom available for a specific time period. (Tr. 106:2-15). Gott’s advertises itself to the public as a provider of portable toilet rentals through its website, the Yellow Pages, and labels on its trucks and rental units. (Ex. 8; Ex. 15; Tr. 114:2-117:23; Tr. 118:13-18). As Mr. Gott testified at the hearing, without the portable toilets there would be nothing to service: “you have to have a porta potty to do the service.” (Tr. 89:6-7). In fact, Gott’s does not provide any service to customers renting portable toilets for shorter periods unless they specifically call to ask. (Tr. 107:15-20) Yet, those customers are charged the same per-unit fee as customers who rent the units for longer periods, such as construction sites that might have months-long rental periods. (Tr. 108:21-109:2; Ex. 6). And there is no evidence

demonstrating that Gott's allows its customers to retain another company to provide cleaning services for Gott's portable toilets.

Exemptions are strictly construed against the taxpayer, "and any doubt must be resolved in favor of application of the tax." *Emerson*, 204 S.W.3d at 644; *Bartlett*, 487 S.W.3d at 472. The taxpayer bears the burden of proving that "an exemption applies 'by clear and unequivocal proof[.]'" *TracFone Wireless*, 514 S.W.3d at 21. Gott's has failed to meet its burden of proof to show the Director's assessments are incorrect and that its transactions qualify for an exemption to the imposition of tax. The AHC's decision is supported by competent and substantial evidence, and Gott's has not provided clear and unequivocal proof that the true object of its transactions are the servicing of portable toilets instead of the rental of the units. The AHC considered all the testimony and evidence in the record and found that the true object of Gott's transactions is the rental of the units. This Court should therefore affirm the AHC's decision.

II. The imposition of sales taxes on Gott's rentals of portable toilets does not violate Article X, § 26 of the Missouri Constitution. (Responding to Appellant's Point Relied On II).

In Gott's second point on appeal, Gott's contends imposing sales taxes on the contested transactions violates Article X, § 26 of the Missouri Constitution. This constitutional provision prohibits the imposition of new taxes "on any service or transaction that was not subject to sales, use or similar transaction-based tax on January 1, 2015." Mo. Const. Art. X, § 26. Though there are no reported decisions from this Court construing Article X, § 26, this matter is straightforward: Gott's rentals are not a new

transaction that has never been subject to tax in Missouri. Nor are they services, as discussed above.

Gott's argument would have legs only if the tax seeking to be imposed was on a transaction or service *not* subject to tax prior to January 1, 2015. That is not the case here. The Director assessed taxes on Gott's rentals under §§ 144.020.1(8) and 144.010.1(4), which have been part of Missouri's revenue laws for many years prior to January 1, 2015. Gott's rentals would have been subject to tax both before *and* after January 1, 2015. Therefore, the Director's tax assessments cannot violate the ban on new taxes under Article X, § 26.

Finally, this Court should discredit Gott's quasi-estoppel argument that the Director's tax assessments are unconstitutional because the Director did not previously order Gott's to pay taxes over the many years it failed to do so. Gott's had the same obligation to collect and remit appropriate taxes prior to January 1, 2015, as it does today. The Director's auditor reviewed just three years' of Gott's operations. Gott's has not cited to any authority shielding it from taxes because it has failed to pay taxes for many years. Such a proposition is nonsensical and would produce absurd results.

Similarly, Gott's contention that the absence of other "porta potty cases" "suggests the inclusion of portable toilet service revenue is a new venture for the Director in attempting to tax all receipts" is nonsensical. (App. Br. at 23). The absence of other similar cases is more suggestive that other companies in the industry *are* paying taxes. In any event, Gott's bears the burden of proof, and it has not provided clear and unequivocal proof that other portable toilet rental companies have failed to pay taxes on similar transactions.

Even if other companies have similarly failed to do so, the statutory language has required the imposition of taxes for as long as the statutes have been part of Chapter 144.

CONCLUSION

For these reasons, this Court should affirm the judgment of the Administrative Hearing Commission finding Gott's liable for unpaid sales taxes in the amount \$56,905.27.

Respectfully submitted,

ERIC S. SCHMITT
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above was filed electronically under Rule 103 through Missouri Case Net, on this 24th day of October, 2020.

/s/ Jason K. Lewis

CERTIFICATION OF COMPLIANCE

The undersigned hereby certifies that the above brief complies with the limitations in Rule 84.06(b) in that excluding the cover, certificates of service and compliance, and signature blocks, the brief contains 5,229 words.

/s/ Jason K. Lewis