SUPREME COURT OF MISSOURI

SEBA, LLC v. Director of Revenue

No. SC98601 (Mo. Nov. 24, 2020) · No. SC98601 · Decided November 24, 2020

SUMMARY

The Supreme Court of Missouri affirmed an Administrative Hearing Commission decision holding SEBA, LLC liable for unpaid sales tax, statutory interest, and a five percent addition to tax. The Court held that SEBA's inadequate recordkeeping shifted the burden of proof under Missouri law and supported the director's estimate-based assessment of taxable sales. The Court also upheld the denial of certain claimed tax exemptions because SEBA failed to provide sufficient documentary evidence.

CASE DETAILS

COURT	Supreme Court of Missouri
WRITING FOR THE COURT	George W. Draper III, Chief Justice
JURISDICTION	Missouri
DECIDED	November 24, 2020
DOCKET	SC98601
DISPOSITION	affirmed
PROCEDURAL POSTURE	SEBA petitioned for judicial review of an Administrative Hearing Commission decision affirming a state sales-tax assessment, statutory interest, and a five-percent addition to tax. The Missouri Court of Appeals, Western District, transferred the case to the Supreme Court of Missouri because it involved construction of Missouri revenue laws.
STANDARD OF REVIEW	The Court affirms the AHC when its decision is authorized by law and supported by competent and substantial evidence on the record as a whole, unless clearly contrary to the reasonable expectations of the General Assembly. The Court reviews the AHC's interpretation of a revenue statute de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	SEBA, LLC v. Director of Revenue

TOPICS

sales and use tax · tax audits · tax penalties · tax court procedure · statutory interpretation

PRACTICE AREAS

state and local taxation | administrative law | sales and use tax | appellate procedure

QUESTIONS PRESENTED

1. Whether the AHC properly placed the burden of proof on SEBA under section 136.300.1(2) because SEBA lacked adequate transaction records and did not provide reasonable access to them.
2. Whether the Director's estimate-based calculation of SEBA's taxable sales, including the average retail sale and cash-to-credit ratio, was supported by competent and substantial evidence.
3. Whether SEBA proved that sales to St. John the Baptist Church and St. Patrick Center were exempt from sales tax and whether the AHC was required to take judicial notice of an unoffered directory.
4. Whether the AHC properly imposed a five-percent addition to tax under section 144.250.3 for negligence or intentional disregard of tax rules.
5. Whether SEBA's reliance on its accountant's professional services precluded the negligence addition.

HOLDINGS

1. Because SEBA failed to maintain adequate records of its transactions and did not provide the Department reasonable access to complete records, SEBA bore the burden of proof on factual issues relevant to its tax liability under section 136.300.1(2).
2. The Director may estimate a taxpayer's gross receipts when the taxpayer fails to make or support a required return, and the AHC's adoption of the auditor's estimate was authorized by law and supported by competent and substantial evidence.
3. SEBA failed to prove by clear and unequivocal evidence that sales to St. John the Baptist Church and St. Patrick Center were exempt, and the AHC was not required to take judicial notice of an unoffered directory that SEBA never requested the AHC to notice.
4. The five-percent addition to tax under section 144.250.3 was properly imposed because SEBA negligently failed to maintain adequate and accurate business records, thereby failing to make a reasonable attempt to comply with state tax laws.

KEY QUOTATIONS

> *"In this case, the auditor had no choice but to estimate SEBA's gross receipts pursuant to section 144.250.4 based on the information she possessed at the time of the audit because SEBA wholly failed to maintain any records during the audit period."* (at 9)

> *"SEBA failed to offer such proof or maintain such records and, therefore, did not carry its burden of proof."* (at 20)

> *"Reasonable business taxpayers should have a means to track inventory sales, which SEBA did not."* (at 24)

FACTUAL BACKGROUND

SEBA operated a donut shop whose sales included retail and wholesale transactions. Its cash register produced a single receipt tape, it lacked a secondary method for tracking sales, and SEBA did not maintain or produce complete receipts, inventory records, exemption certificates, and other business records requested during the audit. The Director's auditor used available July 2015 records to estimate SEBA's taxable sales for the audit period, calculated a cash-to-credit ratio, and assessed additional sales tax, interest, and a five-percent addition for negligence. SEBA also failed to prove that sales to two organizations were exempt and challenged the assessment methodology and negligence addition.

PROCEDURAL HISTORY

The Director of Revenue audited SEBA's sales records for October 1, 2011, through September 30, 2014, estimated taxable sales because SEBA's records were incomplete and unreliable, and assessed unpaid sales tax, interest, and a five-percent negligence addition. The AHC affirmed the assessment, with a reduction for certain exempt sales. SEBA sought judicial review, and the case was transferred from the Western District of the Missouri Court of Appeals to the Supreme Court of Missouri. The Supreme Court affirmed the AHC's decision.

DISPOSITION

affirmed

CASES CITED

- St. Louis Rams LLC v. Director of Revenue, 526 S.W.3d 124, 126 (Mo. banc 2017)
- Krispy Kreme Doughnut Corp. v. Director of Revenue, 488 S.W.3d 62, 67-70 (Mo. banc 2016)
- State ex rel. Rice v. Public Service Commission, 220 S.W.2d 61, 65 (Mo. 1949)
- United States v. Koudanis, 207 F. Supp. 3d 115, 121 (D. Mass. 2016)
- Dick Proctor Imports, Inc. v. Director of Revenue, 746 S.W.2d 571, 575 (Mo. banc 1988)
- DI Supply I, LLC v. Director of Revenue, 601 S.W.3d 195, 196 (Mo. banc 2020)
- Bartlett International, Inc. v. Director of Revenue, 487 S.W.3d 470, 472 (Mo. banc 2016)
- Sanzone v. Mercy Health, 326 F. Supp. 3d 795, 806 (E.D. Mo. 2018)
- Overall v. Ascension, 23 F. Supp. 3d 816, 824 (E.D. Mich. 2014)
- Hartwig v. Albertus Magnus College, 93 F. Supp. 2d 200, 202-03 (D. Conn. 2000)
- Am. Healthcare Mgmt., Inc. v. Director of Revenue, 984 S.W.2d 496, 498 (Mo. banc 1999)
- Balloons Over the Rainbow, Inc. v. Director of Revenue, 427 S.W.3d 815, 825 (Mo. banc 2014)
- Cook Tractor Co. v. Director of Revenue, 187 S.W.3d 870, 873 (Mo. banc 2006)
- Lora v. Director of Revenue, 618 S.W.2d 630, 632-34 (Mo. banc 1981)
- Hiett v. Director of Revenue, 899 S.W.2d 870, 872-73 (Mo. banc 1995)
- Hewitt Well Drilling & Pump Serv., Inc. v. Director of Revenue, 847 S.W.2d 795, 798 (Mo. banc 1993)
- Parrish v. Commissioner of Internal Revenue, 168 F.3d 1098, 1102 (8th Cir. 1999)
- Lynn v. Director of Revenue, 689 S.W.2d 45, 49 (Mo. banc 1985)
- SEBA LLC v. Director of Revenue, WD No. 83083, 2020 WL 3067497, at *4 (Mo. App. W.D. June 9, 2020)