

DEPARTMENT OF STATE REVENUE
Revenue Ruling #2008-13 ST
October 15, 2008

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ISSUES

Sales/Use Tax – Drugs, Reagents, and Compounds Used in Prescribed Medical Tests

Authority: [IC 6-2.5-1-17](#), [IC 6-2.5-5-19](#), [45 IAC 2.2-5-35](#), [45 IAC 2.2-5-36](#), [45 IAC 2.2-5-37](#), Information Bulletin #48

Taxpayer requests that the Department rule on whether Taxpayer's purchases of drugs, reagents, and compounds that are consumed in prescribed medical tests conducted in Taxpayer's central laboratory are exempt from Indiana sales and use tax.

STATEMENT OF FACTS

Taxpayer is an Indiana limited liability company, created by two not-for-profit entities, but Taxpayer is not federal tax exempt and has never sought federal tax exempt status. Taxpayer provides laboratory testing services to both exempt and non-exempt entities, operating under an agreement that Taxpayer will promote charitable purposes.

Taxpayer operates a central laboratory in Indiana, where it conducts high-complexity testing in a certified laboratory under the management and direction of a medical director. The medical director is licensed as a laboratory director and physician in Indiana and has the authority to prescribe, dispense, and administer drugs to humans in the course of his professional duties. The medical director also makes decisions regarding what tests the laboratory will conduct and how such tests will be conducted. The medical director's decisions determine which drugs, reagents, and compounds the laboratory will purchase under the medical director's license number and subsequently use under his supervision in the laboratory tests.

All tests performed at the laboratory are prescribed by physicians or licensed practitioners and are conducted using procedures approved by the medical director. Taxpayer bills either the provider, a third party payor, or the patient directly following the testing, but does not separately invoice the drugs, reagents, or compounds used in the testing process.

DISCUSSION

Taxpayer argues that it is exempt from state gross retail sales tax under [IC 6-2.5-5-19\(f\)](#) because it purchases drugs, reagents, and compounds using its medical director's license number which are then directly consumed in the practitioner's practice. Because Taxpayer is purchasing drugs, compounds, and reagents which are intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease, the substances are classified as drugs under [IC 6-2.5-1-17](#).

However, [IC 6-2.5-5-19\(f\)](#) only exempts the sales of drugs from state gross retail tax if:

- (1) the purchaser is a practitioner licensed to prescribe, dispense, and administer drugs to human beings or animals; and
- (2) the purchaser buys the items for:
 - (A) direct consumption in his practice; or
 - (B) resale to a patient that the practitioner is treating, in the case of sales of legend or nonlegend drugs.

Taxpayer argues that it acts on behalf of the medical director when purchasing the drugs. Taxpayer uses its medical director's license number for purchasing these materials in the same way as hospitals and physician groups use physician license numbers to purchase these same materials. Information Bulletin #48 states that carrying on a professional practice "through the formation of a corporation does not change the status of professional services rendered in relation to sales tax liability or exemption." Therefore, the medical director is acting within the scope of his professional practice and the Taxpayer's status does not change the sales tax liability or exemption.

Taxpayer also argues that the drugs are directly consumed in the medical director's practice as required by [IC 6-2.5-5-19\(f\)](#). "Directly consumed in the course of rendering professional services is defined in [45 IAC 2.2-5-37](#) to mean "the administration of prescription drugs... by the licensed practitioner, or his agent. Consumed in professional use includes the furnishing of such drugs as a part of a single charge for professional service." Absent additional information on the legislature's intent regarding the meaning of "consumed," and whether this includes only consumption by the human body or whether it includes consumption in a testing process, the Department views this as consumption by the human body. Therefore, any drugs used in a testing process that are not specifically placed inside the human body remain subject to gross retail sales tax. Drugs which are consumed by a human for testing purposes, for example barium sulfate, are gross retail sales tax exempt.

Taxpayer indicated that it purchases some drugs which do not require a prescription, but that the medical director includes his license number on those orders. Information Bulletin #48 and [45 IAC 2.2-5-36](#) both state that

gross retail sales tax applies to purchase transactions made by licensed practitioners of drugs not requiring a prescription. Therefore, any non-prescription drugs purchased by Taxpayer, whether or not the medical director's license number is used for the purchase, remain subject to gross retail sales tax.

RULING

The Department rules that the drugs, reagents, and compounds which can be purchased without a prescription for use in the Taxpayer's laboratory remain subject to gross retail sales tax as there is no available exemption for non-prescription drugs purchased by licensed practitioners. Additionally, all drugs which are not consumed by the human body during the testing process are subject to gross retail sales tax. Any other drugs which are consumed by humans specifically for testing purposes are tax exempt.

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 statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

Posted: 11/26/2008 by Legislative Services Agency
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