



# This Week in State Tax (TWIST)

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MISSISSIPPI



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## Mississippi: No Good Faith Basis for Exempt Sales

The Mississippi Court of Appeals recently addressed whether a taxpayer was liable for uncollected sales tax on supplies and equipment sold to oilfield service companies that held Mississippi retail sales tax permits. On audit, the Department of Revenue asserted that the purchased supplies and equipment were consumed by the companies, rather than resold to customers. After the Board of Review and Board of Tax Appeals determined the taxpayer did not exercise the requisite “good faith” in determining at the time of the sale that the items it sold to its customers were to a retailer regularly selling or renting that property, the taxpayer appealed to a trial court. The trial court ruled in the Department of Revenue’s favor, and this appeal followed.

Under Mississippi law, two statutory requirements must be met before a purchase of tangible personal property is “excepted” from the 7 percent retail sales tax. First, the purchaser must be licensed if it is located in Mississippi. Second, the purchaser must be a retailer making the purchase to sell or rent the items purchased in the regular line of its business. While possession of the permit itself satisfies the first requirement, it does nothing on its face to satisfy the second requirement. Instead, that determination must be made at the time of each purchase or sale by the entity making the sale. On review, the court noted that the taxpayer’s business practice was to accept the presentation of a sales tax permit as a representation by the purchaser that it did not have to pay any retail sales tax on its purchases. The permit would then be sent to the taxpayer’s office in Wyoming and would be entered into its accounting and point-of-sale system. Thereafter, anytime the holder of that permit made a purchase, the system would not charge retail sales tax for that purchase. In fact, the Mississippi location could not override the system to charge retail sales tax on any purchase by the permit holder once it was entered into the system. For the sales at issue, the court concluded that there was no evidence that the purchasers were ever asked any questions about the nature of their business or the purpose for which each specific purchase was being made, either before or after having presented the permit. The court concluded that the taxpayer did not have a good faith basis to believe that the sales at issue were wholesale sales. Please contact Randy Serpas with questions on *Toolpushers Supply Co. v. Miss. Dep’t of Revenue*.



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