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Circular Arguments Float A Refund On Inner Tubes In Missouri

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The Missouri Supreme Court in *Six Flags Theme Parks, Inc.*,¹ holds that inconsistent statutory provisions and the compelling legislative goal of taxing property but once justify a refund of tax paid on the rental of inner tubes "Where the Rivers Run!"²

The taxpayer in *Six Flags* had paid sales or use tax on its purchases of inner tubes and collected sales tax on the fees charged for the tube rentals. The taxpayer then filed a claim for refund of double taxation under Missouri Revised Statute §144.020.1(8), which was denied by the Director of Revenue. The Administrative Hearing Commission reversed the Director's decision, and the Director appealed the case to the Missouri Supreme Court.

The primary issue was the inconsistency between Missouri statutes §144.020.1(2), which taxes all fees paid to, or in, any place of amusement, and §144.020.1(8), which exempts from tax the lease or rental of property purchased in a retail sale where tax was paid at the time of purchase. Missouri courts have had difficulty reconciling these provisions for several years.

In 1977, the Missouri Supreme Court held that fees, including fees for bowling shoes, charged for participating in the activity of bowling were taxable under §144.020.1(2), without reference to §144.020.1(8).

In 1999, the Missouri Supreme Court held that fees paid to rent golf carts at a country club were not taxable because the statutory exemption of §144.020.1(8) is more specific than the statutory language of §144.020.1(2).

In 2003, the Missouri Supreme Court again upheld the taxability of bowling shoes (under the doctrine of *stare decisis*), but held that fees paid to rent arcade machines at

¹ See *Six Flags Theme Parks, Inc. v. Director of Revenue*, No. SC86519, ____ S.W. 3d ___, 2005 WL 3111974 (Mo., Nov. 22, 2005).

² See www.visitMO.com (If you are ready for an adventure, it's time to explore Missouri, Where the Rivers Run!)

a theme park were not taxable, again because §144.020.1(8) was considered more specific than §144.020.1(2).

The Missouri Supreme Court denied requests to reconcile the treatment of bowling shoes and other amusement rental items. Instead, the Court noted that while bowling shoes are required to bowl, rental of golf carts are not required to play golf, rental of arcade machines are not required to visit Six Flags, and inner tubes are not required for the wave pool. At least for now, the case holding on bowling shoes is restricted to its particular facts.■



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