

Purchases of Goods for Resale to Governmental Entities in Missouri May No Longer Qualify for Missouri's Resale Exclusion

On June 16, 2009, the Missouri Supreme Court held that a seller's purchase of goods for resale to a tax-exempt municipality did not qualify for Missouri's resale exclusion because the seller's end sale to the municipality was not a taxable sale. To review the entire decision, please access ***ICC Management, Inc. v. Director of Revenue***, Docket No. SC89559 (Mo. banc 2009) (see link to case below).

Last Monday, November 16, 2009, representatives from the Missouri Department of Revenue met with industry association representatives to discuss the Department's proposed interpretation of this case.

- In a nutshell, the Department proposes to disallow any Missouri seller's claim for a resale exemption for the seller's purchases of any taxable goods or taxable services that the seller ultimately resells to any type of governmental entity, including Federal agencies.
- The potential ramifications of the Department's proposed implementation of the ***ICC*** case are far-reaching, and would affect not only existing government contractors but also retailers ranging from Wal-Mart to Mom and Pop neighborhood stores.
- If a Missouri company purchases a taxable item with the intent to resell it to a governmental entity, the Missouri company must pay Missouri sales or use tax to its vendor and ***may not*** claim the resale exemption.
- If the company does not know to whom it will sell the property at the time of purchase, the company may rely on a resale exemption certificate and purchase the item tax-free. If, however, the company later sells the item to any governmental entity, the company must self-accrue sales or use tax on the company's cost of the item at the time of the resale.
- The Department clarified that it intends to apply this ruling to taxable services (including telephone services and utilities).

[Click here](#) to view a copy of the Department's draft proposal to implement the ICC case. You can access the entire case at <http://www.courts.mo.gov/file.jsp?id=33029>.

The Department has asked for all interested parties to submit their comments by NO LATER THAN FRIDAY, NOVEMBER 20, 2009.

If you would like to have your comments submitted to the Department on a blind basis, please direct them to the attention of our state and local tax partner, Janette M. Lohman, at jlohman@thompsoncoburn.com or at 314-552-6161 by 5:00 p.m. tomorrow, November 19, 2009.

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