

Summary of SC91283, *Wehrenberg, Inc. v. Director of Revenue*

Petition for Review of a Decision of the Administrative Hearing Commission

Argued and submitted September 8, 2011; opinion issued October 4, 2011

Judge Edward Sweeney, a judge of the 22nd Judicial Circuit, participated in this case by special designation to fill the vacancy on the Court.

Attorneys: Daniel J. Cook of Cook & Riley LLC in St. Louis, (314) 241-3314, argued on behalf of Wehrenberg; Jeremiah Morgan, deputy state solicitor for the attorney general's office in Jefferson City, (573) 751-3321, argued on behalf of the director of revenue.

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: Wehrenberg seeks review of a decision holding that it is not entitled to the food tax rate on concession items it sells in its movie theaters. In an opinion written by Chief Justice Richard B. Teitelman, joined by all other judges participating, the Supreme Court of Missouri holds that the “products and types of food” subject to the one percent state sales tax are food items for home consumption. There is no doubt that the food sold at the theater concession stand is for consumption at the theater and are not sold for home consumption. Consequently, the one percent state sales tax rate provided in section 144.014 does not apply to Wehrenberg’s concession sales.

Facts: Wehrenberg operates twelve movie theaters in Missouri, in each containing concession stands selling food and drinks. Wehrenberg charged its customers the four percent state sales tax imposed by section 144.020. Wehrenberg then filed a sales tax refund claim with the director of revenue asserting that the concession items should have been taxed at the one percent rate set forth in section 144.014. The director and the AHC denied the claim. Wehrenberg seeks review of the AHC decision.

AFFIRMED.

Court en banc holds: Section 144.014 imposes a one percent state sales tax on the retail sale of “those products and types of food for which food stamps may be redeemed pursuant to the provisions of the Federal Food Stamp Act as contained in 7 U.S.C. section 2012.” The federal food stamp program defines “food” as “any food or food product for home consumption....” 7 U.S.C., section 2012(k). Thus, the “products and types of food” subject to the one percent state sales tax are food items for home consumption. There is no doubt that the food sold at the theater concession stand is for consumption at the theater and are not sold for home consumption. Wehrenberg’s argument is premised on the assertion that section 144.014 does not incorporate the definition of “food” utilized by the Federal Food Stamp program. This argument fails because the plain, unambiguous

language of section 144.014 links the definition of “products and types of food” subject to the one percent sales tax to the definition of “food” utilized by the Federal Food Stamp Act.