

Summary of SC95388, *Gate Gourmet Inc. v. Director of Revenue*

Appeal from the administrative hearing commission, Commissioner Sreenivasa Rau Dandamudi
Argued and submitted May 3, 2016; opinion issued October 4, 2016

Attorneys: Gate Gourmet was represented by Jeremy Abrams and Donald M. Griswold of Crowell & Moring LLP in Washington, D.C., (202) 624-2500; and Matthew J. Landwehr and Janette M. Lohman of Thompson Coburn LLP in St. Louis, (314) 552-6000. The director was represented by Solicitor General James R. Layton of the attorney general's office in Jefferson City, (573) 751-3321; and Benjamin C. Slawson 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 sells frozen meals to airlines seeks review of the administrative hearing commission's decision finding it is not entitled to a refund of sales taxes it paid under protest. In a unanimous decision written by Judge Paul C. Wilson, the Supreme Court of Missouri affirms the commission's decision. The meals the company sells to airlines should be taxed at 4 percent; the meals do not qualify for the reduced 1-percent rate because they are not sold for home consumption. The relevant statutes are not unconstitutional as applied in this case, nor is the decision in this case unexpected such that it only can be applied prospectively.

Facts: Gate Gourmet Inc. sells frozen meals in bulk to commercial airlines. It prepares meals according to menus provided by the airlines, plates the meals on trays owned by the airlines, then flash-freezes the meals. When an airline then orders a particular number of meals for a particular flight, Gate Gourmet delivers the meals to the airplane a half-hour before departure. The meals must be heated onboard the aircraft before they can be served to passengers and crew. Gate Gourmet also removes carts from arriving aircraft, disposes of waste and cleans the airline's trays for use with future meals. Gate Gourmet filed sales tax returns with the director of revenue for the January 2008 through December 2010 in which it reported sales of frozen meals to its airline customers at a reduced sales tax rate of 1 percent. The director performed an audit for this period and concluded the sales of such food, made to airlines for consumption during flight, do not qualify for the reduced tax rate because they are not sales of food for home consumption. The director issued assessments against Gate Gourmet for nearly \$296,400 in sales tax and statutory interest. Gate Gourmet paid the assessments under protest. In September 2013, the director denied the protests. Gate Gourmet sought review from the administrative hearing commission, which determined the company was not entitled to a refund because it did not sell the airline meals "for home consumption." Gate Gourmet now seeks review from this Court.

AFFIRMED.

Court en banc holds: (1) The commission's decision finding the frozen meals Gate Gourmet sold to the airlines were intended to be eaten while onboard the aircraft is based on a proper construction of the law and is supported by competent and substantial evidence. Under section 144.020, RSMo, retail sales of tangible personal property such as food are taxed at a 4-percent

rate. Under the exception in section 144.014, RSMo, however, certain retail sales of food are taxed at a lower rate of 1-percent. According to the exception, this lower rate applies only to food for which food stamps may be redeemed under a federal statute, which defines “food” in relevant part to mean “any food or food product for home consumption except . . . hot foods or hot food products ready for immediate consumption.” The dispositive fact is not where the food actually is eaten but, instead, whether the items are intended for home consumption. As such, the phrase “for home consumption” requires consideration of the context of the sale in determining the proper sales tax rate. Viewed in context, the frozen meals Gate Gourmet sold were expected and intended to be eaten exclusively on its customers’ aircraft.

(2) The applications of section 144.020 and 144.014 in this case do not violate the uniformity clause of article X, section 3 of the state constitution. The application of the 1-percent sales tax rate in section 144.014 does not distinguish among classes of sellers; it merely distinguishes between food that is sold “for home consumption” and food that is not. Nor is this Court’s holding unexpected, such that it can be applied only prospectively. The commission properly based its decision on the language of state and federal statutes, and its application was consistent with this Court’s prior decisions.