

Letter of Findings Number: 76-20110370**Quality Assessment Fee for the Period of January 11 through March 10, 2011**

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ISSUE**I. Health Facility Quality Assessment Fee – Jurisdiction.**

Authority: IC § 6-8.1-5-1(c); P.L. 224-2003, § 70; P.L. 78-2004, § 27; P.L. 186-2005, § 1; P.L. 18-2006, § 1; P.L. 3-2007, §1; P.L. 182-2009, § 486.

Taxpayer protests the imposition of the Quality Assessment Fee ("QAF") and related finance charges, asserting that, as a "continuing care retirement community," it is exempt from the QAF assessments.

STATEMENT OF FACTS

Taxpayer, an out-of-state corporation, operates several licensed facilities in Indiana, which offer healthcare services to Indiana senior citizens. Taxpayer had received quality assessment fees ("QAFs") for certain periods which were prior to January 11, 2011, from the Indiana Family and Social Services Administration, and had petitioned for an administrative review before the Office of Medicaid Policy and Planning of the Indiana Family and Social Services Administration.

Taxpayer subsequently received monthly statements which were dated March 23, 2011, imposing the QAFs concerning the period of January 11, 2011 through March 10, 2011, as well as the finance charges (collectively, the "Assessments"). Believing that the QAF is one of the special taxes, Taxpayer protests the Assessments before the Indiana Department of State Revenue (the "Department"). A hearing was held. This Letter of Findings ensues. Additional facts will be provided as necessary.

I. Health Facility Quality Assessment Fee – Jurisdiction.**DISCUSSION**

Taxpayer protests the Assessments, asserting that, as a "continuing care retirement community," it is exempt from the QAF assessments. Taxpayer also submitted additional documentation to support its claim.

As a threshold issue, all tax assessments are *prima facie* evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c).

A brief review of the history of the QAF implementation legislation is helpful. The Indiana General Assembly imposed a QAF on nursing facilities operating in Indiana beginning in 2003. Pursuant to P.L. 224-2003, § 70 (effective upon passage), the Office of Medicaid Policy & Planning ("OMPP") - effective August 1, 2003 – was required to collect QAF from each nursing facility in Indiana. Subsequently, P.L. 224-2003, § 70 was amended by P.L. 78-2004, § 27, retroactively. Among the changes of statutory language, the General Assembly added the definition of "health facility" and also amended the definition of "nursing facility." As a result, the health facilities and the nursing facilities are subject to QAF. P.L. 78-2004, § 27 was later amended by P.L. 186-2005, § 1.

Notably, among the changes of statutory language, P.L. 186-2005, § 1 changes which Indiana agency collects the QAF, splitting it between the OMPP and "the department of state revenue." Pursuant to P.L. 186-2005, § 1, the OMPP would collect the QAF from Medicaid participation facilities, and the Department would collect the QAF from non-Medicaid participation facilities. The statute was amended to read that the OMPP and the Department would begin collecting the QAF. Language was also added to allow facilities to enter into agreements with the OMPP and the Department to pay the QAF through installment plans. P.L. 186-2005, § 1 was later amended by P.L. 18-2006, § 1 and P.L. 18-2006, § 1 was amended by P.L. 3-2007, § 1 with the Department continuing to jointly collect the QAFs.

In 2009, the Indiana General Assembly passed P.L. 182-2009, § 486 [effective October 1, 2008, (retroactive)] which amended P.L. 3-2007, § 1. The OMPP remained intact in the statutory text of P.L. 182-2009, § 486, but the General Assembly specifically deleted or removed "the department of state revenue" from the text. As a result, the OMPP, not the Department, has the statutory authority to implement, assess, and collect the QAF pursuant to P.L. 182-2009, § 486(i), (j), and (m). That is, effective October 1, 2008, the Department does not have the statutory authority to implement, assess, and collect QAFs. Since the QAFs imposed on Taxpayer was for the periods of January 11, 2011 through March 10, 2011, the Department does not have the jurisdiction to address Taxpayer's protest of the Assessments pursuant to P.L. 182-2009, § 486.

In short, the Department must decline Taxpayer's invitation addressing the QAF issue pursuant to P.L. 182-2009, § 486 and, thus, there is no need to address whether Taxpayer is exempt from the QAF assessments.

FINDING

Taxpayer's protest is respectfully denied.

