

SUPREME COURT OF MISSOURI

Krispy Kreme Doughnut Corp. v. Director of Revenue

358 S.W.3d 48 (Mo. banc 2011) · Decided December 20, 2011

SUMMARY

The Missouri Supreme Court reviewed whether Krispy Kreme's retail food sales qualified for Missouri's reduced one-percent sales tax rate under the statutory 80/20 test. The Court held that food prepared for "immediate consumption on or off the premises" includes food eaten at the place of purchase, while traveling to another location, or immediately upon arrival without further preparation. It reversed the Administrative Hearing Commission's decision granting the Director of Revenue summary decision and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Missouri
WRITING FOR THE COURT	William Ray Price, Jr.; Ronald L. Russell; Patricia Breckenridge; Zel M. Fischer; Richard B. Teitelman; Mary R. Russell; W. Brent Powell
JURISDICTION	Missouri
DECIDED	December 20, 2011
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Krispy Kreme petitioned the Supreme Court of Missouri for review of the Administrative Hearing Commission's decision sustaining the Director of Revenue's motion for summary decision and denying Krispy Kreme's sales-tax refund claim.
STANDARD OF REVIEW	The Court reviews the AHC's interpretation of Missouri revenue laws de novo. It reviews the AHC's decision for legal authorization, competent and substantial evidence on the whole record, compliance with mandatory procedural safeguards, and consistency with the reasonable expectations of the General Assembly. Summary decision is proper only when the established facts entitle a party to judgment and no genuine dispute exists as to material facts.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Missouri
PARTIES	Krispy Kreme Doughnut Corp. v. Director of Revenue

TOPICS

sales and use tax

statutory interpretation

administrative law

appellate jurisdiction

standard of review

PRACTICE AREAS

state and local taxation

administrative law

appellate procedure

QUESTIONS PRESENTED

1. What does the phrase "food prepared by such establishment for immediate consumption on or off the premises" mean under Missouri's 80/20 sales-tax test?
2. Whether the undisputed facts entitled either party to summary decision before the Administrative Hearing Commission.
3. Whether the AHC was authorized to sustain the Director of Revenue's motion for summary decision and deny Krispy Kreme's refund claim.

HOLDINGS

1. Under section 144.014.2, "food prepared by such establishment for immediate consumption on or off the premises" means food actually eaten at the place of preparation and purchase, while traveling to another location, or immediately upon arrival at another location without further preparation. The test does not include all food merely capable of immediate consumption, nor is it determined solely by purchase quantity, elapsed time after preparation, or the customer's ultimate destination.
2. Neither Krispy Kreme nor the Director of Revenue was entitled to summary decision because neither established entitlement to a favorable decision under the correct interpretation of the substantive law.

KEY QUOTATIONS

"Accordingly, "food prepared ... for immediate consumption on or off the premises" means all food that is eaten at the place of preparation and purchase, or while traveling to, or immediately upon arrival at another location without any further preparation." (53)

"Because neither party was entitled to summary decision, the AHC correctly overruled Krispy Kreme's motion; however, its decision to sustain the director's motion was not authorized by law." (54)

FACTUAL BACKGROUND

Krispy Kreme operated four Missouri retail stores selling donuts and other food and beverage products. It had collected sales tax at the four-percent rate on all retail sales, but later sought a partial refund for sales it claimed qualified for Missouri's one-percent food-tax rate. The AHC found that the products generally satisfied the statute's food-stamp-related definition, but concluded that more than 80 percent of the stores' gross receipts came from food prepared for immediate consumption. The record contained evidence concerning preparation times, quantities purchased, and customer consumption locations, but the Director did not challenge the accuracy of Krispy Kreme's statistics.

PROCEDURAL HISTORY

Krispy Kreme sought a partial refund of sales taxes paid from 2003 through 2005, contending that certain sales qualified for Missouri's reduced one-percent food-tax rate. The Director of Revenue denied the claim, and Krispy Kreme sought review before the Administrative Hearing Commission. On cross-motions for summary decision, the AHC denied Krispy Kreme's motion, sustained the Director's motion, and denied the refund claim. The Supreme Court affirmed the denial of Krispy Kreme's motion, reversed the order sustaining the Director's motion, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The AHC was instructed to overrule the Director of Revenue's motion for summary decision and conduct further proceedings in accordance with the AHC's rules of procedure.

CASES CITED

- E & B Granite, Inc. v. Dir. of Revenue, 331 S.W.3d 314, 316 (Mo. banc 2011)
- ITT Commercial Fin. Corp. v. Mid-America Marine Supply Corp., 854 S.W.2d 371, 381 (Mo. banc 1993)
- State v. Moore, 303 S.W.3d 515, 520 (Mo. banc 2010)
- Martin v. City of Washington, 848 S.W.2d 487, 491 (Mo. banc 1993)
- Wehrenberg, Inc. v. Dir. of Revenue, 352 S.W.3d 366, 367 (Mo. banc 2011)