
DEPARTMENT OF STATE REVENUE
Revenue Ruling #2008-11 ST
October 2, 2008

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ISSUE

Sales/Use Tax – Acquisition of Construction Materials for Facilities to be Acquired by an Educational Institution

Authority: [IC 6-2.5-2-1\(a\)](#); [IC 6-2.5-3-2\(a\)](#); [IC 6-2.5-4-9](#); [IC 6-2.5-5-16](#); [45 IAC 2.2-3-9](#)

The taxpayer requests the Department to rule on the following issues:

1. Are the Developers or Subcontractors subject to sales or use tax on their purchases or use of tangible personal property which is converted into, incorporated into, or otherwise made a part of the Projects' facilities and structures if the facilities and structures become or are part of the land and are transferred to the Institution upon completion?
2. May the Developers, if registered with the Department as retail merchants, issue their own exemption certificates to suppliers and Subcontractors, and Subcontractors, if registered with the Department as retail merchants, issue their own exemption certificates to suppliers for construction materials described in the first ruling?

STATEMENT OF FACTS

The Institution is a state educational institution established by the Indiana General Assembly which provides a program of post secondary general, liberal arts, occupational, and technical education in Indiana. The Institution's Foundation is a charitable organization described in Section 501(c)(3) of the Internal Revenue Code which provides support to the Institution in connection with the Institution's educational activities.

The Institution has received bonding authority from the General Assembly for two significant projects. The first project ("Center Project") is an expansion of an existing campus, and the second project ("Campus Project") is for a new campus to be located on land owned by the Foundation and leased to the Institution.

The Institution is proposing to use a "build to suit with purchase on completion" method for the Center Project and the Campus Project (together the "Projects"). The Institution will enter into a Completion Contract for each of the Projects with the successful bidders ("Developers"). Each Developer will be responsible for the design and construction of facilities to suit the Institution's programs and standards. Upon completion, each Developer will sell, convey, transfer and assign all facilities comprising the Projects, along with any additionally required personal property, to the Institution for a lump sum amount.

The Center Project will be constructed on land owned by the Institution, and the Campus Project on land owned by the Foundation and leased to the Institution. The Institution will temporarily lease its land to the Developers for use during the design and construction period. The leases will be entered into as a means to enable the Developers to obtain financing during the design and construction period, are conditioned upon compliance with the Completion Contracts, and terminate upon closing and the transfer of the Projects to the Institution.

The Institution will issue exemption certificates to each Developer in connection with the Projects. The Developers will issue their own exemption certificates to Suppliers and Subcontractors. Subcontractors will issue their own exemption certificates to Suppliers.

DISCUSSION

[IC 6-2.5-2-1\(a\)](#) imposes sales tax on retail transactions made in Indiana. [IC 6-2.5-3-2\(a\)](#) imposes use tax on the storage, use or consumption of tangible personal property in Indiana. A "retail transaction" is defined in [IC 6-2.5-1-2](#) as a transaction that constitutes "selling at retail", a "wholesale sale", or that which is otherwise described in [IC 6-2.5-4](#).

[IC 6-2.5-4-9\(a\)](#) provides that a "retail transaction" includes the sale of tangible personal property which is to be added to a structure or facility by the purchaser if the property would become part of the real estate on which the structure or facility is located. However, [IC 6-2.5-4-9\(b\)](#) provides that a transaction described in subsection (a) is not a retail transaction if the ultimate purchaser or recipient of the property to be added to the structure or facility would be exempt from the state gross retail and use taxes if that purchaser or recipient had directly purchased the property from the supplier for addition to the structure or facility.

[IC 6-2.5-5-16](#) provides that transactions involving tangible personal property, public utility commodities, and public utility service are exempt from the state gross retail tax, if the person acquiring the property, commodities, or service: (1) is the state of Indiana, an agency or instrumentality of the state. . .; and (2) predominantly uses the property, commodities, or service to perform its governmental functions.

[IC 6-2.5-4-9\(b\)](#) states that the sale of tangible personal property which is to be added to a structure or facility by the purchaser and become part of the real estate after the addition is not a retail transaction "if the ultimate

purchaser or recipient. . . would be exempt. . . if that purchaser or recipient had directly purchased the property." In this case, the Institution is the "ultimate recipient" of the construction materials. If the Institution purchased construction materials directly, such purchases would qualify for exemption under [IC 6-2.5-5-16](#) as the Institution is a state educational institution and the construction materials will be incorporated into facilities to be used by the Institution in the performance of its educational purposes.

If a contractor purchases construction material exempt from sales tax and then converts it into realty on land he does not own pursuant to a lump sum contract, such disposition is generally subject to use tax. However, the disposition is not subject to tax if the contractor received a valid exemption certificate from an ultimate purchaser or recipient that could have initially purchased the construction material exempt from tax. In this case, the Developers will receive a valid exemption certificate from the Institution which could have initially purchased the construction materials exempt from tax.

Lump sum construction contractors may accept an exemption certificate from a nonprofit entity, but may not reissue it to any supplier of construction materials. The lump sum contractor must issue its own exemption certificate to the supplier. A construction contractor receiving an exemption certificate for a particular job should issue an exemption certificate to subcontractors. Construction contractors and subcontractors must be registered as retail merchants in order to issue an exemption certificate.

RULING #1

Are the Developers or Subcontractors subject to sales or use tax on their purchases or use of tangible personal property which is converted into, incorporated into, or otherwise made a part of the Projects' facilities and structures if the structures become or are part of the land and are transferred to the Institution upon completion?

The Developers or Subcontractors are not subject to sales or use tax on their purchases or use of tangible personal property which is converted into, incorporated into, or otherwise made a part of the Projects' facilities and structures if the structures become or are part of the land and are transferred to the Institution upon completion.

RULING #2

May the Developers, if registered with the Department as retail merchants, issue their own exemption certificates to suppliers and Subcontractors, and Subcontractors, if registered with the Department as retail merchants, may issue their own exemption certificates to suppliers for construction materials described in the first ruling?

The Developers, if registered with the Department as retail merchants, may issue their own exemption certificates to Suppliers and Subcontractors, and Subcontractors, if registered with the Department as retail merchants may issue their own exemption certificates to Suppliers for construction materials described in the first ruling.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in the statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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