

Summary of SC91415, *Custom Hardware Engineering & Consulting Inc. v. Director of Revenue*

On review from the administrative hearing commission, Commissioner Karen A. Winn Argued and submitted Oct. 5, 2011; opinion issued Jan. 17, 2012

Attorneys: Custom Hardware was represented by Matthew D. McBride and Carl M. Markus of Lashly & Baer PC in St. Louis, (314) 621-2939; and the director was represented by Solicitor General James R. Layton of the attorney general’s office in Jefferson City, (573) 751-3321.

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: A company appeals an administrative hearing commission determination that it owes use taxes for certain computer parts it purchases, tests and certifies for its customers. In a 7-0 decision written by Chief Justice Richard B. Teitelman, the Supreme Court of Missouri affirms this decision. Because the record demonstrates that the company does not just store the parts temporarily but uses them for testing and certifying, the company is liable for use tax, and it is not entitled to a statutory resale exception. Further, the statutes authorize the commission to assess a higher amount of liability than that initially assessed by the director of revenue.

Judge Michael M. Pritchett, presiding judge of the 36th Judicial Circuit (Butler and Ripley counties), sat in this case by special designation to fill a then-vacancy on the Court (from before the appointment of Judge George W. Draper III).

Facts: Custom Hardware Engineering Inc. purchased certain computer parts from vendors outside Missouri, had them shipped to its Missouri headquarters, and spent five to seven days testing those parts and certifying them for use by its customers, after which it shipped the parts to its customers. The company did not file use tax returns on its purchases of parts from out-of-state vendors. After auditing the company for the tax period April 2001 through March 2006, the director of revenue assessed use taxes and interest against Custom Hardware. The company paid these taxes under protest and filed a complaint with the administrative hearing commission, arguing that, under section 144.605 (13), RSMo 2000, its testing and certification of the computer parts was not a taxable use and instead was nontaxable “temporary storage.” The commission determined that the testing and certification process was, in fact, a taxable “use” under section 144.610, RSMo 2000, and determined the company’s ultimate use tax liability. In so doing, it increased the amount of tax liability the director had calculated in her post-audit assessment and credited what the company had paid under protest. The company seeks review.

AFFIRMED.

Court en banc holds: (1) Because the record demonstrates that Custom Hardware used the parts for testing and certifying on behalf of its customers, it is liable for use tax as provided in section 144.610. This statute imposes a tax on out-of-state purchases of tangible personal property that is stored, used or consumed in Missouri. It excepts from such tax, however, “the temporary storage of property in this state for subsequent use outside the state.” To test and certify the computer

parts, Custom Hardware had to store them temporarily. But the record shows it did more than just provide a warehouse for temporary storage and reshipping; it unpackaged, inspected, tested and repackaged the parts, then certified them for use and shipped them to its customers. By performing those functions, the company engaged in a taxable “use” as provided in section 144.610, as the commission correctly concluded.

(2) Custom Hardware is not entitled to a resale exemption from the use tax. It does not purchase the computer parts for a subsequent taxable sale, and the fact that some of the company’s customers are public entities that are not required to pay sales or use taxes does not change the fact that the company’s activities constitute a taxable “use” under section 144.610.

(3) Under section 621.050, RSMo 2000, the commission was authorized to determine Custom Hardware’s tax liability independently from the director’s assessment and increase the liability the director initially determined. Under this statute, the company bears the burden of proving either that it is not liable for use tax or that it is liable for less than what the director assessed, while the director bears the burden of providing any increase in a tax deficiency. As such, it necessarily assumes the commission’s authority to increase a company’s use tax liability above that determined by the director. The commission correctly determined that the company is liable for use taxes.