

**DEPARTMENT OF STATE REVENUE**  
**Revenue Ruling #2009-12 ST**  
**August 10, 2009**

**NOTICE:** Under [IC 4-22-7-7](#), this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

Sales Tax – Rental of Parking Spaces for Merchandise Trailers

An entity ("Vendor") is seeking an opinion as to whether the rental fee paid for vendor space occupied by merchandise trailers for less than 30 days is subject to Indiana sales tax.

Authority: [IC 6-2.5-4-4\(a\)](#); [45 IAC 2.2-4-9\(a\)](#).

**STATEMENT OF FACTS**

Taxpayer provides the following facts regarding its request for a revenue ruling. An entity ("Lessor"), which is located in Indiana, hosts individual sporting events on its property throughout the course of the year. These events last less than 30 days and are open to the public. Vendor, which is not located in Indiana, rents vendor space from Lessor during these events. In particular, Taxpayer provides the following information related to its business operations:

[Vendor] operates multiple merchandise trailers (tractor trailers with side doors that open to the public) which are pulled from out of state and in to the state of Indiana. These trailers are temporarily situated for a period of less than one week [on Lessor's property]. No utility is provided to these trailers. Retail sales of merchandise are transacted out of these trailers on which [Vendor] collects sales tax and remits to Indiana. [Lessor] charges [Vendor] a fee for the real estate space (e.g. plot of ground) allotted for each merchandise trailer. These merchandise trailers are situated in areas that are designated as retail vendor space, which is separate from [event customer] car/truck parking areas.

**DISCUSSION**

In general, [IC 6-2.5-4-4\(a\)](#) states:

A person is a retail merchant making a retail transaction when the person rents or furnishes rooms, lodgings, or other accommodations, such as booths, display spaces, banquet facilities, and cubicles or spaces used for adult relaxation, massage, modeling, dancing, or other entertainment to another person:

- (1) if those rooms, lodgings, or accommodations are rented or furnished for periods of less than thirty (30) days; and
- (2) if the rooms, lodgings, and accommodations are located in a hotel, motel, inn, tourist camp, tourist cabin, gymnasium, hall, coliseum, or other place, where rooms, lodgings, or accommodations are regularly furnished for consideration.

The Department's regulation, found at [45 IAC 2.2-4-9\(a\)](#) defines an "accommodation" in the following manner:

(a) For purposes of the state gross retail and use tax, an "accommodation" is any space, facility, structure, or combination thereof including booths, display spaces and banquet facilities, together with all associated personal or real property (including land), which is intended for occupancy by human beings for a period less than thirty (30) days including:

- (1) Rooms in hotels, motels, lodges, ranches, villas, apartments or houses.
- (2) Gymnasiums, coliseums, banquet halls, ballrooms, or arenas, and other similar accommodations regularly [sic.] offered for rent.
- (3) Cabins or cottages.
- (4) Tents or trailers (when situated in place).
- (5) Spaces in camper parks and trailer parks wherein spaces are regularly offered for rent for periods of less than thirty (30) days.
- (6) Rooms used for banquets, weddings, meetings, sales displays, conventions or exhibits.
- (7) Booths or display spaces in a building, coliseum or hall.

In the case at hand, while the parking spaces are segregated from other event customer parking, the nature of the spaces cannot be said to be "intended for occupancy by human beings." The spaces do not include the

incorporation of any tangible property, such as walls or a roof, or any amenities, such as electricity or water connections. Lessor provides no covering, furniture or other tangible property useful for human occupancy. Indeed, each space is just a parcel of land intended as a parking space for Vendor's merchandise trailers. Absent the incorporation of tangible property or an amenity designed to support occupancy by human beings, the rental fee paid for vendor space occupied by Vendor's merchandise trailers is not subject to Indiana sales tax.

### **RULING**

Absent the incorporation of tangible property or an amenity designed to support occupancy by human beings, the rental fee paid for vendor space occupied by merchandise trailers for less than 30 days does not represent an accommodation under IC 6-2.5-4-4(a) or [45 IAC 2.2-4-9\(a\)](#) and, therefore, is not subject to Indiana sales tax.

### **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.

### **Department of State Revenue**

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