Summary of SC98444, *John Gott, d/b/a Gott's To Go v. Director of Revenue*
Petition for review from the administrative hearing commission, Commissioner Audrey Hanson McIntosh
Argued and submitted November 10, 2020; opinion issued December 22, 2020

Attorneys: Gott was represented by B. Edwin Bloomfield of the Law Office of B. Edwin Bloomfield LC in Springfield, (417) 886-3100. The director was represented by Jason K. Lewis of the attorney general's office in St. Louis, (573) 751-3321, and Benjamin C. Slawson 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: An owner of a proprietorship that provides portable toilet rentals seeks review of the administrative hearing commission's decision that he was liable for unpaid sales and use taxes as well as additions to tax and statutory interest. In a unanimous decision written by Chief Justice George W. Draper III, the Supreme Court of Missouri affirms the commission's decision. Portable toilet rentals are taxable under section 144.020.1(4), RSMo, as tangible personal property when, as here, the ancillary services provided to the rental customers are not billed separately and are part of a single sales transaction.

Facts: John Charles Gott owns and operates Gott's To Go, a portable toilet rental business. Gott did not pay sales tax when he purchased the portable toilets for the business, nor did he charge sales tax on the rental of portable toilets. Gott would deliver the portable toilets to the customer and provide services, such as cleaning upon the customer's request. In a subsequent audit, the director of revenue determined Gott was liable for approximately $58,000 in unpaid taxes. Gott appealed to the administrative hearing commission, which affirmed the director's assessment. Gott now seeks review of the commission's decision.

AFFIRMED.

Court en banc holds: (1) Portable toilet rentals are subject to sales tax as the rental of tangible, personal property pursuant to section 144.010.1(4). Gott holds his business out as a portable toilet rental service and, without providing the portable toilets to his customers, he has no service to provide. Furthermore, Gott does not separate any amount representing services in billing for the portable toilet rental; accordingly, Gott has failed to demonstrate to this Court that any portion of his gross sales from portable toilet rentals should be exempt from taxation.

(2) Gott does not provide only a nontaxable service. The true object test applies only when the intangible service element of the transaction is transferred through an item of tangible personal property that has relatively little value on its own. Gott's portable toilet rental sales were a single transaction including delivery, rental, labor and supplies and, therefore, under section 144.010.1(4) were subject to taxation.

(3) The taxation of portable toilet rentals does not violate article X, section 26 of the Missouri Constitution. Because the conduct in which Gott's business was engaged – the rental of portable toilets – was always subject to sales and use taxation, the director did not impose tax on any service or transaction that was not previously subject to taxation.