

**Summary of SC89547, Music City Centre Management, LLC v. Director of Revenue**  
Petition for review of an Administrative Hearing Commission decision

**Attorneys:** The director was represented by James R. Layton and Gary L. Gardner of the attorney general's office in Jefferson City, (573) 751-3321; and Music City was represented by Kenneth N. Hall of Reece, Moore & Pendergraft LLP in Fayetteville, Ark., (479) 443-2705.

*This summary is not part of the opinion of the Court. It has been prepared by the 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 appeals the administrative hearing commission's decision that sales of tickets by a Branson theater to other Branson-based businesses qualify for the statutory "resale" exemption and that the theater is entitled to a tax refund. In a unanimous decision written by Judge Patricia Breckenridge, the Supreme Court of Missouri affirms the commission's decision in part, reverses it in part and remands (sends back) the case to the commission. The theater's sales of tickets to businesses that later sold the tickets to customers for cash, individually or as part of packages, fall within the resale exemption. The theater's sales of tickets to timeshare businesses that later gave the tickets away do not fall within the exemption because they never were sold at retail.

**Facts:** Music City Centre Management produces and promotes live entertainment attractions at its theater in Branson. From April 2003 through December 2005, it sold tickets to these theater attractions through contractual arrangements with Branson-based businesses. Some of these businesses resold some of the tickets to customers for cash. Others, which were timeshare companies, gave some of the tickets for free to customers who took tours of timeshares. Still other businesses bundled the tickets together with other products and then offered the package for a single price to customers, payable in cash. Music City reported the amounts it received from sales to those businesses as gross taxable amounts and remitted the sales tax due to the director of revenue. It subsequently sought refunds for this sales tax, arguing its transactions with the Branson-based businesses did not constitute retail sales because the tickets were for resale. The director denied the refunds, and Music City sought review from the administrative hearing commission. The commission determined that all of Music City's sales to Branson-based businesses qualified for the "resale" exemption of section 144.010.1(10), RSMo Supp. 2007, and that Music City, therefore, was entitled to a refund of more than \$83,100, plus interest. The director appeals.

**AFFIRMED IN PART; REVERSED IN PART; REMANDED.**

**Court en banc holds:** (1) Section 144.020.1(2) imposes a tax on the amount paid for admission to places of amusement or entertainment, and section 144.010.1(10)(a)

expressly includes sales of admission tickets to places of entertainment within the term “sale at retail.” Under the resale exemption of section 144.010.1(10), a “sale at retail” includes only transfers made for use or consumption by the buyer and not transfers made for resale. This exemption applies equally to the sale of admission tickets, which are the service of amusement. The language of these statutes shows the legislature’s intent to tax the amount charged for admission to places of amusement, entertainment or recreation without regard to whom or where the admission payment is paid.

(2) The commission properly found that Music City was not liable for sales tax on the tickets it sold to Branson-based businesses that then sold the tickets to their customers for cash, either individually or as part of a package with other retail items. These sales clearly fall within the statutory definition of “resale.”

(3) The commission erred in finding that Music City was not liable for sales tax on the tickets it sold to timeshare businesses that then gave away those tickets to individuals who took timeshare tours. The giving away of these tickets free of charge is not a taxable retail sale, and without a taxable sale at retail, there cannot be a resale. Accordingly, Music City’s sale of these tickets does not qualify for the resale exemption.