

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**MICHAEL STRUP,  
RESPONDENT**

**vs.**

**DIRECTOR OF REVENUE,  
APPELLANT**

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DOCKET NUMBER WD69508

DATE: JUNE 23, 2009

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Appeal from:

Circuit Court of Johnson County, Missouri  
The Honorable Joseph P. Dandurand, Judge

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Appellate Judges:

Division Three: James M. Smart, Jr., Joseph M. Ellis, and James E. Welsh, JJ.

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Attorneys:

Jeremiah Morgan, for Respondent

James Chenault, for Appellant

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**MICHAEL STRUP, RESPONDENT**

**v.**

**DIRECTOR OF REVENUE, APPELLANT**

WD69508

Johnson County, Missouri

Before Division Three Judges: James M. Smart, Jr., Joseph M. Ellis and James E. Welsh, JJ.

The Director of Revenue for the State of Missouri appeals from a judgment entered in the Circuit Court of Johnson County ordering the Director to reinstate the commercial driving privileges of Michael Strup.

**AFFIRMED**

**Division Three holds:**

(1) The administrative review provided for in § 302.505 and § 302.530 applies only to the suspension a driver's base driving privilege, and administrative review under those provisions is not applicable to a suspension of a commercial driver's license under § 302.755. The trial court erred in concluding that Strup's right to due process was violated by the procedure utilized.

(2) Disqualification of a person from driving a commercial vehicle requires a conviction for driving a motor vehicle under the influence of alcohol or a controlled substance. Accordingly, the Director was required to prove that Strup had been adjudicated guilty of driving a motor vehicle under the influence of alcohol or a controlled substance.

(3) The judgment relied upon by the Director in her attempt to establish a conviction merely finds that "based upon a preponderance of the evidence [Strup] is found to have been arrested upon probable cause to believe he was driving a motor vehicle while the alcohol concentration in his blood was .08% or more."

(4) Under the clear language of the statute, absent evidence that Strup had been adjudged guilty of driving under the influence of alcohol by a court of original jurisdiction or in an authorized administrative proceeding, Strup's commercial driving privileges could not be suspended or revoked pursuant to §302.755.1.

**Opinion by: Joseph M. Ellis, Judge**

Date: June 23, 2009

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