

Summary of SC94441, VisionStream, Inc., v. Director of Revenue

Petition for review of a decision of the administrative hearing commission,
Commissioner Karen A. Winn

Argued and submitted March 18, 2015; opinion issued June 30, 2015

Attorneys: VisionStream was represented by Harry Charles, an attorney in St. Louis, (314) 862-7900. The director was represented by Rochelle L. Reeves and Solicitor General James R. Layton of the attorney general's office in Jefferson City, (573) 751-3321, and Thomas A. Houdek of the department of revenue in Jefferson City, (573) 751-8807.

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 seeks review of the administrative hearing commission's decision upholding the director of revenue's denial of a sales tax refund. In a unanimous decision written by Judge Laura Denvir Stith, the Supreme Court of Missouri affirms the commission's decision. Because the evidence in the record shows that title to the company's products transferred to its customers in Missouri and not in the states to which the products were shipped, the transactions were subject to Missouri sales tax.

Facts: VisionStream was a Missouri corporation that designed and constructed trade show displays for customers both within and outside Missouri. VisionStream paid Missouri sales tax on the displays it sent to its out-of-state customers but later sought a refund of those taxes paid over a period of approximately five years. The director of revenue denied the refund request, and VisionStream appealed to the commission. The only evidence of the sales terms introduced was a display order form, which VisionStream officers testified was rarely signed but which, they said, set out the company's terms, at least for certain aspects of their transactions. The form states: "Delivery will be F.O.B. [free on board] manufacturer." The commission determined that VisionStream was not entitled to a refund of sales taxes paid on its out-of-state transactions because title transferred to the customers in Missouri. VisionStream seeks this Court's review.

AFFIRMED.

Court en banc holds: The evidence presented supports the commission's determination that title to VisionStream's products transferred to its customers in Missouri and, therefore, those transactions were subject to Missouri sales tax. Section 144.030.1, RSMo exempts from Missouri sales tax "such retail sales as may be made in commerce between this state and any other state." The exemption applies only where the title to the goods transfers outside of Missouri, not to all transactions where the goods are shipped out of state. To determine where title transfers, section 400.2-401(2), RSMo, states that, in the absence of a contrary agreement, "title passes to the buyer at the time and place at which the seller completes his or her performance with reference to the physical delivery of the goods." When a sales agreement says "[d]elivery will be F.O.B. manufacturer," as VisionStream's display order does, title generally passes when the manufacturer delivers the goods to the shipping company. VisionStream delivered its products to the shipping companies in Missouri. Its claim that the terms of the display order do not apply

because the order was unsigned is unavailing. No other evidence was introduced to show other sales terms or practices besides those set out in the display order, and VisionStream itself introduced and relied on the display order as evidence of its usual business practices. Likewise, the regulation VisionStream relies on to argue that title transferred outside Missouri does not apply counter to the controlling statute, which says that title transfers when the seller completes its delivery obligations, or counter to the agreement of the parties, for which the display order is the only evidence in the record.