In the Missouri Court of Appeals
Eastern District

DIVISION TWO

CITY OF JEFFERSON, MISSOURI,	)	No. ED113433
	)	
Appellant,	)	
	)	
vs.	)	
	)	
SPRINT COMMUNICATIONS, INC., et al.,	)	
	)	
Respondents.	)	FILED: December 2, 2025

Appeal from the Circuit Court of St. Louis County
The Honorable Richard M. Stewart

Before: Michael S. Wright, Presiding Judge, James M. Dowd, Judge, and Virginia W. Lay, Judge

Introduction

In this consolidated appeal, the City of Jefferson, Missouri (City) appeals the circuit court's judgments dismissing with prejudice each of City's third amended petitions. In Point I, City argues the circuit court erred in dismissing its claims for delinquent business license taxes by interpreting the words "limitation for bringing suit" contained in section 71.625.2[1] as requiring City to comply with certain portions of the Missouri Sales Tax Law when bringing such claims, as opposed to treating that language as a statute of limitations. In Point II, City alleges the circuit court erred in dismissing its claims for section 392.350 violations and request for declaratory judgment as derivative of the license tax claims because City may not only bring alternative claims but also

[1] All section references are to RSMo (2016), unless otherwise indicated.

must bring in one action all claims originating from the same facts. In Point III, City claims the circuit court erred in dismissing its declaratory judgment claims because the court erroneously determined City had an adequate legal remedy. Lastly, in Point IV, City asserts the circuit court erred in dismissing its claims for accounting. We affirm.

Factual and Procedural Background

City enacted a municipal license tax on companies furnishing telephone or telecommunication services within its boundaries. The license tax rate is seven percent of the gross receipts solely derived from the charges for local telephone or telecommunication services provided within City's boundaries. The license tax is "self-reporting," requiring those subject to the tax to file a statement of the gross receipts for covered services with City's clerk and pay the resulting license tax to City.

Believing numerous telecommunication companies had been underpaying license taxes, City brought suit against Sprint Communications, Inc., Sprint Spectrum, LLC, T-Mobile Central, LLC, T-Mobile US, Inc., T-Mobile USA, Inc., Telephone and Data Systems, Inc., USCOC of Greater Missouri, LLC, GTE Wireless, LLC, d/b/a Cellco Partnership, St. Joseph CellTelCo, Bell Atlantic Mobile Systems, LLC, d/b/a Cellco Partnership, Verizon Americas, LLC, d/b/a Cellco Partnership, AllTel Corporation, Missouri RSA 4 Limited Partnership, Cellco Partnership, d/b/a Verizon Wireless, AT&T Corporation, New Cingular Wireless PCS, LLC, Southwestern Bell Telephone Company, AT&T, Inc., AT&T Mobility, LLC, f/k/a Cingular Wireless, LLC, and Missouri RSA 11/12 LP (collectively, Respondents).[2] City filed its first amended petition in January 2022 alleging Respondents underpaid their license taxes and included claims for

[2] For simplicity, we have included only the parties to this appeal.

delinquent taxes, interest, and penalties, violations of section 392.350,[3] declaratory judgment, and accounting.

Respondents moved to sever the case by corporate family. The circuit court granted the motion and severed the original case into four separate cases for (1) AT&T defendants, (2) Sprint and T-Mobile defendants, (3) USCellular defendants, and (4) Verizon defendants. Subsequently, Respondents filed respective motions to dismiss City's first amended petition for failure to exhaust administrative remedies before bringing suit to collect. Before the circuit court ruled on the motions to dismiss, City moved to file its second amended petitions, which the court allowed.

City's second amended petitions included identical claims for delinquent taxes, interest, and penalties, violations of section 392.350, declaratory judgment, and accounting. City did not indicate it had exhausted any administrative remedies prior to bringing suit, which Respondents argued warranted dismissal in their second respective motions to dismiss. On City's claim for delinquent taxes, interest, and penalties, the court found City failed to plead it conducted an audit and assessment as required by Missouri law. The court dismissed the section 392.350 and declaratory judgment claims as derivative of the unpaid license taxes claim, and further found, as for declaratory judgment, City had a remedy at law. Lastly, as to the accounting claim, the court found City failed to sufficiently plead Respondents were City's fiduciary and further, City had a remedy at law. The circuit court granted Respondents' motions, but gave City leave to file third amended petitions.

City's third amended petitions were nearly identical, however, City added an allegation it had conducted audits and assessments of Respondents and included an additional claim for audit

[3] Section 392.350 gives standing to sue to persons or corporations aggrieved by prohibited acts committed by telecommunication companies.

and assessment.[4] Respondents again moved to dismiss based on City's failure to notify them of any assessment or provide them an opportunity to appeal the assessment. The circuit court found City again failed to state a claim or otherwise correct the deficiencies the court identified in its order dismissing City's second amended petitions, and dismissed the third amended petitions with prejudice. This consolidated appeal follows.

Standard of Review

We review the grant of a motion to dismiss *de novo*. *Avery Contracting, LLC v. Niehaus*, 492 S.W.3d 159, 161-62 (Mo. banc 2016). "A motion to dismiss for failure to state a claim tests the adequacy of a plaintiff's petition." *Id.* at 162. We review a petition "to determine if the plaintiff has alleged facts that meet the elements of a recognized cause of action[.]" *Id.* "The facts alleged are assumed to be true and all inferences from those facts are construed broadly in favor of the plaintiff." *Id.* We will affirm a judgment of dismissal "if it is supported by any ground raised in the motion to dismiss." *Id.* Questions of law are reviewed *de novo*. *Yahne v. Pettis Cnty. Sheriff Dep't*, 73 S.W.3d 717, 719 (Mo. App. W.D. 2002).

Discussion

Section 71.625, which governs the timeliness of business license tax payments, provides in subsection 2:

> Except as otherwise provided by law, the interest provisions of section 144.170 and penalty provisions of section 144.250 relating to delinquent sales tax shall apply to delinquent taxes due as a result of the imposition of a license tax by any municipal corporation. The limitation for bringing suit for the collection of the delinquent tax and penalty shall be the same as that provided in sections 144.010 to 144.510.

Commonly known as the Sales Tax Law, sections 144.010 to 144.510 generally require the director of revenue to assess and notify the delinquent party. *See* section 144.210.2-3 (authorizing director

[4] The claim simply stated "[a]s authorized in this Court's Order [dismissing City's second amended petition] of July 31, 2024, the City has authority to conduct a further audit and assessment of [] Defendants."

to make an additional assessment and requiring written notice of such to the person being additionally assessed); section 144.220.3 ("every notice of additional amount proposed to be assessed under this chapter shall be mailed to the person within three years after the return was filed or required to be filed"); section 144.230 ("Any amount assessed or any additional amount assessed . . . shall be due and payable . . . sixty days after the service upon or mailing to the person of notice of such assessment or such additional assessment"); section 144.250.4-5 (if a person neglects or refuses to make a return and payment, director shall make an estimate, compute, and assess tax payable, and the director shall give written notice of such estimated assessment to the delinquent through personal service or registered mail). *See also Shelter Mut. Ins. Co. v. Dir. of Revenue*, 107 S.W.3d 919, 923 (Mo. banc 2003) ("under section 144.250, when there is an alleged failure to remit taxes, the Director is required make an assessment of the delinquent tax and give notice of the estimated assessment" (footnote omitted)). None of the time requirements in sections 144.010 to 144.510 contain the statute of limitations for filing suit.

Point I – Limitation for Bringing Suit

City contends the circuit court erred when it dismissed City's claims for delinquent business license taxes by interpreting the words "limitation for bringing suit" in section 71.625.2 to require compliance with the Sales Tax Law when bringing claims for delinquent license taxes. City argues "limitation for bringing suit" imposes only a time limitation for bringing suit.[5] We disagree because the plain language of section 71.625.2 broadly incorporates the Sales Tax Law's process required prior to bringing suit, which routinely requires an assessment and notice of additional taxes due.

[5] City does not specify what the time limitation is.

"The primary rule of statutory interpretation is to give effect to legislative intent as reflected in the plain language of the statute." *State ex rel. Young v. Wood*, 254 S.W.3d 871, 872-73 (Mo. banc 2008). Where the statutory language is unambiguous, courts "must give effect to the legislature's chosen language." *Id.* at 873. Courts "may not add words by implication" if the statute is clear and unambiguous. *Id.* Although section 71.625.2's reference to the Sales Tax Law is broad, it is not ambiguous. We will not add words by implication to construe it as a statute of limitations, as City suggests.

"[W]here one statute adopts the procedure outlined in another, such parts of the procedure as are applicable may be adopted." *State ex rel. Summerson v. Goodrich*, 165 S.W. 707, 710 (Mo. 1914); *see also Hedgecorth v. Jones*, 651 S.W.3d 900, 904 (Mo. App. E.D. 2022) (interpreting language in section 115.526 mandating "[t]he procedure in such matters shall be the same as that provided in sections 115.527 to 115.601, to the extent that it is applicable and not in conflict with the provisions of this section" and holding the legislature was instructing the court to "harvest the applicable provisions from sections 115.527 to 115.601 to complete the procedural course for a section 115.526 election contest").

Here, section 71.625.2 requires both assessment and notification to the alleged delinquent of that assessment. *See* sections 144.010 to 144.510; *Shelter Mut. Ins. Co.*, 107 S.W.3d at 923. While Respondents urge us to impose an administrative and judicial review requirement upon municipalities bringing suit to collect business license taxes, we do not reach that question because although City pled it conducted an assessment, there is nothing in the petition indicating it notified Respondents of any assessments.

City contends the Supreme Court of Missouri determined "the limitation" in section 71.625.2 refers only to a statute of limitations, relying on *City of Aurora v. Spectra*

Communications Group, LLC, 592 S.W.3d 764, 786-87 (Mo. banc 2019). The issue involving section 71.625 there, however, was whether the five-year statute of limitations applied to the city-plaintiff's claim. *See id.* at 786. The company-defendant argued section 144.220.3, incorporated into section 71.625.2, imposed a three-year statute of limitations. *Id.* at 787. The Court rejected that and wrote "this Court speaks of section 144.220.3 as a statute of limitations for the director's filing of an assessment, not the commencement of an action." *Id.* *City of Aurora* is inapplicable because the issue presented here is not how many years City has to bring its claim, rather it is what procedural limitations of the Sales Tax Law apply to City's collection suit.

City's failure to adequately plead it notified Respondents of the assessments City claims it completed procedurally bars any collection suit. Accordingly, the circuit court did not err in dismissing City's claims for delinquent taxes, interests, and penalties. Point denied.

Points II and III – Section 392.350 and Declaratory Judgment

In Point II, City argues the circuit court erred in dismissing, as derivative of City's delinquent license tax claims, its claims under section 392.350 and for declaratory judgment. City argues in Point III the court further erred in dismissing its declaratory judgment claims due to having an adequate legal remedy because this would require City to bring multiple lawsuits to enforce its license tax. We disagree. City does not have standing to bring a claim under section 392.350 and the circuit court properly dismissed City's declaratory judgment claims because City has an adequate remedy at law.

A. Section 392.250

"Standing is a prerequisite to this Court's authority to address the substantive issues; it must be addressed before all other issues and must be shown to be present prior to any adjudication on the merits." *Sunshine and Gov't Accountability Project v. Missouri House of Representatives*,

688 S.W.3d 704, 713 (Mo. App. W.D. 2024). Standing is a matter of law we review *de novo*. *Id.* at 714. A plaintiff does not have standing to bring suit under a statute conferring a cause of action to a specific group unless the plaintiff can establish it falls within that group. *See id.* at 716 (appellant lacked standing to bring suit under Sunshine Law, which grants a cause of action to "[a]ny aggrieved person, taxpayer to, or citizen of, this state," because appellant was not an aggrieved person (alteration in original)).

Section 392.350 states in relevant part:

> In case any telecommunications company shall do or cause to be done or permit to be done any act, matter or thing prohibited, forbidden or declared to be unlawful, or shall omit to do any act, matter or other thing required to be done by this chapter or by any order or decision of the commission, such telecommunications company shall be liable to the *person or corporation* affected thereby for all loss, damage or injury caused thereby or resulting therefrom . . . . An action to recover for such loss, damage or injury may be brought in any court of competent jurisdiction by any such *person or corporation*.

(Emphasis added). A "person" is defined to include "an individual, and a firm or copartnership." Section 386.020(40).[6] A "corporation" includes "a corporation, company, association and joint stock association or company." Section 386.020(11). Notably, the definitional statute contains an entry for "municipality," which it defines to include "a city, village or town." Section 386.020(34). The term "municipality" is absent from section 392.350. City argues by using "includes" in the definitions, the legislature was providing examples of what fit the definition rather than an exhaustive list. Although the word "'include' is ordinarily a term of enlargement, its plain meaning varies according to its context." *Mitchell v. Residential Funding Corp.*, 334 S.W.3d 477, 498 (Mo. App. W.D. 2010). We conclude "person or corporation" was not intended to include City, where

[6] Section 392.180 provides the definitions contained in section 386.020 "shall apply to and determine the meaning of all such words, phrases and terms as used in sections 392.190 to 392.530."

the definitional statute contains definitions for both "person" and "corporation" but has a separate entry for "municipality," a category that is absent from section 392.350.

City lacks standing to sue under section 392.350, which gives a cause of action to "any such person or corporation." For purposes of the statute, City is not a "person" or "corporation."

B. Declaratory Judgment[7]

Courts "may grant a declaratory judgment if presented with: (1) a justiciable controversy; (2) legally protectable interests; (3) a controversy ripe for judicial determination; and (4) an inadequate remedy at law." *Double AA Mkt., LLC v. City of St. Louis*, 703 S.W.3d 694, 698 (Mo. App. E.D. 2024) (internal quotation omitted). "Absent exceptional circumstances plainly appearing, a trial court may not use the Declaratory Judgment Act when an adequate remedy at law exists." *Id.* (internal quotation omitted). "When a declaratory judgment claim improperly invokes [the Declaratory Judgment Act] because an adequate remedy already exists, that declaratory judgment claim fails to state a cause of action." *Id.* (internal quotation omitted).

Here, City has an adequate remedy in assessment and notification. City argues it lacks an adequate remedy at law because it would have to bring multiple lawsuits to enforce its license tax, relying on *City of St. Louis v. State*, 643 S.W.3d 295 (Mo. banc 2022). In *City of St. Louis*, three county-plaintiffs filed a declaratory judgment action seeking a declaration the Second Amendment Protection Act was unconstitutional. 643 S.W.3d at 298. The circuit court granted the State's motion for judgment on the pleadings and found the county-plaintiffs had an adequate remedy at law because they could litigate their constitutional challenges in the pending enforcement actions. *Id.* at 299. On appeal, the Supreme Court of Missouri reversed the circuit court's judgment and held the county-plaintiffs lacked an adequate legal remedy in which to litigate their constitutional

[7] We do not address whether the circuit court erred by dismissing the declaratory judgment claims as derivative of the unpaid license tax claims because we affirm on a separate ground. *See Avery Contracting*, 492 S.W.3d at 162.

challenges. *Id.* at 302. The Court reasoned "[p]laintiffs need not subject themselves to multiple, individual suits to assert their constitutional challenges." *Id.* at 301. Addressing the dissenting opinion's assertion the county-plaintiffs had an adequate remedy at law because nothing was prohibiting them from raising their constitutional claims as affirmative defenses in the pending enforcement actions, the Court's majority noted precedent holding "a party need not face a multiplicity of lawsuits . . . before seeking a declaration of rights." *Id.* at 302.

As Respondents point out, *City of St. Louis* is distinguishable because City is not itself facing multiple lawsuits, but is instead the claimant. City's decision to bring multiple lawsuits does not affect the adequacy of its remedies at law. Accordingly, the court did not err in dismissing City's declaratory judgment claims because it has an adequate remedy at law. Points II and III denied.

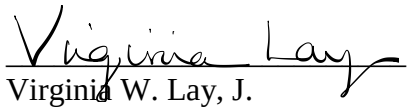
Point IV – Accounting

In Point IV, City alleges the circuit court erred in dismissing its claims for accounting because City sufficiently pled the elements for accounting, specifically the existence of a fiduciary relationship between it and Respondents. City argues such a relationship exists due to the trust it extends to Respondents to accurately report revenue information which is wholly in their control. We disagree City sufficiently pled an accounting claim because it has an adequate remedy at law.

"To establish a right to an equitable accounting, a party must show a need for discovery, complicated accounts, a fiduciary or trust relationship between the parties, and lack of an adequate legal remedy." *Eckel v. Eckel*, 540 S.W.3d 476, 488 (Mo. App. W.D. 2018) (internal quotation omitted). As detailed above, City has adequate legal remedies. Point denied.

Conclusion

For the reasons set forth above, we affirm the circuit court's judgments.



Virginia W. Lay, J.

Michael S. Wright, P.J., concurs.
James M. Dowd, J., concurs.