

## Sales/Use/Indirect:

### Missouri: Intercompany Resales of Configured IT Equipment are Deemed to Qualify for Exemption

*Decision No. 19-1217, Mo. Admin. Hrg. Comm. (2/3/23).* A wholly owned limited liability company (LLC) organized under a tiered structure that purchased information technology (IT) equipment that it intended to resell to its retail store affiliates, but which installed software and otherwise processed and configured the IT equipment for its affiliates before reselling it to them with a fixed markup, nevertheless was deemed to qualify for Missouri's resale exemption. Rejecting the Missouri Department of Revenue's claim pursuant to Missouri Supreme Court caselaw that the LLC's use "exceeds the bounds of control a taxpayer may exert over tangible personal property before a claimed resale exemption," the Missouri Administrative Hearing Commission (AHC) reasoned that there is no dispute that the LLC purchased the IT equipment with the intention to resell it to purchasers and that those purchases ultimately were subject to use tax paid by the end purchaser in the appropriate state – and thus allowing the LLC to claim a resale exemption "satisfies the fundamental purposes of the resale exemption because doing otherwise would amount to double taxation." Acknowledging the LLC's taxable use, the AHC also explained that any minor benefit a taxpayer receives from tangible personal property it uses or stores does not defeat a resale claim so long as its ultimate purpose is to resell the property. Please contact us with any questions.

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