Summary of SC98601, *SEBA, LLC v. Director of Revenue*
Petition for review from the administrative hearing commission, Commissioner Renee T. Slusher
Argued and submitted September 23, 2020; opinion issued November 24, 2020

Attorneys: SEBA was represented by Ronald L. Hack, Mary Anne Lindsey and Grace E. Shemwell of Evans & Dixon LLC in St. Louis, (314) 621-7755. The director was represented by Emily A. Dodge of the attorney general's office in Jefferson City, (5730 751-7344, and Thomas A. Houdek of the department of revenue in Jefferson City.

This summary is not part of the opinion of the Court. It is provided by communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A donut company seeks review of the administrative hearing commission's decision that the company was liable for unpaid sales tax, statutory interest and a 5-percent addition to tax. In a unanimous decision written by Chief Justice George W. Draper III, the Supreme Court of Missouri affirms the commission's decision. The company's failure to maintain adequate records of its sales transactions supported the director's use of an estimate-based assessment to calculate the amount of sales taxed owed and justified the imposition of the 5-percent addition to tax. The company also failed to meet its burden of proving certain wholesales were tax-exempt.

Facts: Since 2007, SEBA LLC has done business in St. Louis as Eddie's South Town Donuts. SEBA's clientele consisted of both walk-in and wholesale customers. It did not keep receipts for cash purchases, and its credit card machine reported only full-day sales rather than individual sales. In October 2014, the department of revenue informed SEBA it would be performing a sales tax audit of the store. The auditor concluded SEBA was missing certain sales receipts and tax-exempt sales certificates. Using existing documentation to extrapolate SEBA's sales, the auditor concluded SEBA had nearly $400,500 in total retail sales for the audit period. Based on the audit, the director of revenue assessed SEBA approximately $34,300 in unpaid sales tax, approximately $2,500 in interest and a penalty of approximately $1,700, together totaling approximately $38,500. SEBA sought review from the administrative hearing commission, which affirmed the director's assessment, finding the methods the auditor used to calculate the amount of sales and tax liability were reasonable. SEBA petitions this Court for review.

AFFIRMED.

Court en banc holds: (1) The commission did not err in determining the director's use of an estimate-based calculation method to determine the total amount of taxable retail sales was reasonable under the circumstances. Because SEBA failed to provide adequate records of its sale transactions to the director, SEBA bore the burden of proof with respect to any factual issue relevant to ascertaining its sales tax liability. Although the auditor requested numerous documents for purposes of the audit, SEBA produced minimal records even after the auditor requested it keep specific records for three subsequent audit periods. Given the paucity of records SEBA maintained and provided, the director necessarily had to estimate SEBA's gross receipts. Furthermore, because of unexplained discrepancies in the documentation SEBA did

provide, the commission did not err in adopting the auditor's calculations as to average retail sales and cash-to-credit ratio.

(2) The commission did not err in ruling SEBA failed to prove certain wholesale sales were tax-exempt. The taxpayer bears the burden of establishing it is entitled to a tax exemption. While SEBA offered a letter the department of revenue issued to the archdiocese, the letter merely demonstrated the archdiocese agencies and instrumentalities are tax-exempt. SEBA failed to produce the archdiocese directory or tax-exempt certificates showing two church entities to which it made wholesale donut sales were affiliated with the archdiocese and, thereby, tax exempt. SEBA did not offer the archdiocese directory into evidence or ask the commission to take judicial notice of it.

(3) The commission did not err in affirming the director's assessment of a 5-percent addition to tax pursuant to section 144.250.3, RSMo. For purposes of such an addition, negligence is the failure to make a reasonable attempt to comply with the state tax laws and is evaluated under a reasonableness standard. The record establishes SEBA negligently failed to maintain adequate records of its sales during the audit period by not maintaining or providing individual sales receipts or records to verify bank statements and throwing away receipts from a single sales tape.