

## **Summary of SC94224, *Five Delta Alpha LLC v. Director of Revenue***

Appeal from the administrative hearing commission, Commissioner Sreenivasa Rau Dandamudi  
Argued and submitted January 13, 2015; opinion issued February 24, 2015

**Attorneys:** Five Delta Alpha was represented by Paul V. Herbers, James E. Cooling, Lisa D. Holt and Chad E. Voss of Cooling and Herbers PC in Kansas City, (816) 474-0777; and the director was represented by Solicitor General James R. Layton of the attorney general's office in Jefferson City, (573) 751-3321, and Spencer Adam Martin of the department of revenue in Jefferson City, (573) 751-0961.

*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 that bought an airplane out-of-state and then leased it to a common carrier that bases the airplane out of Kansas City, Missouri, appeals the administrative hearing commission's determination that its purchase does not qualify for the resale exemption from taxation. In a unanimous per curiam decision that cannot be attributed to any particular judge, the Supreme Court of Missouri reverses the commission's decision and remands (sends back) the case. Based on the record and concessions from the director of revenue, the company is exempt from paying Missouri tax on its purchase of the airplane.

**Facts:** Five Delta Alpha LLC purchased an airplane in Kansas and immediately leased it to JetSelect, which moved it to Missouri. Ever since, the airplane has been based in Kansas City for use in JetSelect's operations in transporting passengers or property for hire under individual agreements. Five Delta Alpha paid Missouri nearly \$1.4 million in use tax under protest. In the tax protest payment affidavit it filed with the director of revenue, Five Delta Alpha asserted the aircraft's purchase was exempt from tax because it is leased to JetSelect as a common carrier. The director denied the company's refund, and Five Delta Alpha appealed to the administrative hearing commission. The commission found JetSelect to be a common carrier but concluded Five Delta Alpha was not entitled to a refund because its lease to JetSelect was not a "sale" for purposes of the resale exemption. Five Delta Alpha appeals.

### **REVERSED AND REMANDED.**

**Court en banc holds:** (1) The director concedes that JetSelect is a "common carrier" for purposes of section 144.030.2(20) and, therefore, that Five Delta Alpha's purchase of the airplane qualifies for the "resale" exemption in section 144.030.2(20).

(2) Five Delta Alpha has shown clear and unequivocal proof – based on the record and the director's concessions – that it qualifies for the tax exemption under section 144.081.1(4), RSMo. Read together, the statutes governing taxation of tangible personal property (including airplanes) and resale exemptions do exempt Five Delta Alpha from paying Missouri sales or use tax if the company purchased the airplane for the purpose of leasing it to JetSelect and that lease constituted a "resale," which it does because the right to use the airplane was transferred fully to JetSelect, which provides air courier service for pay.