

Sales/Use:

Nebraska: State High Court Says Resale Exemption Does Not Apply as Re-Lease is Not for “Business”

Case No. S-20-518, Neb. (7/30/21). In a case involving a company’s purchase and subsequent lease of an airplane, the Nebraska Supreme Court (Court) affirmed that the company did not qualify for Nebraska’s resale exemption on the purchase because it failed to meet its burden of proving that the purchase and use of the airplane was a sale for resale in the normal course of its business under state law. In doing so, the Court explained that when determining whether property is being leased in the normal course of a taxpayer’s business within the meaning of the relevant statute at issue, Neb. Rev. Stat. section 77-2701.34 (Reissue 2018), a court may consider factors including, but not limited to:

URL: <https://www.nebraska.gov/apps-courts-epub/public/viewOpinion?docId=N00007995PUB>

- Whether the leases are entered into with consumers who are related to or associated with the taxpayer,
- Whether the terms of the leases and the parties’ subsequent conduct reflect an arm’s-length business transaction,
- Whether the leases produced reasonable revenue for the taxpayer’s business in relation to operating expenses, and
- Whether the taxpayer held itself out to the public as being in the business of leasing the property.

Applying these factors to the facts at hand, the Court concluded that the company failed to show that the airplane was leased in the normal course of its business in an activity with the object of gain, benefit, or advantage. Please contact us with any questions.

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