

Summary of SC93083, *Union Electric Co. d/b/a Ameren Missouri v. Director of Revenue*

On review from the administrative hearing commission, Commissioner Sreenivasa Rao Dandamudi

Argued and submitted October 23, 2013; opinion issued March 11, 2014

Attorneys: Ameren was represented by Erwin O. Switzer III and Jennifer Mann Bortnick of Greensfelder, Hemker & Gale PC in St. Louis, (314) 241-9090; and the director was represented by Deputy Solicitor General Jeremiah J. Morgan 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 utility that requested a sales tax refund on behalf of one of its customers, a grocery chain, seeks review of the administrative hearing commission's decision upholding the director of revenue's denial of the refund. In a unanimous opinion written by Judge Laura Denvir Stith, the Supreme Court of Missouri affirms the commission's decision. The bakery departments of the grocery stores do not constitute "bakeries" as that term is used in an example in a regulation promulgated pursuant to the relevant tax statute. Even if they had, the term "processing," as used in the statute, does not include the in-store final preparation of baked goods for retail sale. An example in a regulation cannot extend an exemption beyond that permitted in the statute under which it was promulgated. The activities of the grocer's bakery departments do not fall within the tax exemption.

Facts: Section 144.054.2, as enacted in 2007, exempts from sales and use tax electrical energy and natural gas "used or consumed in the manufacturing, processing, compounding, mining, or producing of any product." In 2009, Union Electric, doing business as Ameren Missouri, filed for a tax refund, at the request of Schnucks grocery stores, claiming that Schnucks' bakery departments engaged in "processing" and qualified for a refund of sales tax paid on energy purchases dating back to the exemption statute's effective date. The director of revenue denied the request, and the administrative hearing commission agreed, finding the exemption did not apply to Schnucks' bakery departments. Ameren seeks review of the commission's decision.

AFFIRMED.

Court en banc holds: (1) The Court's holding in *Aquila Foreign Qualifications Corporation v. Director of Revenue*, issued while this case was pending on appeal to the administrative hearing commission, is instructive. Presented with very similar facts involving the on-site food preparation activities of Casey's General Stores, *Aquila* held that "processing" under section 144.054.2 does not encompass "the preparation of food for retail consumption." Tax exemptions are narrowly construed with the burden on the taxpayer to demonstrate the exemption applies by clear and unequivocal evidence. Any ambiguity will be construed against the exemption. Applying the same principles of statutory construction used in *Aquila* and its predecessor cases, the normal use of the word "processing" does not include the final preparation of baked goods

for retail sale. Moreover, a word will be read in the context of the other words with which it is used. Here, processing is included in a list of words including manufacturing, mining and compounding, all of which suggest an industrial connotation. Therefore, the legislature did not intend section 144.054.2 to exempt the activities of Schnucks' bakery departments in preparing frozen dough for retail sale.

(2) Ameren's argument that it is entitled to the exemption because the regulation lists a bakery as an example of an operation engaged in exempt activities also is unavailing. While the commission found that Schnucks' bakery departments come within the meaning of the term "bakery," whether the bakery departments fall within the regulation is a matter of law that is reviewed de novo (anew, without deference to the commission's holding). Construed narrowly, as it must because it involves a tax exemption, the example does not include Schnucks' final defrosting and baking of products for sale in its grocery stores. Moreover, a regulation cannot expand or modify a statute. Because the word "processing" does not include Schnucks' activities, the use of the word "bakery" in the example cannot extend the meaning of the statute to include those activities.