

IN THE SUPREME COURT OF MISSOURI

STATE OF MISSOURI, EX REL.,)	
CAROL RUSSELL FISHER)	
DIRECTOR OD REVENUE ,)	
)	
Respondent,)	
)	NO. SC85951
v.)	
)	
Joe R. Brooks)	
Sui Juris Status)	
)	
Appellant.)	

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
SIXTEENTH JUDICIAL CIRCUIT, ASSOCIATE DIVISION
AT INDEPENDENCE

STATE OF MISSOURI, EX REL.)	
CAROL RUSSELL FISHER)	
DIRECTOR OD REVENUE)	
)	
Plaintiff,)	
)	
v.)	No. 03CV214199
)	Division 32
Joe R. Brooks)	
)	
Defendant.)	
)	

APPELLANT'S REPLY BRIEF

RESPONDENT
Trevor Bossert
Office of Attorney General
P.O. Box 899
Jefferson City, Missouri 65102

APPELLANT
Joe R. Brooks
6824 James A. Reed Rd.
Kansas City, Missouri 64133
816-737-1942

TABLE OF CONTENTS

TOPIC	Page#
TABLE OF AUTHORITIES	3
REPLY ARGUMENT.....	4
CONCLUSION.....	8
CERTIFICATE OF SERVICE.....	9
APPENDIX.....	10

TABLE OF AUTHORITIES

<i>Baugas v. Director of Revenue</i> 878 S.W.2d 39dated June 21, 1994	6
<i>Brown Group, Inc. vs. Administrative Hearing Commission</i> , 649 SW 2 nd 874, 881 (MO banc 1983)	7
<i>Burnau</i> , 642 S.W. 2d at 623.	7
<i>England v. Eckley</i> , 330 S.W. 2d 738, 744 (Mo. Banc 1959)..	7
<i>L & R Distributing Co. v. Missouri Department of Revenue</i> , 648 S.W. 2d 91, 95 (Mo. 1983)	7
<i>Prokopf v. Whaley</i> , 592 S.W.2d 819, 824 (Mo. banc 1980)	7
<i>Roberts v. United States Jaycees</i> , 468 U.S. 609, 629 104 S. Ct. 3244, 3255, 82 L.Ed.2d 462 (1984).	6
<i>State v. Patton</i> , 308 S.W. 2d 641,644 (Mo. Banc 1958)	7
<i>State ex rel. Mo. State board of Registration for Healing Arts v. Southworth</i> , 704 S.W. 2d 219,223 (Mo. Banc 1986)	6
<i>State v. Young</i> , 695 S.W. 2d 882,884(Mo. banc 1985)	6

Revised Statutes of Missouri

RSMo. 1.090.....	7
RSMo. 143.511	4, 5, 7,8,
RSMo.536.023.....	5

Rules and Regulations

12CSR10-1.010.....	5
--------------------	---

REPLY ARGUMENT

The first point to be addressed in the Respondent's brief is that the issue on appeal by the Appellant is not nor has it ever been stated within the appeal brief of Appellant the assessment of tax nor whether the Appellant is "excused" or "required" to pay a tax. *See* Resp. Brief, pgs. 7, 8, 10 and 11. Since these issues are not on appeal at this time the Appellant will not address those items but will limit this reply only to the remarks of the Respondent which are pertinent to the issues on appeal. The only issues on appeal to be addressed before the court at this time are the jurisdiction established under the revenue laws of the state and whether the Respondent fulfilled the requirements of the statute of the state in §143.511.

Respondent declares within the jurisdictional statement §143.511 ¹ is an unambiguous ² statute and "there is no room for construction of the statute". *See* Resp. Brief, p. 5. Respondent continues on to say in the argument section of the brief "the word "shall" in §143.511 is not mandatory" leaving the Appellant to wonder if in fact the word "shall" as used in each of the sentences in §143.511 is also not mandatory and if not then

¹ All section references are to the Revised Statutes of Missouri currently in effect, unless otherwise noted.

² **Unambiguous**/ Susceptible of but one meaning. *Lawrie v. Miller*, Tex.Com.App., 45 S.W.2d 172, 173. A contract provision is "unambiguous" if its meaning is so clear as to preclude doubt by a reasonable person. *Deerfield Commodities, Ltd. v. Nerco, Inc.*, 72 Or App. 305, 696 P.2d 1096, 1104. Black's Law Dictionary Sixth Edition pg.1523

would the use of the word “shall” cause the understanding of the statute be somewhat ambiguous ³ as used therein. *See* Resp. Brief, p. 11.

Respondent further contends in the final paragraph of the “Argument” section “there is a regulation directing where he should file his returns.” Respondent contends that 12CSR10-1.010(4) covers returns. Even though the regulation cited is prescribed for §536.023 and has nothing to do with chapter 143 requirements, Respondent states “Absent some other regulation promulgated under § 143.511, the general language of 12 C.S.R. 10-1.010(4) is sufficient.” **IF** that were the case then why does the authority for 12 C.S.R. 10-1.010 not list applications under Chapter 143 to be included in and apply to the regulation? Wouldn’t that also be somewhat ambiguous? *See* Resp. Brief, p. 12. (a reproduction of §536.023 and 12CSR10-010 are attached as Appendix A)

If the Respondent is a person of common intelligence and the Appellant can be recognized as a person of common intelligence then why does the Respondent understand the statute to say that she is not required to prescribe a regulation identifying the place to file the returns and pay the taxes under §143.511 where the Appellant understands the

³ **Ambiguity** / Doubtfulness; doubleness of meaning. Duplicity, indistinctness, or uncertainty of meaning of an expression used in a written instrument. Want of clearness or definiteness; difficult to comprehend or distinguish; of doubtful import. For Extrinsic term in a document, *Atlas Ready-Mix of Minot, Inc. v. White Properties, Inc.*, N.D., 306 N.W.2d 212, 220; when application of pertinent rules of interpretation to an instrument as a whole fails to make certain which one of two or more meanings is conveyed by the words employed by the parties, *Wood v. Hatcher*, 199 Kan. 238; 428 P.2d 799, 803. *Black’s Law Dictionary Sixth Edition* pg.79,80.

statute to mean what it says? Where the language of the statute is apparently so vague as to cause such a disagreement between the parties concerning the jurisdiction for the Respondent to exercise proper due process of law and bring a claim for which relief may be granted in favor of the Respondent, how could such a claim in this civil action be supported by the trial court?

This court in the decision of *Baugas v. Director of Revenue* 878 S.W.2d 39 dated June 21, 1994 stated in part: The void-for-vagueness doctrine reflects the principle that a statute which either forbids or requires the doing of an act in terms so vague that persons of common intelligence must guess at its meaning and differ as to its application violates the first essential of the due process of law. *Roberts v. United States Jaycees*, 468 U.S. 609, 629 104 S. Ct. 3244, 3255, 82 L.Ed.2d 462 (1984). The vagueness doctrine assures that guidance, through explicit standards, will be afforded to those who must apply the statute avoiding possible arbitrary and discriminatory application. *State ex rel. Mo. State board of Registration for Healing Arts v. Southworth*, 704 S.W. 2d 219,223 (Mo. Banc 1986)

This court in the *State v. Young*, 695 S.W. 2d 882,884(Mo. banc 1985) stated recently that: Vagueness: as a due process violation, takes two forms. One is the lack of notice given a potential offender because the statute is so unclear that “men of common intelligence must necessarily guess at its meaning.” [Citations omitted.] The second is that the vagueness doctrine assures that guidance, through explicit standards, will be afforded to those who must apply the statute, avoiding possible arbitrary and discriminatory application.

“If the terms or words used in the statute are of common usage and are understandable by persons of ordinary intelligence, they satisfying the constitutional requirement as to definiteness and certainty.” **Prokopf v. Whaley**, 592 S.W.2d 819, 824 (Mo. banc 1980)

The statute is triggered by the plain language⁴ of §143.511 when the director of revenue prescribes within a regulation the place for filing any return, declaration, statement, or other document required pursuant to this chapter and for the payment of any tax, and is not so imprecise and uncertain a duty as to render the statute void for vagueness.

. Words used in a statute must be accorded their plain and ordinary meaning. **Burnau**, 642 S.W. 2d at 623. Where the language of a statute is plain and admits of but one meaning, there is no room for construction. **L & R Distributing Co. v. Missouri Department of Revenue**, 648 S.W. 2d 91, 95 (Mo. 1983) We must construe the statute as it stands, **England v. Eckley**, 330 S.W. 2d 738, 744 (Mo. Banc 1959) and give effect to it as written. **State v. Patton**, 308 S.W. 2d 641,644 (Mo. Banc 1958) Each “word, clause, sentence and section” of a statute should be given meaning. **Brown Group, Inc. vs. Administrative Hearing Commission**, 649 SW 2nd 874, 881 (MO banc 1983)

⁴ RSMo.§ 1.090. Words and phrases, how construed.--

Words and phrases shall be taken in their plain or ordinary and usual sense, but technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import.

CONCLUSION

For the foregoing reasons, Appellant requests the Court to consider the issues of due process of law addressing the jurisdiction of the Director of Revenue through the state of Missouri to maintain a civil action against the Appellant where the Respondent has failed in the function and performance of the office to satisfy a specific and certain duty to prescribe a regulation pursuant to §143.511 identifying the place for filing any return, declaration, statement, or other document required pursuant to this chapter and for the payment of any tax concerning the Missouri Citizen and render a determination at law accordingly.

Respectfully submitted

“With explicit reservation of all rights”

Joe R. Brooks, Sui Juris Status
6824 James A. Reed Rd.
Kansas City, Missouri 64133
816-737-1942

CERTIFICATE OF SERVICE

I hereby certify that on September ____, 2004, the foregoing Appellant's Brief was mailed to the following by first class mail, postage prepaid, addressed as follows:

Trevor Bossert
Office of Attorney General
P.O. Box 899
Jefferson City, Missouri 65102

Joe R. Brooks, Sui Juris Status
6824 James A. Reed Rd.
Kansas City, Missouri 64133

APPENDIX

APPENDIX A.....	A-1
-----------------	-----