

Before the
Administrative Hearing Commission
State of Missouri



MIDWEST QUALITY GLOVES, INC.,)	
)	
Petitioner,)	
)	
vs.)	No. 11-0578 RS
)	
DIRECTOR OF REVENUE,)	
)	
Respondent.)	

DECISION

Midwest Quality Gloves, Inc., (“MQG”) is subject to use tax on gloves donated to charity. MQG is not subject to sales tax.

Procedure

MQG filed its complaint on April 4, 2011. The Director of Revenue filed his answer on May 2, 2011. MQG filed an amended complaint on November 18, 2011. The Director filed an amended answer on November 22, 2011. We held a hearing on October 1, 2012. This case became ready for our consideration on March 4, 2013, when the last written argument was filed.

Findings of Fact

1. MQG operates a glove importing and manufacturing business in Chillicothe, Missouri.
2. MQG’s business is located in the Kansas City, Missouri, Foreign Trade Zone (“FTZ”).

3. MQG both manufactures gloves and imports gloves from vendors outside the United States.
4. MQG purchased gloves from foreign vendors and held them for resale.
5. MQG sorted the foreign-made gloves for repackaging and inspected them for defects.
6. MQG donated defective gloves to charity.
7. The gloves that MQG donated were removed from inventory, taken out of the FTZ, and transferred to MQG's sample room. MQC paid customs duties on the gloves at that time.
8. All of the gloves that MCQ donated to charity were imported from outside the United States.
9. The Director audited MQG for withholding, sales, and use taxes for time periods between January 2007 and December 2009.
10. The Director determined that MQG was subject to sales tax liability for gloves that were removed from inventory and subsequently donated.
11. The Director issued sales tax assessments for the following periods:
 - a. January 1, 2007—March 31, 2007: \$10,792.42 in taxes and \$2,400.37 in interest;
 - b. January 1, 2008—March 31, 2008: \$1,137.79 in taxes and \$161.86 in interest;
 - c. January 1, 2009—March 31, 2009: \$4,207.98 in taxes and \$304.12 in interest.
12. The use tax rate for the 2007, 2008, and 2009 years was 4.9750 percent.
13. The value of the donated gloves was:
 - a. January 1, 2007—March 31, 2007: \$149,376;
 - b. January 1, 2008—March 31, 2008: \$15,748;
 - c. January 1, 2009—March 31, 2009: \$58,242.
14. The Director issued his final decision on February 15, 2011.

Conclusions of Law

This Commission has jurisdiction over appeals from the Director's final decisions.¹ MQG has the burden of proof.²

The issue in this case is straightforward. MQG imported gloves from foreign vendors with the intent to resell the gloves. MQG sorted the gloves and discarded gloves that were defective. MQG donated some of the discarded gloves to charity. MQG now wants a sales or use tax exemption for the donated gloves.

The Director's auditor assessed sales tax because he could not ascertain whether the gloves came from Missouri or abroad. MQG has supplied us with evidence showing that the gloves all came from suppliers outside of the United States. "Use taxes are meant to complement, supplement, and protect sales taxes by eliminating the incentive to purchase from out-of-state sellers in order to avoid local sales taxes."³ Sales taxes apply when the sale takes place within Missouri.⁴

The Director argues that we are bound by the record given to the Department's auditor. We disagree. Our duty in a tax case is not to review the Director's decision but to find the facts and to determine the taxpayer's lawful tax liability for the period or transaction at issue.⁵ Based on the fact that all of the gloves came from overseas, we conclude that use tax is the proper tax to apply.

MQG is not entitled to a use tax exemption. We begin with the general use tax statute, § 144.610.1:

¹Section 621.050.1. All statutory citations are to the 2000 version of the Missouri Revised Statutes unless otherwise noted.

²*Branson Properties USA v. Director of Revenue*, 110 S.W.3d 824, 825-26 (Mo. banc 2003); §§ 136.300.1 and 621.050.2.

³*Kirkwood Glass Co., Inc. v. Director of Revenue*, 166 S.W.3d 583, 585-86 (Mo. banc 2005).

⁴Section 144.021.

⁵*J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20-21 (Mo. banc 1990).

A tax is imposed for the privilege of storing, using or consuming within this state any article of tangible personal property purchased on or after the effective date of sections 144.600 to 144.745 in an amount equivalent to the percentage imposed on the sales price in the sales tax law in section 144.020. This tax does not apply with respect to the storage, use or consumption of any article of tangible personal property purchased, produced or manufactured outside this state until the transportation of the article has finally come to rest within this state or until the article has become commingled with the general mass of property of this state.

There is no dispute that MQG stored the gloves in Missouri. There is also no dispute that the defective gloves became part of the “general mass of property” in Missouri when MQG removed those gloves from the foreign trade zone, paid customs duties, and placed the gloves in their sample room. Therefore, unless MQG is entitled to a use tax exemption, MQG must pay use tax.

The only potential exemption to use tax in this case is § 144.615(6): “Tangible personal property held by processors, retailers, importers, manufacturers, wholesalers, or jobbers solely for resale in the regular course of business.” “The elements of the resale exemption are: (1) a transfer, barter or exchange, (2) of the title or ownership of tangible personal property or the right to use, store or consume the same, (3) for a consideration paid or to be paid.”⁶ Here, there was no consideration paid for the gloves. The resale exemption does not apply. Therefore, MQG must pay use tax.

Finally, MQG contends that the gloves are not subject to tax because the gloves were in an FTZ. MQG relies on 19 U.S.C. §81(e):

Tangible personal property imported from outside the United States and held in a zone for the purpose of storage, sale, exhibition, repackaging, assembly, distribution, sorting, grading, cleaning, mixing, display, manufacturing, or processing, and tangible personal property produced in the United States and held in a zone for exportation, either in its original form or as altered by any of the above processes, shall be exempt from State and local ad valorem taxation.

⁶ *McDonnell Douglas Corp. v. Director of Revenue*, 945 S.W.2d 437, 440 (Mo. banc 1997).

The Director counters by citing *R.J. Reynolds Tobacco Co. v. Durham County, North Carolina*, 479 U.S. 130, 143-145 (1986), for the proposition that a North Carolina use tax was proper on tobacco held in a customs-bonded warehouse.

We need not consider the interplay between 19 U.S.C. §81(e) and *R.J. Reynolds* because MQG removed the defective gloves from the FTZ. Therefore, we examine the gloves after they formally entered the United States and after customs duties were paid. Therefore, §81o(e) does not apply because the gloves were not in a FTZ when the use tax was calculated.

Conclusion

We find that MQG does not have to pay the sales taxes assessed by the Director. Further, we have determined that use tax, rather than sales tax, applies to MQG. The Director has not made a use tax assessment. He is required to do so under § 144.670. We lack the power to determine the use tax for which MQG is liable.⁷

SO ORDERED on September 13, 2013.

\s\ Nimrod T. Chapel, Jr.
NIMROD T. CHAPEL, JR.
Commissioner

⁷ See *Dyno Nobel, Inc. v. Director of Revenue*, 75 S.W.3d 240, 243 -244 (Mo. 2002).