



# This Week in State Tax (TWIST)

13th November, 2023



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## Missouri: Technology Equipment Was Purchased for Resale

The Missouri Supreme Court recently affirmed an Administrative Hearing Commission (AHC) decision concluding 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 at a marked-up amount to other group members for use in their brick-and-mortar stores. 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 when claiming a resale exemption. The Department' 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. After the AHC held against the Department of Revenue, the Director appealed to the Missouri Supreme Court.

The court determined that the resale exemption did apply in this case, as the findings demonstrated that the taxpayer's sole purpose was to purchase the equipment for resale. Any value added from the taxpayer's modifications was reflected in the markup 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 jurisdictions. As such, allowing the taxpayer to claim a resale exemption aligned with the fundamental purpose of the exemption, which was to avoid double taxation. The court also concluded that the Commission did not err when it determined that *Custom Hardware* did not support the Director's arguments. In the court's view, *Custom Hardware* was the "polar opposite" of the instant case in which the taxpayer purchased the IT equipment with the ultimate intent to resell it. Please contact [John Griesedieck](#) with questions on *Walmart Starco LLC v. Director of Revenue*.

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