SUPREME COURT OF MISSOURI

Business Aviation, LLC and Vaughn C. Zimmerman v. Director of Revenue

579 S.W.3d 212 (Mo. banc 2019) · No. SC97475 · Decided July 16, 2019

SUMMARY

The Supreme Court of Missouri held that Business Aviation, LLC transferred the right to use an aircraft to Burgess Aircraft Management, a common carrier, for valuable consideration. Accordingly, the aircraft purchase qualified for Missouri's resale use-tax exemption through the applicable statutory provisions. The court reversed the Administrative Hearing Commission's decision and remanded the matter.

CASE DETAILS

COURT	Supreme Court of Missouri
WRITING FOR THE COURT	Mary R. Russell
JURISDICTION	Missouri
DECIDED	July 16, 2019
DOCKET	SC97475
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Petition for review of an Administrative Hearing Commission decision assessing use tax, additions to tax, and interest against appellants based on their purchase and leasing of an aircraft.
STANDARD OF REVIEW	The court reviews the AHC decision for whether it is authorized by law, supported by competent and substantial evidence on the whole record, compliant with mandatory procedural safeguards, and not clearly contrary to the General Assembly's reasonable expectations. The AHC's interpretation of revenue statutes is reviewed de novo. Tax exemptions are strictly construed against the taxpayer, and the taxpayer must establish the exemption by clear and unequivocal proof.
PRECEDENTIAL VALUE	Published en banc opinion of the Supreme Court of Missouri; precedential.
PARTIES	Business Aviation, LLC, Vaughn C. Zimmerman, Zimmerman Properties Construction LLC, JRV Technologies LLC, Robert

Davidson, Matthew Zimmerman, Justin Zimmerman, James Foster v. Director of Revenue

TOPICS

sales and use tax | tax | statutory interpretation | agency adjudication | administrative law

PRACTICE AREAS

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

QUESTIONS PRESENTED

1. Whether the aircraft lease transferred the right to use the aircraft from Business Aviation to Burgess for purposes of the Missouri resale use-tax exemption.
2. Whether the payments made or credited under the lease constituted valuable consideration even when some related-party charter flights were billed at a discounted rate and the payment did not equal the lease's stated hourly rate.
3. Whether Business Aviation therefore qualified for the resale exemption under sections 144.018.1(4), 144.615(3), and 144.030.2(20).

HOLDINGS

1. A lease transfers the right to use tangible personal property when it transfers the exercise of a right or power over the property incident to ownership or control; the lease transferred that right from Business Aviation to Burgess.
2. Valuable consideration does not require payment of the exact amount stated in a lease, an exchange of checks, a profit to the lessor, or proof of an actual benefit; the payments and credits made by Burgess for use of the aircraft constituted valuable consideration.
3. Because Business Aviation transferred the right to use the aircraft to a Missouri common carrier for valuable consideration paid or to be paid, the aircraft purchase qualified for the resale tax exemption under sections 144.018.1(4), 144.615(3), and 144.030.2(20).

KEY QUOTATIONS

> *"Chapter 144 and previous case law do not require the right to use to be "fully" transferred for a lease to constitute a sale."* (at 219)

> *"But the definition of valuable consideration does not require checks to exchange hands, nor does it require the amount paid to be the exact amount stated in the lease agreement."* (at 222)

> *"Valuable consideration does not compel a certain amount to be paid, nor does it require the exact amount stated in the lease agreement to be paid."* (at 223)

FACTUAL BACKGROUND

Business Aviation purchased an aircraft from Cessna Finance Corporation in Kansas and entered into an aircraft lease agreement the same day with Burgess Aircraft Management LLC, a Missouri common carrier. The lease transferred exclusive care, custody, and control of the aircraft to Burgess and required Burgess to pay Business Aviation an hourly amount for use of the aircraft. Burgess paid either $900 or, for certain related-party charters, $434.77 per flight hour, with the payments reflected in monthly financial summaries. The Director of Revenue assessed use tax, additions to tax, and interest, and the AHC denied the claimed resale exemption.

PROCEDURAL HISTORY

The Director of Revenue assessed use tax, additions to tax, and interest against Business Aviation, its members, and related parties. The Administrative Hearing Commission determined that the aircraft lease did not constitute a sale for purposes of the resale use-tax exemption. Appellants petitioned the Supreme Court of Missouri for review, and the court reversed the AHC's decision and remanded the matter.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The AHC's decision is reversed and the matter is remanded; the opinion provides no further specific remand instructions.

CASES CITED

- Brinker Mo., Inc. v. Director of Revenue, 319 S.W.3d 433, 435 (Mo. banc 2010)
- Union Electric Co. v. Director of Revenue, 425 S.W.3d 118, 121 (Mo. banc 2014)
- Bartlett International, Inc. v. Director of Revenue, 487 S.W.3d 470, 472 (Mo. banc 2016)
- TracFone Wireless, Inc. v. Director of Revenue, 514 S.W.3d 18, 21 (Mo. banc 2017)
- Fall Creek Construction Co. v. Director of Revenue, 109 S.W.3d 165, 169 (Mo. banc 2003)
- Five Delta Alpha, LLC v. Director of Revenue, 458 S.W.3d 818, 821-22 (Mo. banc 2015)
- Brambles Industries, Inc. v. Director of Revenue, 981 S.W.2d 568, 570 (Mo. banc 1998)
- Asbury v. Lombardi, 846 S.W.2d 196, 201 (Mo. banc 1993)
- Moore v. Seabaugh, 684 S.W.2d 492, 496 (Mo. App. 1984)
- Brown v. Weare, 152 S.W.2d 649, 653-54 (Mo. 1941)