

Summary of SC91010, *E & B Granite, Inc. v. Director of Revenue*

Petition for review from the administrative hearing commission

Argued and submitted Dec. 15, 2010; opinion issued Feb. 8, 2011

Attorneys: The director was represented by Deputy Solicitor General Jeremiah J. Morgan of the attorney general's office in Jefferson City, (573) 751-3321; and E & B was represented by Lamar E. Ottsen and J. Matthew Belz of Ottsen, Mauze, Leggat & Belz LC in St. Louis, (314) 726-2800.

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 seeks review of a decision finding a company's purchases of raw granite slabs used to manufacture installed granite countertops are exempt from sales and use tax. In a unanimous decision written by Chief Justice William Ray Price Jr., the Supreme Court of Missouri affirms the administrative hearing commission's decision. Because the raw granite slabs are "materials used or consumed" and the countertops are "products" under the applicable statute, the company's purchases are subject to the tax exemptions provided in the statute.

Facts: E & B Granite Inc. buys raw granite slabs and uses them to manufacture granite countertops and other granite products. It sells some countertops without installation and some with installation. For the installed countertops, E & B and its customers expressly agreed in writing that title to the products passed to the owner when they are installed completely on the customer's real property. E & B paid under protest state and local use tax and state sales tax on its purchases of the granite slabs used to manufacture countertops that are installed on customers' property, claiming an exemption to such taxes under section 144.054.2, RSMo Supp. 2007. The director of revenue disallowed E & B's exemptions. E & B filed a complaint with the administrative hearing commission requesting a refund of the taxes assessed on its purchase of the granite slabs. The commission granted the refund. The director seeks review.

AFFIRMED.

Court en banc holds: E & B's granite countertops are subject to the tax exemptions of section 144.054.2, which provides sales and use tax exemptions for "materials used or consumed in the manufacturing ... of any product."

(1) Although E & B's granite countertops eventually are installed, they are "products" under section 144.054.2. No appellate court has construed this section, and chapter 144 does not define "product." The discussion in previous cases about what is a product under a different statute – section 144.030.2(2), RSMo – does not apply here. That statute applies to "personal property ... Sold ultimately for final consumption" and "tangible personal property," whereas section 144.054.2 broadly applies to "any product." The legislature intended section 144.054.2, which was enacted after the cases construing section 144.030.2 were decided, to provide additional

exemptions that are not allowed by section 144.030. Section 144.054.2 applies to all products, regardless of whether they eventually are affixed to real property.

(2) Under the plain meaning of section 144.054.2, raw granite slabs are “materials used or consumed” to manufacture E & B’s granite countertops. The statute does not define “materials,” so its plain meaning may be derived from the dictionary. Dictionaries commonly define “materials” to mean either the raw product from which something is made or an apparatus necessary to make something. Although section 144.054.2 addresses “materials used or consumed,” prior appellate cases interpreting chapter 144 do not require the materials to be consumed totally to be covered by this section.

(3) E & B’s purchases of granite slabs are not untaxed completely. Its purchases are subject to local sales tax, which section 144.054.2 does not cover. Further, E & B is not receiving a special benefit. Any company that is integrated vertically similarly to E & B may obtain this tax exemption on purchases of materials it uses to manufacture products.