

Summary of SC94260, *Tatson LLC d/b/a Powerhouse Gym of Joplin v. Director of Revenue*
Appeal from the administrative hearing commission, Commissioner Sreenivasa Rau Dandamudi
Argued and submitted December 2, 2014; opinion issued February 24, 2015

Attorneys: The director was represented by Evan J. Buchheim of the attorney general’s office in Jefferson City, (573) 751-3321; and Powerhouse was represented by Paul A. Boudreau of Brydon, Swearngen & England PC in Jefferson City, (573) 635-7166.

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 appeals an administrative hearing commission determination that a fitness facility need not pay sales taxes on rental fees it collects from a company that uses the facility to provide personal training sessions for the facility’s members. In a unanimous decision written by Chief Justice Mary R. Russell, the Supreme Court of Missouri affirms the commission’s determination. Because the facility did not perform any affirmative act for the company, it did not render any taxable service at retail and is not liable for sales tax on the fees.

Facts: Members pay a fee to join Powerhouse Gym, a fitness facility that did not offer personal training services directly. Rather, Custom Built paid Powerhouse \$6,000 per month in exchange for office space, the ability to market Custom Built services to Powerhouse members, and the use of Powerhouse’s facilities to conduct personal training sessions for Powerhouse members. Powerhouse reported and paid income tax on the rental fees it received. The director of revenue subsequently assessed Powerhouse about \$12,200 in unpaid sales tax on the rental fees. Powerhouse challenged the assessment. The administrative hearing commission determined that Powerhouse was not liable for the sales tax assessment. The director appeals.

AFFIRMED.

Court en banc holds: Section 144.020.1(2), RSMo, calls for a 4-percent sales tax on fees paid to, or in any place of recreation. Although Powerhouse is a place of recreation, it did not sell Custom Built tangible personal property, and so the threshold question is whether the rental fees were for rendering a “taxable service at retail.” Given the plain and ordinary meaning of this phrase, without performing an affirmative act for Custom Built, Powerhouse did not render any taxable service at retail. As such, it is not liable for sales tax on the monthly rental fees.