

**Summary of SC89559, ICC Management, Inc. v. Director of Revenue**  
Petition for review of an Administrative Hearing Commission decision

**Attorneys:** ICC Management was represented by John W. Simpson of Shook, Hardy & Bacon LLP in Kansas City, (816) 474-6550; and the director was represented by Gary L. Gardner of the attorney general's office in Jefferson City, (573) 751-3321.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** A private jail operator appeals the administrative hearing commission's decision that it owes more than \$19,500 in sales and use tax, plus interest, on its purchases of certain consumable goods that it provided to the inmates of the municipalities and counties with which it contracted. In a 7-0 decision written by Chief Justice Laura Denvir Stith, the Supreme Court of Missouri affirms the commission's decision. Because governmental entities do not pay sales tax on consumable goods, an exemption from sales tax is not required to avoid double taxation, and the jail operator does not meet the statutory definition of a "seller," both of which disqualify it from claiming the resale exemption. The jail operator, therefore, must pay taxes on its purchases of consumables. In a concurring opinion, Judge Michael A. Wolff questions whether a private corporation legally is authorized to operate a jail at all.

**Facts:** Between January 2000 through December 2005, certain Missouri municipalities and counties and one Kansas county paid ICC Management Inc. between \$32.50 and \$50 per day to house inmates at ICC's private jail facility near Holden. Pursuant to its contracts with these governmental entities, ICC provided inmates with consumable items including three meals per day, clothing, soap, shampoo and medical supplies. Because governmental entities are exempt from paying sales tax, ICC cannot and did not charge them sales tax on these consumables, but it did factor the cost of these consumables into the fee it charges the governmental entities. ICC claims this means it "resells" the consumables to the entities, and so it did not pay sales tax when it purchased the consumables from in-state vendors. After conducting a sales tax audit of ICC for January 2002 through December 2005 and a use tax audit for January 2000 through December 2005, the director of revenue determined ICC owed the state about \$14,000 in sales tax and nearly \$5,500 in use tax, plus interest, on ICC's purchases of food, clothing and other consumables during the audit periods. ICC sought review from the administrative hearing commission, which affirmed the director's tax assessment, holding that the resale exclusion does not apply because it requires a taxable sale at retail. ICC appeals.

**AFFIRMED.**

**Court en banc holds:** The commission properly concluded that ICC does not qualify for the resale tax exemption set out in section 144.615(6), RSMo 2000. That exemption is designed to avoid multiple taxation of the same property as it passes through the chain of commerce from producer to wholesaler to distributor to retailer. Here, there is no risk of double taxation, because under article III, section 39(10) of the Missouri Constitution and section 144.030.1, RSMo 2000, the governmental entities to which the consumables were sold are exempt from paying sales tax when they purchase tangible personal property. Following this Court's rationale in *Westwood Country Club v. Director of Revenue*, 6 S.W.3d 885 (Mo. banc 1999), because the "resale" of consumables to the governmental entities is not taxable, ICC does not meet the definition of "seller" in section 144.010.1(11), RSMo 2000, is disqualified from claiming the resale exemption and must pay tax on its purchases of the consumables.

**Concurring opinion by Judge Wolff:** The author agrees ICC is not entitled to a tax exemption but also notes he is not willing to assume there was constitutional or statutory authority for a private corporation to hold individuals in jail.