

Three Contractors Denied Sales/Use Tax Exemptions

by

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In three separate cases, the Missouri Supreme Court denied on January 13, 2015 the requests of two contractors and one subcontractor for exemptions from sales and use taxes for construction-related activities.

The cases are *Ben Hur Steel Worx, LLC v. Director of Revenue*, 2015 WL 161747, *Fred Weber, Inc. v. Director of Revenue*, 2015 WL 161751 and *Alberici Constructors, Inc. v. Director of Revenue*, 2015 WL 161935. All three cases stem from hearings with Missouri's Administrative Hearing Commission (AHC).

In the *Ben Hur Steel Worx* case, Ben Hur had applied for refunds of nearly \$200,000 for 2008-2010. Ben Hur contracts with commercial construction companies to provide labor, materials and equipment to furnish and install structural steel beams, plates, angles and other components for construction of large-scale commercial buildings and structures. Ben Hur buys steel beams and steel plates directly from steel mills.

Ben Hur modifies the steel beams according to project drawings and specifications to cut them to length, provide proper drilling holes and slots, bevel the edges, chamfer, curb, cope and cut the steel.

If the steel components that Ben Hur purchased were for a taxable construction project, Ben Hur paid tax on the components. If the project was for a tax-exempt entity, such as an educational institution or health care organization, Ben Hur did not pay sales tax on the purchased materials.

The dispute involved whether Ben Hur could seek tax reimbursement for materials purchased to fulfill construction contracts it had with non-exempt entities.

Section 144.054.2 of the Missouri Statutes exempts the following from sales tax:

electrical energy and gas, whether natural, artificial, or propane, water, coal, and energy sources, chemicals, machinery, equipment, and materials used or

consumed in the manufacturing, processing, compounding, mining, or producing of any product, or used or consumed in the processing of recovered materials, or used in research and development related to manufacturing, processing, compounding, mining, or processing any product.

Both the AHC and the Missouri Supreme Court found that Ben Hur as a subcontractor was using steel beams, plates and angles to fulfill contractual obligations to construct steel frames for commercial buildings. These activities were part of construction contracts, an activity not exempt under the language of Section 144.054.2. The Missouri Supreme Court decided that if the Missouri Legislature had intended for “construction” activities to be included in this section, it would have used words that included construction activities and no such words are in this section.

In the *Fred Weber* case, Weber in 2008-09 sold various paving companies approximately \$2.6 million worth of rock base and asphalt. Weber applied for a sales tax refund under Section 144.054.2 of \$139,654.62 for those sales. The AHC agreed with Weber.

The Missouri Supreme Court, however, found that this section was meant to apply to large-scale industrial activities. The paving companies were not engaged in such activities. Instead, they were engaged in construction.

Since the word “construction” does not appear in Section 144.054, the high court concluded the Missouri Legislature did not intend that such activities should be exempt from sales and use taxes.

In the *Alberici Constructors* case, the dispute was whether Alberici was entitled to a refund of \$18,593.11 for use taxes it paid for rentals of cranes and a welder to construct manufacturing equipment at a new cement plant in Missouri and a use tax for the delivery of one of the cranes to the manufacturing job site.

In this case, the applicable exemption is in Section 144.030.2(5), which reads as follows:

Machinery and equipment, and parts and the materials and supplies solely required for the installation or construction of such machinery and equipment, purchased and used to establish new or to expand existing manufacturing, mining or fabricating plants in the state if such machinery and equipment is used directly in manufacturing, mining or fabricating a

product which is intended to be sold ultimately for final use or consumption.

The Supreme Court decided that the only question was whether the cranes and welder were materials within the meaning of this section. The court concluded that even if a dictionary definition of material could include machinery, machines such as cranes and welders do not appear to be what the Legislature intended by materials.

Alberici also sought a tax exemption for the delivery charge of \$15,000.00 paid to Bulldog Erectors to deliver one of the cranes to the job site. The Supreme Court supported the AHC finding that it was the intention of Alberici and Bulldog Erectors that the delivery service was to be part of the crane rental and therefore the delivery charge was subject to the use tax.

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