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Covid-19: Liability, Mandates & Taxation

The State of Missouri has enacted legislation to deal with the Covid-19 pandemic and the rules and mandates that have been put forth by counties, cities and agencies. There are news laws that limit individual and business liability against exposure actions. Finally there are provisions relating to the taxation of CARES funds received by companies. These laws are reviewed in this letter.

Public Health Orders

A new law states that a political subdivision cannot issue a public health order during a state of emergency declared by the governor that closes businesses, churches, schools or churches for more than 30 days each six month period. Such orders may however be extended.

The law also prohibits publicly funded entities from requiring a vaccine passport before allowing use of public services, including transportation systems.

Covid-19 Exposure Actions

Section 537.1005 RSMo provides that no individual or business will be liable in a Covid exposure lawsuit unless the plaintiff can prove reckless or willful misconduct cause the

exposure and that such exposure caused personal injury. Also, no church shall be liable unless the plaintiff can prove intentional misconduct, which is a very high bar to liability. There is a two year statute of limitation in which to bring an exposure action.

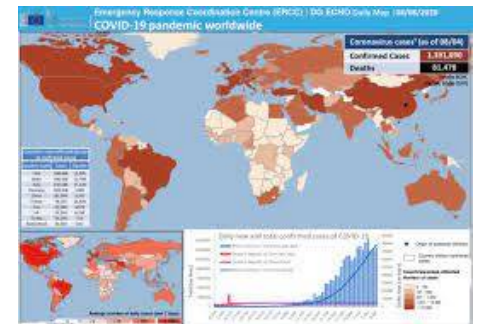
The law also provides a rebuttable presumption that a plaintiff suing for exposure assumed the risk of catching the virus when an individual or entity posts a sign that contains the following written notice:

“WARNING: Under Missouri law, any individual entering the premises or engaging the services of the business waives all civil liability against the individual or entity for any damages based on inherent risks associated with an exposure or potential exposure to COVID-19, except for reckless or willful misconduct.”

Even without the above warning, it would be extremely difficult for a plaintiff to prove that they caught the virus in a particular business on a certain date and time.

Liability for Healthcare Providers

Section 537.1010 provides broad immunity from liability for healthcare providers, unless the plaintiff can



prove reckless or willful misconduct, and that such behavior caused the alleged harm, damage, breach or tort resulting in the personal injury. The legislature intentionally made it very difficult for an individual to recover from an alleged Covid-19 exposure by a healthcare provider. Since most providers wear masks and other protective gear, it would be difficult to prove willful misconduct.

Missouri State Income Taxation

The amount of any federal tax credits received by a taxpayer to mitigate damages from the pandemic are not to be considered in calculating a taxpayer's federal tax liability for purposes of determining gross income under Missouri law.

Normally there is a \$5,000 (or \$10,000 for joint filers) deduction limitation on a taxpayer's Missouri income tax for tax credits which reduce a taxpayer's federal tax liability.

Beware of New Entity Copy Scheme

If you have established a new limited liability company, limited partnership or corporation within the state of Missouri, you may have received an official looking letter from a company that offers

For example, I recently set up a new limited liability company for a client and she received such a letter, which was intentionally designed to make recipients believe that the communication was from the government. It has a Form Number, and a date, just like IRS and MO state tax forms. It gives you a "Respond By" date and a return envelope to mail the payment. The fee for this service is \$89.25.

A certified copy is available from the MO Secretary of State for \$10. A free

uncertified copy, which is probably all you probably need, is available free on their website.

There are other such rip-off mailings, offering a Certificate of Good Standing, or Labor Dept. Employee compliance posters. These are all designed to deceive you to pay large amounts for items that are available free or at little cost. I reported these companies to the MO secretary of State Dept. of Consumer Affairs, but they say they cannot do anything because they do not lie in the communications.

So, beware. If you have a question about a letter you received, call my office and I will be happy to review it for you at no cost.

Sample solicitation letter offering to provide copies at price gouging levels.

Asset Preservation: Bank Accounts between Spouses

If a married couple goes into a bank and sets up an account together, the bank will probably title the account: "John Doe and Mary Doe, joint tenants with rights of survivorship."

Most married persons would prefer, if it were explained to them, to hold accounts as tenants by the entirety, which protects the assets from creditors. A creditor would have to have a judgment against both spouses to reach an account held by as tenants by the entirety.

In fact, there is a Missouri statute, section 362.470.5 provides:

"Any deposit made in the name of two persons or the survivor thereof who are husband and wife shall be considered a tenancy by the entirety unless otherwise specified."

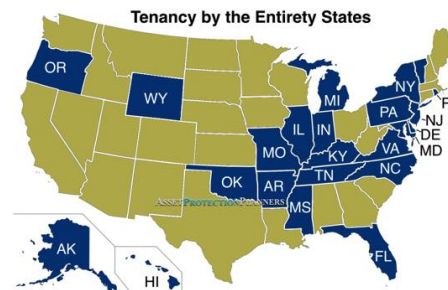
To simply label an account as "joint tenants with rights of survivorship" has been held not to overcome the statutory presumption.

Evidence to overcome the presumption of a tenancy by the entirety account must be "so clear, positive, unequivocal and definite as to leave no doubt in the trial judge's mind." *Brown v. Mercantile Bank*, 820 SW2d 327 (MoApp 1991).

Here is why this matters: suppose a husband is in a car wreck and a judgment for damages is entered against him for \$250,000. The couple has a large account with a local bank. If the bank pays out the funds from a "joint account" when the wife was not liable, it can be sued for wrongfully giving the funds to the creditor.

Or, if the wife has a judgment entered against her but not her husband, then the creditor can only reach assets in the wife's sole name and the bank account is safe.

Nevertheless, tenancy by the entirety is not a failsafe asset protection scheme. Upon divorce or the death of one spouse, the survivor's account could be attached. Other than those two circumstances, tenancy by the entirety is an effective tool in preserving assets..



States in blue have Tenancy by the Entirety, including MO, AR and FL

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