

Certain property exempt from taxes.

137.100. The following subjects are exempt from taxation for state, county or local purposes:

- (1) Lands and other property belonging to this state;
- (2) Lands and other property belonging to any city, county or other political subdivision in this state, including market houses, town halls and other public structures, with their furniture and equipments, and on public squares and lots kept open for health, use or ornament;
- (3) Nonprofit cemeteries;
- (4) The real estate and tangible personal property which is used exclusively for agricultural or horticultural societies organized in this state, including not-for-profit agribusiness associations;
- (5) All property, real and personal, actually and regularly used exclusively for religious worship, for schools and colleges, or for purposes purely charitable and not held for private or corporate profit, except that the exemption herein granted does not include real property not actually used or occupied for the purpose of the organization but held or used as investment even though the income or rentals received therefrom is used wholly for religious, educational or charitable purposes;
- (6) Household goods, furniture, wearing apparel and articles of personal use and adornment, as defined by the state tax commission, owned and used by a person in his home or dwelling place;
- (7) Motor vehicles leased for a period of at least one year to this state or to any city, county, or political subdivision or to any religious, educational, or charitable organization which has obtained an exemption from the payment of federal income taxes, provided the motor vehicles are used exclusively for religious, educational, or charitable purposes;
- (8) Real or personal property leased or otherwise transferred by an interstate compact agency created pursuant to sections 70.370 to 70.430* or sections 238.010 to 238.100 to another for which or whom such property is not exempt when immediately after the lease or transfer, the interstate compact agency enters into a leaseback or other agreement that directly or indirectly gives such interstate compact agency a right to use, control, and possess the property; provided, however, that in the event of a conveyance of such property, the interstate compact agency must retain an option to purchase the property at a future date or, within the limitations period for reverters, the property must revert back to the interstate compact agency. Property will no longer be exempt under this subdivision in the event of a conveyance as of the date, if any, when:
 - (a) The right of the interstate compact agency to use, control, and possess the property is terminated;
 - (b) The interstate compact agency no longer has an option to purchase or otherwise acquire the property; and

(c) There are no provisions for reverter of the property within the limitation period for reverters;

(9) All property, real and personal, belonging to veterans' organizations. As used in this section, "veterans' organization" means any organization of veterans with a congressional charter, that is incorporated in this state, and that is exempt from taxation under section 501(c)(19) of the Internal Revenue Code of 1986, as amended.

State Tax Commission of Missouri

DURHAM SCHOOL SERVICE, L.P.,)	
)	
Complainant,)	
)	
v.)	Appeal Number 05-32011
)	
CATHY RINEHART, ASSESSOR,)	
CLAY COUNTY, MISSOURI,)	
)	
Respondent.)	

DECISION AND ORDER

HOLDING

Decision of the Clay County Board of Equalization sustaining the assessment made by the Assessor is **AFFIRMED**. The Commission finds presumptions of correct assessment not rebutted and exemption of property not established under Section 137.100(7), Revised Statutes of Missouri (RSMo).

Complainant appeared by Counsel Michael A. LeVota, Lee’s Summit, Missouri.
Respondent appeared by Counsel, Patricia Hughes, Assistant County Counselor.
Case heard by Senior Hearing Officer W. B. Tichenor.
Case decided by the Commission.

ISSUE

The Commission takes this appeal to determine whether the Complainant’s motor vehicles (28 – *school busses*) meet the requirements of Section 137.100(7), RSMo to be exempt from *ad valorem* taxation.

SUMMARY

Complainant appeals, on the ground of exemption under Section 137.100(7), RSMo, the decision of the Clay County Board of Equalization, which sustained the assessment and valuation of the subject motor vehicles. A hearing was conducted on December 14, 2006, at the Clay County Administration Building, Liberty, Missouri. Transcript was filed with the Commission on January 12, 2007. Order setting Briefing Schedule was issued January 16, 2007. Complainant filed its Brief on February 20, 2007 (*dated received at Commission Office*). Respondent filed her Brief on March 21, 2007 (*dated received at Commission Office*). Complainant filed its Reply Brief on April 13, 2007 (*dated received at Commission Office*), with a Motion to File Reply Brief Out of Time. Reply Brief was due April 10th, it and the Motion were mailed on April 12th, sent as an email attachment at 5:24 pm, April 12th. Motion granted and Reply Brief received.

The Commission, having considered all of the competent evidence upon the whole record, enters the following Decision and Order.

Complainant's Evidence

Complainant offered into evidence the following exhibits and written direct testimony:

Exhibit A – Contract between Crabtree Harmon Corporation and Kearney R-I School District, dated June 6, 2000

Exhibit B – Contract between Lone Jack C-6 School District and Durham School Services, dated April 12, 2002

Exhibit C – Contract between Oak Grove R-VI Schools and Durham School Services, L.P., dated May, 2, 2003

Exhibit D – Contract between Hickman Mills C-I School District and Durham School Services, L.P, dated September 2, 1997, with Addendum, dated August 1, 2003.

Exhibit E – Written direct testimony of Scott Bruegge, Vice-President of Durham School Services

Exhibit F – Written direct testimony of Robin Reed, Executive Assistant for Durham School Services

No objections were made to any of the exhibits. Exhibits A through F were received into evidence.

Respondent's Evidence

Respondent offered into evidence the following exhibits and written direct testimony.

Exhibit 1 – 2005 Personal property Declaration

Exhibit 2 – Contract for School Bus Services for Kearney R-1 School District

Exhibit 3 – 2005-06 Bus List – Durham School Services

Exhibit 4 – Copies of pages from 2005 Missouri Assessor's State Valuation Guide

Exhibit 5 – Written direct testimony of Dee Anna Richardson, Director of Personal Property for Clay County Assessor.

No objections were made to any of the exhibits. Exhibits A through F were received into evidence.

FINDINGS OF FACT

1. Jurisdiction over this appeal is proper. Complainant timely appealed to the State Tax Commission from the decision of the Clay County Board of Equalization.

2. The subject property is identified by Assessor's Account Number 87246. The property consists of passenger busses as shown on Exhibit 1 – Form B of 2005 Business Personal Property Declaration and Assessor's Personal Property Assessment Form.

3. The contract between Complainant and the School District includes the following provisions (*Exhibits A & 2, Tr. 15 – 16*):

- a. The subject motor vehicles (*school busses*) are operated under a contract by which Complainant maintains possession of the busses, and arranges for the drivers.
- b. Drivers are not school district employees, but employees of a company related to Complainant, although the District has a right to approve employment or require termination of employment.
- c. Drivers are supervised by and take direction from the bus company.
- d. Separate arrangements must be made and additional fees apply for use of busses for extra curricular activity, such as transporting a team to a game, or taking a class on a field trip.
- e. All maintenance of the busses is done by Complainant and the busses are stored at Complainant's facility, leased from the District, when not in use.
- f. The District has no control over the specific vehicles used to fulfill the contract. Complainant has the option to use different buses if it wants, so long as the bus meets the standard for age/size etc, set for in the contract.
- g. Complainant has the right to hire out and use the busses for other purposes, such as for transportation for Boy Scout or church group trips.

4. Complainant's evidence was not substantial and persuasive to rebut the presumptions of correct assessment by the Assessor and the Board and establish the property under appeal to be exempt under §137.100(7).

5. The agreement between Complainant and the Kearney R-I School District is a contract for transportation services, a service agreement, and does not qualify as a lease of motor vehicles in the plain and ordinary meaning of the word "lease."

CONCLUSIONS OF LAW AND DECISION

Jurisdiction

The Commission has jurisdiction to hear this appeal and correct any assessment which is shown to be unlawful, unfair, arbitrary or capricious. *Article X, section 14, Mo. Const. of 1945; Sections 138.430, 138.431, RSMo.* The Commission shall issue a decision and order affirming, modifying or reversing the determination of the board of equalization, and correcting any assessment which is unlawful, unfair, improper, arbitrary, or capricious. *Section 138.431.4, RSMo.*

Presumptions in Appeals

There is a presumption of validity, good faith and correctness of assessment by the County Board of Equalization. *Hermel, Inc. v. STC*, 564 S.W.2d 888, 895 (Mo. banc 1978); *Chicago, Burlington & Quincy Railroad Co. v. STC*, 436 S.W.2d 650, 656 (Mo. 1968); *May Department Stores Co. v. STC*, 308 S.W.2d 748, 759 (Mo. 1958).

The Supreme Court of Missouri has held, “A tax assessor’s valuation is presumed correct.” *Snider v. Casino Aztar/Aztar Missouri Gaming Corp.*, 156 S.W.3d 341 (Mo. 2005). Citing to *Hermel, supra*; and *Cupples Hesse Corp. v. State Tax Commission*, 329 S.W.2d 696, 702 (Mo. 1959).

The presumptions of correct assessment are rebutted when the taxpayer presents substantial and persuasive evidence to establish that the assessor’s or Board’s assessment is erroneous. *Snider, Hermel & Cupples Hesse, supra*.

Exemption of Certain Motor Vehicles

Motor vehicles leased for a period of at least one year to this state or to any city, county, or political subdivision or to any religious, educational, or charitable organization which has obtained an exemption from the payment of federal income taxes, provided the motor vehicles are used exclusively for religious, educational, or charitable purposes are exempt from taxation for state, county or local purposes. §137.100(7), *RSMo*

Subject Busses Not Leased to School District

The present case presents a case of first impression for the Commission. The issue to be decided is one of law based on the facts of this appeal. Under the facts of this case, the school busses are not “leased” to the schools, and therefore they are not exempt. Section 137.100(7), *RSMo*, states, in pertinent part, “The following subjects are exempt from taxation for state, county or local purposes:... (7) Motor vehicles leased for a period of at least one year to this state or to any city, county or political subdivision...” (*emphasis added*). The school district is a political subdivision, and the agreement in this case is for more than one year. However, the busses are not leased.

A lease involves the transfer of possession and control for a period of time. Neither possession nor control is transferred under the terms of the agreement in this case. The term “leased” has a very specific meaning. In interpreting a statute the primary objective is to ascertain the intent of the legislature from the words that are used. *United Pharmacal Co. of Mo., Inc. v. Mo. Bd. of Pharmacy*, 208 S.W.3d 907, 909 (Mo. banc 2006). “This goal is achieved by giving the language used its plain and ordinary meaning.” *Id. at 909*.

Where a word “...is not defined in the statute, its meaning is ascertained from the dictionary definition.” *Id. at 912*. *Black’s Law Dictionary* defines the term “lease” as “Any agreement which gives rise to relationship of landlord and tenant (real property) or lessor and lessee (real or personal property). . When used with reference to tangible personal property, word ‘lease’ means a contract by which one owning such property grants to another the right to possess, use and enjoy it for a specified period of time in exchange for periodic payment of a stipulated price, referred to a rent.” *Black’s Law Dictionary, Sixth Edition*.

When used as a verb, as in Section 137.100(7), *RSMo*, the term is defined as: “lease, vb. 1. To grant the possession and use of (land building, room, movable property, etc.) to another in return for rent or other consideration. <The city leased the stadium to the football team>. 2. To take a lease of to hold by lease <Carol leased the townhouse from her uncle>.” *Blacks Law Dictionary, Seventh Edition*.

Standard dictionary definitions include:

“lease - . . 1. A contract granting occupancy or use of property during a certain period in exchange for a specified rent. 2. The term or duration of a lease. 3. Property occupied or used under the terms of a lease...” *Webster II New Riverside University Dictionary*.

“lease. . . 1. A contract for the temporary occupation or use of premises, property, etc. in exchange for payment of rent. 2. The period of such occupation or use. v.1. 1. To grant use of under a lease. 3. to hold under a lease.” *Funk & Wagnalls Standard Desk Dictionary*.

The Missouri Uniform Commercial Code definitions state “‘Lease’ means a transfer of the right to possession and use of goods for a term in return for consideration....” Section 400.2A-103 (j) R.S.Mo.

The essential elements in each of these definitions are “use” and “possession.” The Complainant in this case claims that the school district has the possession and use of the busses, but the claim is not supported by the evidence. The school district in this case does not have possession of the busses. The busses are driven, maintained, and garaged by non-school employees. If the school wants a bus for other than the standard routes, additional arrangements and payment must be made. Complainant itself acknowledges that “Black’s Law Dictionary (8th Edition) defines ‘possession’ to include the control of the property for one’s use and enjoyment to the exclusion of other persons.” *Complainant’s Brief, page 5*.

The school does not have possession and control, the school cannot drive the bus whenever it wishes, and the school cannot prevent Complainant from using the busses for itself or for other customers. Neither are the busses “used by” the school district. The primary use of the busses is to make a profit for the owner. That the way a profit is made is by arranging routes and transporting school children does not change the primary use of the bus, which is to fulfill the transportation services agreement. The schools do not have the right to use busses at will, and do not have the right to use particular busses. The Complainant may send different busses, or substitute busses when it wants, so long as the bus meets the contract criteria.

The term “leased” in Section 137.100(7) is unambiguous. It has a commonly understood meaning. It involves the transfer of use and possession. There is no transfer of use or possession under the facts of this case. The courts must give effect to the plain meaning of the statute and the words used.

Other methods of determining legislative intent also support Respondent’s position. In looking for the intent of the legislature “the Court may. . . consider the problem the statute was enacted to remedy.” *In re MD.R., 124 S.W.3d 469, 472 (Mo banc 2004), cited with authority in United Pharmacal, Id at 913*. Prior to the enactment of Section 137.100(7) property leased to political subdivisions was taxable, even where it was being purchased through a lease-purchase plan. *Op. Atty. Gen. No. 31, Burlison, 6-8-67*. The Commission agrees with Complainant, that political subdivisions have increased the use of lease-purchase plans as an alternate method of financing purchases of personal property. Recognizing that such lease-purchase plans gave the taxing authority nearly all the rights of an owner (*except immediate title*), it is plain that the legislature intended to recognize the practical effect of this type of financing by extending the tax exemption. The statute solved the problem of tax bills on property that was being purchased by political subdivisions.

It does not follow, however, that the exemption applies to service contracts. If the legislature had intended to exempt vehicles used in contracts with political subdivisions, it could have said so. It did not. The legislature could have said “motor vehicles used in connection with services provided to political subdivisions are exempt.” It did not say that.

CONCLUSION

The school busses owned by Complainant are not leased to the school district under the facts of this case, and therefore they are not exempt.

ORDER

The assessed valuation for the subject property as determined by the Assessor and sustained by the Board of Equalization for Clay County for the subject tax day is AFFIRMED.

The subject property for tax year 2005 does not qualify for exemption from taxation for state, county and local purposes under Section 137.100(7), RSMo.

Judicial review of this Order may be had in the manner provided in Sections 138.432 and 536.100 to 536.140, RSMo within thirty days of the date of the mailing of this Order.

If judicial review of this decision is made, any protested taxes presently in an escrow account in accordance with this appeal shall be held pending the final decision of the courts. If no judicial review is made within thirty (30) days, this decision and order is deemed final and the Collector of Clay County, as well as the collectors of all affected political subdivisions therein, shall, unless the impounded taxes have been disbursed in accordance with an order of the Circuit Court pursuant to section 139.031.8 RSMo., disburse the protested taxes presently in an escrow account to the appropriate political subdivisions. Any Finding of Fact which is a Conclusion of Law or Decision shall be so deemed. Any Decision which is a Finding of Fact or Conclusion of Law shall be so deemed.

SO ORDERED April 25, 2007.

STATE TAX COMMISSION OF MISSOURI

Bruce E. Davis, Chairman

Jennifer Tidwell, Commissioner

Charles Nordwald, Commissioner

Certificate of Service

I hereby certify that a copy of the foregoing has been mailed postage prepaid on this 25th day of April, 2007, to: Michael LeVota, 400 N.E. Brockton Drive, Lee's Summit, MO 64064, Attorney for Complainant; Patricia Hughes, Assistant County Counselor, 17 W. Kansas, Suite 3, Attorney for Respondent; Cathy Rinehart, Assessor, 1 Courthouse Square, Liberty, MO 64068; Tom Brandom, Clerk, Administration Building, 1 Courthouse Square, Liberty, MO 64068; Sandra Reeves, Collector, Administration Building, 1 Courthouse Square, Liberty, MO 64068.

Barbara Heller
Legal Coordinator