Summary of SC98409, *APLUX LLC and Paul & Ann Lux Associates LP v. Director of Revenue*

Petition for review from the administrative hearing commission, Commissioner Sreenivasa Rao Dandamudi

Argued and submitted November 10, 2020; opinion issued March 2, 2021

Attorneys: The director was represented by Julia E. Rives of the attorney general's office in Jefferson City, (573) 751-8824. APLUX was represented by Lowell D. Pearson of Husch Blackwell LLP in Jefferson City, (573) 635-9118, and Michael A. Cosby and Laura C. Robinson of Husch Blackwell LLP in Springfield, (417) 268-4000.

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: The director of revenue seeks review of the administrative hearing commission's decision that a company was not liable for use tax on the purchases of two aircraft. In a unanimous decision written by Judge Laura Denvir Stith, the Supreme Court of Missouri affirms in part, reverses in part and remands the commission's decision. The lease agreements the company entered into with its parent company did not transfer sufficient control such that neither agreement constituted a "sale" for purposes of the use tax resale exemption. The company's lease agreement with a charter company, however, constituted a "sale" and entitled the company to the use tax resale exemption with respect to the purchase of the second aircraft.

Facts: APLUX LLC owns and leases aircraft. In 2011, APLUX purchased a Socata TBM aircraft (the TBM) and then leased it to Luxco, its parent corporation, for an annual fee. In 2012, APLUX purchased a second aircraft, a Cessna 560XL (the Excel), and, again, entered into a lease agreement with Luxco. APLUX also entered into an agreement with Aero Charter, permitting Aero to use the Excel for charter flights for a monthly rental fee and requiring Aero to provide maintenance and supplies for the aircraft. APLUX did not remit sales or use tax for the purchase of either aircraft. Following an audit, the director of revenue determined APLUX was not in the business of leasing aircraft and owed sales and use taxes resulting from the aircraft purchases. APLUX appealed to the administrative hearing commission, which concluded APLUX was entitled to a use tax resale exemption with respect to the aircraft purchases. The director petitions this Court for review of the commission's decision.

AFFIRMED IN PART; REVERSED IN PART; REMANDED.

Court en banc holds: (1) APLUX's agreements with Luxco do not qualify for the use tax resale exemption APLUX claimed for both aircraft. The lease agreements APLUX executed with Luxco transferred mere operational control over the aircraft during a flight. Luxco did not have priority of use or other indicia of control sufficient to constitute a transfer of control, so that neither lease agreement between APLUX and Luxco constitutes a "sale" for use tax purposes.

(2) APLUX's agreement with Aero with respect to the Excel qualifies for the use tax resale exemption. Under the lease agreement, Aero had operational control over the Excel during

charter flights; provided hanger space for the Excel for the duration of the lease term; was responsible for all routine maintenance of the Excel; provided pilots, insurance and supplies for the Excel; maintained records for the Excel to operate in accordance with federal aviation administration regulations; and could operate the aircraft without seeking APLUX's permission. Under this Court's 2019 decision in *Business Aviation LLC v. Director of Revenue*, this constituted sufficient transfer of control over the Excel to constitute a "sale" under the use tax statutes.