

## Sales/Use/Indirect:

### Missouri: State High Court Disallows Resale Exemption Based on Terms of Aircraft Reuse Agreement

*Case No. SC98409, Mo. (3/2/21).* The Missouri Supreme Court (Court) partially reversed a Missouri Administrative Hearing Commission (Commission) decision to hold that a taxpayer is liable for state use tax on its purchase of two aircraft, because the transactions did not qualify for Missouri's resale exemption based upon the terms of a subsequent aircraft lease agreement with its parent company. In doing so, the Court agreed with the Missouri Director of Revenue that the arrangement terms with its parent did not transfer use of either aircraft because the taxpayer retained general control and priority use of both aircraft and the parent, which had no priority to use either aircraft, could operate the aircraft only if the taxpayer had not already leased them to a third-party or claimed priority use for itself. According to the Court, such an arrangement is not a transfer of use, which under statute requires both the exercise of "any right or power" over property and either "ownership or control" of that property. For this reason, the Court concluded that a subsequent aircraft "sale" to the parent did not occur and thus the taxpayer was not entitled to a resale exemption on its purchase of either aircraft.

**URL:** [https://www.courts.mo.gov/file/SC/Opinion\\_SC98409\\_2.pdf](https://www.courts.mo.gov/file/SC/Opinion_SC98409_2.pdf)

However, the Court affirmed a separate part of the Commission's ruling that the taxpayer was entitled to a resale exemption on its purchase of one of the aircraft based upon the terms of another lease. Specifically, the Court agreed with the Commission that a separate lease agreement to a common carrier was sufficient to constitute a "sale" under state tax law, comparing the facts to those in a previous Court case from 2019. The terms of this other agreement required the taxpayer to deliver the aircraft to the lessee's base of operation, where it was required to be hangered in the lessee's custody throughout the lease, and, during the lease period, the taxpayer could not override the lessee's schedule. Further, the lessee had operational control of the aircraft during charter flights and was solely responsible for its maintenance. Therefore, the Court concluded that the Commission did not err in allowing the resale exemption for that aircraft. Please contact us with any questions.

— Jeff Maxwell (Denver)  
Senior Manager  
Deloitte Tax LLP  
[jemaxwell@deloitte.com](mailto:jemaxwell@deloitte.com)

Collin Koenig (Kansas City)  
Manager  
Deloitte Tax LLP  
[cokoenig@deloitte.com](mailto:cokoenig@deloitte.com)

This document contains general information only and Deloitte is not, by means of this document, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This document is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. Deloitte shall not be responsible for any loss sustained by any person who relies on this document.

**About Deloitte**

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee (“DTTL”), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as “Deloitte Global”) does not provide services to clients. In the United States, Deloitte refers to one or more of the US member firms of DTTL, their related entities that operate using the “Deloitte” name in the United States and their respective affiliates. Certain services may not be available to attest clients under the rules and regulations of public accounting. Please see [www.deloitte.com/about](http://www.deloitte.com/about) to learn more about our global network of member firms.