



This Week in State Tax (TWIST)

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Missouri: Technology Equipment Was Purchased for Resale and Not Used in State

The Missouri Administrative Hearing Commission (Commission) recently concluded that a taxpayer was not prohibited from claiming a resale exemption for purchases of information technology (IT) equipment because the equipment was ultimately purchased for resale. The taxpayer, a wholly owned subsidiary of a large retailer, regularly purchased IT equipment, such as electronic price scanners, credit card readers, computers, and servers, using a resale exemption. After the purchase, the taxpayer made various modifications to the IT equipment at its Missouri warehouse. The equipment was later sold to other group members for use in their brick-and-mortar stores for a marked-up amount. Group members using the equipment in the retail stores accrued and remitted use tax on these sales based on rates in the jurisdiction in which the store was located.

The Department of Revenue asserted that the taxpayer was not entitled to make these purchases using a resale exemption and owed use tax on the purchase of the equipment. In the Department's view, the taxpayer exercised more control over the use of the purchased IT equipment than was permitted to claim a resale exemption. The Department's position was based Missouri Supreme Court's holding in *Custom Hardware Engineering & Consulting Inc. v. Dir. of Revenue*. In *Custom Hardware*, the court held that a taxpayer was barred from claiming the resale exemption because the taxpayer "tested and certified" equipment before shipping it to customers, and the taxpayer's customers did not remit sales or use tax on the equipment they received.

The Commission concluded that the *Custom Hardware* decision was relevant only in supporting the conclusion that the taxpayer made taxable use of the IT equipment, a point the taxpayer did not dispute. However, unlike the taxpayer in *Custom Hardware*, the taxpayer purchased the IT equipment with the ultimate intent to resell it. The fact that the taxpayer sold the equipment with a fixed markup demonstrated that the additional value was incorporated into the final sale price, as was required to claim the resale exemption. Finally, the subsequent sales were subject to use tax in the appropriate jurisdiction. As such, allowing the taxpayer to claim a resale exemption aligned with the fundamental purpose of the exemption, avoiding double taxation. Please contact [John Griesedieck](#) with questions on *Walmart Starco LLC v. Director of Revenue*.



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