

Letter of Findings: 04-20110062
Gross Retail Tax
For 2009

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ISSUE

I. Not-for-Profit Organization – Gross Retail Tax.

Authority: IC § 6-2.5-5-25; IC § 6-2.5-5-21(b)(1); [45 IAC 2.2-5-55](#).

Taxpayer argues that it was entitled to purchase a tractor and accessories without paying sales/use tax because it is a non-profit-organization.

STATEMENT OF FACTS

Taxpayer is an organization of individual lot-owner members in a camping community. Membership within the Taxpayer's organization is restricted to lot owners within Taxpayer's premises. Article III of Taxpayer's Bylaws states that the purpose of the corporation is:

The Association is organized for pleasure, recreation, promoting family camping and other non-profitable purposes, substantially all of the activities of which are for such purposes and no part of the net earnings of which inures to the benefit of any private shareholder or owner. Activities include but are not limited to camping, dances, concerts, dinners, religious services, crafts and sports.

Taxpayer is recognized by the IRS as a Section 501(c)(4) tax exempt organization. Taxpayer applied for the tax exempt status on February 22, 2005, by means of IRS Form 1024, Application for Recognition of Exemption under Section 501(a). On the form, Taxpayer included the following activities and operational information in applying for its tax exempt status:

The activities aspects of the organization's function include providing a recreation staff with planned activities. Planned activities include religious services on Sunday; adult arts and crafts, children[']s art and crafts; baseball, basketball & tennis; jogging; various sports contests; movies; cartoons; dances; pot luck dinners & ice cream socials; camp cooking demonstrations; and other various activities coordinated through the organization for the enjoyment of the campers. These activities are planned for various times throughout the week and only during the months of April through October. Also provided by the organization are lifeguards for the lake and the 2 pools located at the campgrounds.

On February 9, 2006, the IRS recognized Taxpayer as a 501(c)(4) organization and on March 7, 2006, the Indiana Department of Revenue issued Taxpayer an Indiana Nonprofit Sales Tax Exemption Certificate that certified that Taxpayer is only exempt from payment of sales tax on purchases for which the organization is granted exemption.

The Indiana Department of Revenue ("Department") determined that Taxpayer had purchased items of tangible personal property during the audit period of 2009, but had not paid sales tax on the purchase of those items. The Department therefore issued proposed assessments for sales and use tax and interest for the purchased items. Taxpayer asserts that it is a not-for-profit organization whose purchase of the tractor and attachments qualifies for exemption under IC § 6-2.5-5-25. Taxpayer maintains that it uses the tractor to maintain the roads and haul stone, dirt, and sand in the park and uses these uses of property meet the Taxpayer's charitable purpose.

I. Not-for-Profit Organization – Gross Retail Tax.

DISCUSSION

Taxpayer asserts that it is a not-for-profit organization and that its purchase of the tractor and attachments qualifies for exemption under IC § 6-2.5-5-25. Taxpayer maintains that its uses of the tractor to maintain the roads and haul stone, dirt, and sand in the park are uses of the property that meet the taxpayer's charitable purpose.

IC § 6-2.5-5-25 states:

(a) Transactions involving tangible personal property or service are exempt from the state gross retail tax, if the person acquiring the property or service:

- (1) is an organization described in section 21(b)(1) of this chapter;
- (2) primarily uses the property or service to carry on or to raise money to carry on its not-for-profit purpose; and
- (3) is not an organization operated predominantly for social purposes.

(b) Transactions occurring after December 31, 1976, and involving tangible personal property or service are exempt from the state gross retail tax, if the person acquiring the property or service:

- (1) is a fraternity, sorority, or student cooperative housing organization described in section 21(b)(1)(A) of this chapter; and

(2) uses the property or service to carry on its ordinary and usual activities and operations as a fraternity, sorority, or student cooperative housing organization. (Emphasis added).

[45 IAC 2.2-5-55](#) states:

(a) Sales to a qualified not-for-profit organization of tangible personal property or services used primarily in carrying out the not-for-profit purpose of the organization or in raising money for carrying on such purposes are exempt from the gross retail tax.

(b) In order to qualify for the sales tax exemption on purchases, as a qualified not-for-profit organization, the following conditions must prevail:

(1) The organization must be qualified by being named or described in [IC 6-2.1-3-20](#), [IC 6-2.1-3-21](#), or [IC 6-2.1-3-22](#) which deals with fraternities, sororities, student cooperative housing organizations, etc. This includes not-for-profit organizations organized and operated exclusively for one (1) or more of the following purposes:

- (A) Religious.
- (B) Charitable.
- (C) Scientific.
- (D) Fraternal.
- (E) Educational.
- (F) Literary.
- (G) Civic.

(2) Also included are the following specifically named not-for-profit organizations:

- (A) Labor unions.
- (B) Licensed hospitals.
- (C) Churches.
- (D) Monasteries.
- (E) Convents.
- (F) Cemetery associations.
- (G) Public schools.
- (H) Parochial schools.
- (I) Pension trust.
- (J) Business leagues.

(3) The organization is not operated predominantly for social purposes. The article purchased must be used for the same purpose as that for which the organization is being exempted. Purchases for the private benefit of any member of the organization or for any other individual, such as meals or lodging, are not eligible for exemption. Purchases used for social purposes are never exempt.

(4) The fact that an organization is being exempted by the federal government or by the state of Indiana for income tax purposes does not necessarily mean that a purchase made by the not-for-profit organization is exempt.

(c) Purchases of tangible personal property by a qualified not-for-profit organization used to raise funds to further the exempt purpose of the organization are exempt even if the resale of such property is not subject to tax. The following are examples:

(1) A qualified religious organization purchases envelopes which are distributed to members for use in making weekly contributions to the church. The purchase of the envelopes by the church is exempt because the envelopes will be used to raise funds for the qualified not-for-profit organization.

(2) A qualified hospital purchases advertising posters to be used in a fundraising drive for the hospital. The purchase of the posters is exempt from the state gross retail tax because the posters will be used to raise funds for the qualified not-for-profit organization.

(d) Purchases of tangible personal property or services used primarily in carrying out the not-for-profit purpose of the qualified organization are exempt from tax. This exemption will not apply if such property is primarily used for a purpose other than the not[-]for-profit purpose of the organization. As used in this section, "primarily used in carrying out the not-for-profit purpose" means that the item or service is used more than fifty percent (50[percent]) of the time to further the organization's not-for-profit purpose. The following are examples:

(1) A religious organization acquired building materials to construct a new church. The purchase of such materials by the church is exempt since the new church will further the not-for-profit purpose of the organization. The fact that the church basement will occasionally be used for social events does not subject the purchase of construction materials to tax.

(2) A church sponsors a ski club for its teenage membership. The ski club purchases skis, boots, and poles to be used by the church ski club members on ski trips. These purchases are taxable because the skis, boots, and poles are used primarily to further the social purposes of the ski group and not the exempt purpose of the church.

(3) A fraternal lodge operated a golf club, a bowling alley, and a lounge where liquor is served. Purchases

of property used in these facilities are taxable because the property is used for a purpose other than the not-for-profit fraternal purpose of the lodge. However, the purchase of ceremonial robes for use in fraternal meetings is exempt because the robes are used to further the not-for-profit purpose of the organization.

(4) Sales of meals at medical society meetings are taxable because the meals are provided for the convenience of the organization and its members. Such sales are taxable even when served in conjunction with a meeting which is furthering their not-for-profit purpose.

(e) A social organization will be deemed to exist for predominantly social purposes if more than fifty percent (50 [percent]) of its expenditures are for, or related to, social activities. Social activities include the following:

- (1) Food and beverage services.
- (2) Furnishing of sleeping rooms.
- (3) Club rooms.
- (4) Lounges.
- (5) Recreational activities.
- (6) Any other social activities. (Emphasis added).

The Department raises two issues with the Taxpayer's argument that the purchase of a tractor and attachments qualifies for exemption under IC § 6-2.5-5-25. First, Taxpayer has not proven nor supported its argument that the tractor and attachments are used primarily in carrying out the not-for-profit purpose of the organization and therefore are exempt from sales and use tax. Second, in the alternative that the Taxpayer can prove that the tractor and attachments are used primarily in carrying out the not-for-profit purpose, Taxpayer qualifies as a social organization and therefore the sale and use of the tractor and attachments are not exempt from sales and use tax.

Under IC § 6-2.5-5-25, a taxpayer's transactions involving tangible personal property or service are exempt from the state gross retail tax, if the person acquiring the property or service primarily uses the property or service to carry on or to raise money to carry on its not-for-profit purpose. [45 IAC 2.2-5-55\(d\)](#) expands on IC § 6-2.5-5-25(d) stating that this exemption will not apply if such property is primarily used for a purpose other than the not-for-profit purpose of the organization. As used in this section, "primarily used in carrying out the not-for-profit purpose" means that the item or service is used more than fifty percent (50[percent]) of the time to further the organization's not-for-profit purpose. Taxpayer is a homeowner's association that has claimed a tax exempt status for providing community activities. Therefore in order for Taxpayer to claim sales and use tax exemptions under these sections of the Indiana Tax Code the use of tractor and attachments must be used more than fifty percent (50[percent]) of the time to further the organization's not-for-profit purpose.

According to Taxpayer's IRS Form 1024 application for tax exempt status, Taxpayer's not-for-profit purpose is to provide community activities which includes: religious services on Sunday; adult arts and crafts; children's art and crafts; baseball; basketball; tennis; jogging; various sports contests; movies; cartoons; dances; pot luck dinners; ice cream socials; camp cooking demonstrations; and other various activities coordinated through the organization for the enjoyment of the campers. Taxpayer has stated that the purpose of the tractor and attachments is for maintaining the roads. It can be argued that maintaining the roads within the Taxpayer's premises is necessary to facilitate the travel to and parking for the community activities enumerated. However, Taxpayer has still not met the criteria of proving that the tractor is used more than fifty percent (50[percent]) of the time to further the organization's not-for-profit purpose. This is because the Taxpayer in addition to serving a not-for-profit purpose, also serves the interest of the private lot owners in maintaining the grounds and roads of the Taxpayer's premises. Furthermore the lot owners benefit from the maintenance of the roads 100 percent (100[percent]) of the time whereas the not-for-profit purpose of Taxpayer benefits from the maintenance of the roads presumably during the months of April through October. The Department finds that the tractor and attachments are used for the purpose of the private lot owners over fifty-percent (50[percent]) of the time and therefore does not meet the statutory criteria that the purpose be used for more than fifty-percent (50[percent]) of the time to further the organization's not-for-profit purpose.

Under IC § 6-2.5-5-25, a taxpayer's transactions involving tangible personal property or service are exempt from the state gross retail tax, if the person acquiring the property or service is not an organization operated predominantly for social purposes. [45 IAC 2.2-5-55\(e\)](#) states that a social organization will be deemed to exist for predominantly social purposes if more than fifty percent (50 [percent]) of its expenditures are for, or related to, social activities. Social activities include the following: (1) food and beverage services; (2) furnishing of sleeping rooms; (3) club rooms; (4) lounges; (5) recreational activities; (6) any other social activities. In applying for tax exempt status, Taxpayer's not-for-profit purpose is to provide several recreational activities that include: adult arts and crafts; children's art and crafts; baseball; basketball; tennis; jogging; various sports contests; movies; cartoons; dances; pot luck dinners; ice cream socials; and camp cooking demonstrations. Because the majority of the activities for which Taxpayer claimed its tax exempt status are recreational, Taxpayer as a non-for-profit entity is classified as an organization operated predominantly for social purposes. Therefore under IC § 6-2.5-5-25(a)(3), Taxpayer would not be permitted to claim tax exemption from sales and use tax.

FINDING

Taxpayer's protest is respectfully denied.

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