DEPARTMENT OF STATE REVENUE

04-20130354.LOF

Letter of Findings: 04-20130354
Sales and/or Use Tax
For the Years 2010 and 2011

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.

ISSUE

I. Sales/Use Tax – Imposition.

Authority: IC § 6-2.5-1-1; IC § 6-2.5-1-2; IC § 6-2.5-1-11.5; IC § 6-2.5-2-1; IC § 6-2.5-3-1; IC § 6-2.5-3-2; IC § 6-2.5-3-4; IC § 6-2.5-4-1; IC § 6-2.5-5-1 et. seq.; IC § 6-2.5-5-19; IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Rhoade v. Indiana Dep't of State Revenue, 774 N.E.2d 1044 (Ind. Tax Ct. 2002); USAir, Inc. v. Indiana Dep't of State Revenue, 623 N.E.2d 466 (Ind. Tax Ct. 1993); Indiana Dep't. of State Revenue, Sales Tax Division v. RCA Corp., 310 N.E.2d 96 (Ind. Ct. App. 1974); Indiana Dep't of State Revenue v. Kimball Int'l Inc., 520 N.E.2d 454 (Ind. Ct. App. 1988); Frame Station, Inc. v. Indiana Dep't of Revenue, 771 N.E.2d 129 (Ind. Tax Ct. 2002); Cowden & Sons Trucking, Inc. v. Indiana Dep't of State Revenue, 575 N.E.2d 718 (Ind. Tax Ct. 1991); Indiana Dep't of State Revenue v. Martin Marietta Corp., 398 N.E.2d 1309 (Ind. Ct. App. 1979); Galligan v. Indiana Dep't. of State Revenue, 825 N.E.2d 467 (Ind. Tax Ct. 2005); 45 IAC 2.2-3-4; 45 IAC 2.2-4-1; 45 IAC 2.2-4-2; 45 IAC 2.2-5-36; Sales Tax Information Bulletin 14 (December 2002); Sales Tax Information Bulletin 54 (December 2002); Sales Tax Information Bulletin 54 (August 1990); Sales Tax Information Bulletin 48A (February 2010); Revenue Ruling ST 98-07 (July 24, 1998).

Taxpayer protests the Department's assessments on additional taxable purchases, claiming that its purchases of tangible personal property were exempt from sales/use tax.

STATEMENT OF FACTS

Taxpayer, an Indiana company, offers 24-hour emergency care and also specialized diagnostics and surgical procedures for animals. Taxpayer, however, does not offer routine veterinary care.

In April 2013, the Indiana Department of Revenue ("Department") audited Taxpayer's business records for the tax years 2010 and 2011. Pursuant to the audit, the Department determined that Taxpayer purchased certain tangible personal property to be used in the course of its business without paying sales tax or self-assessing use tax. As a result, the Department assessed additional use tax and interest. Nonetheless, the Department's audit waived the negligence penalty.

Taxpayer protested the assessments. An administrative hearing was held. This Letter of Findings ensues. Additional facts will be provided as necessary.

I. Sales/Use Tax – Imposition.

DISCUSSION

The Department's audit assessed use tax on tangible personal property, including "magnet postcards," "business cards," "brochures," "frisbees," "invitations and envelopes," "folders," "[T-]shirts", and "x-mas tree connect," "syringe set," "test kits," "sealing caps," "shoe covers," "gloves," "tongue[s]," "needles," and "bandages," which Taxpayer purchased and used for its veterinary care business. Taxpayer, to the contrary, claimed that it was not responsible for the sales/use tax.

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); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012).

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana. IC § 6-2.5-2-1(a). A person who acquires property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b). Indiana also imposes a complementary excise tax called "the use tax" on "the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." IC § 6-2.5-3-2(a). "Use" means the "exercise of any right or power of ownership over tangible personal property." IC § 6-2.5-3-1(a). The use tax is functionally equivalent to the sales tax. See Rhoade v. Indiana Dep't of State Revenue, 774 N.E.2d 1044, 1047 (Ind. Tax Ct. 2002).

By complementing the sales tax, the use tax ensures that non-exempt retail transactions (particularly out-of-state retail transactions) that escape sales tax liability are nevertheless taxed. Rhoade, 774 N.E.2d at 1048; USAir, Inc. v. Indiana Dep't of State Revenue, 623 N.E.2d 466, 468 – 69 (Ind. Tax Ct. 1993). The use tax ensures that, after such goods arrive in Indiana, the retail purchasers of the goods bear their fair share of the tax burden. Rhoade, 774 N.E.2d at 1050. To trigger imposition of Indiana's use tax, tangible personal property must (as a threshold matter) be acquired in a retail transaction. IC § 6-2.5-3-2(a); USAir, Inc., 623 N.E.2d at 468 – 69. A taxable retail transaction occurs when (1) a party acquires tangible personal property as part of its ordinary business for the purpose of reselling the property; (2) that property is then exchanged between parties for consideration; and (3) the property is used in Indiana. See IC § 6-2.5-1-2; IC § 6-2.5-4-1(b) and (c); IC § 6-2.5-3-2(a).

Use of tangible personal property in Indiana could be exempt from Indiana use tax if the sales tax is paid or collected at the time of the purchase pursuant to IC § 6-2.5-3-4 and 45 IAC 2.2-3-4. There are also various tax exemptions available outlined in IC § 6-2.5-5. A statute which provides a tax exemption, however, is strictly construed against the taxpayer. Indiana Dep't. of State Revenue, Sales Tax Division v. RCA Corp., 310 N.E.2d 96, 97 (Ind. Ct. App. 1974). "[W]here such an exemption is claimed, the party claiming the same must show a case, by sufficient evidence, which is clearly within the exact letter of the law." Id. at 101 (internal citations omitted). Thus, in applying any tax exemption, the general rule is that "tax exemptions are strictly construed in favor of taxation and against the exemption." Indiana Dep't of State Revenue v. Kimball Int'l Inc., 520 N.E.2d 454, 456 (Ind. Ct. App. 1988).

During the administrative hearing, Taxpayer raised several issues related to its purchases from various vendors. This Letter of Findings addresses each issue, as follows:

A. Purchases from an Advertising Agency ("Vendor A").

Taxpayer claimed that it was not responsible for the sales/use tax on items that it purchased from Vendor A, including magnet postcards, business cards, brochures, Frisbees, invitations and envelopes, folders, and T shirts.

IC § 6-2.5-1-2 states:

> (a) "Retail transaction" means a transaction of a retail merchant that constitutes selling at retail as described in IC 6-2.5-4-1, that constitutes making a wholesale sale as described in IC 6-2.5-4-2, or that is described in any other section of IC 6-2.5-4.
> (b) "Retail unitary transaction" means a unitary transaction that is also a retail transaction.

IC § 6-2.5-1-1(a) explains that "'unitary transaction' includes all items of personal property and services which are furnished under a single order or agreement and for which a total combined charge or price is calculated."

IC § 6-2.5-4-1, in relevant part, provides:

> (a) A person is a retail merchant making a retail transaction when he engages in selling at retail.
> (b) A person is engaged in selling at retail when, in the ordinary course of his regularly conducted trade or business, he:
> (1) acquires tangible personal property for the purpose of resale; and
> (2) transfers that property to another person for consideration.
> (c) For purposes of determining what constitutes selling at retail, it does not matter whether:
> (1) the property is transferred in the same form as when it was acquired;
> (2) the property is transferred alone or in conjunction with other property or services; or
> (3) the property is transferred conditionally or otherwise.
> (d) Notwithstanding subsection (b), a person is not selling at retail if he is making a wholesale sale as described in section 2 of this chapter.
> (e) The gross retail income received from selling at retail is only taxable under this article to the extent that

the income represents:
(1) the price of the property transferred, without the rendition of any service; and
(2) except as provided in subsection (g), any bona fide charges which are made for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other service performed in respect to the property transferred before its transfer and which are separately stated on the transferor's records.
For purposes of this subsection, a transfer is considered to have occurred after delivery of the property to the purchaser.

45 IAC 2.2-4-1 explains:

(a) **Where ownership of tangible personal property is transferred for a consideration, it will be considered a transaction of a retail merchant constituting selling at retail unless the seller is not acting as a "retail merchant".**
(b) **All elements of consideration are included in gross retail income subject to tax.** Elements of consideration include, but are not limited to:
(1) The price arrived at between purchaser and seller.
(2) **Any additional bona fide charges added to or included in such price** for preparation, fabrication, alteration, modification, finishing, completion, delivery, or **other services performed in respect to** or labor charges for work done **with respect to such property prior to transfer**.
(3) **No deduction from gross receipts is permitted for services performed or work done on behalf of the seller prior to transfer of such property at retail**.

(**Emphasis added**).

IC § 6-2.5-1-11.5, in relevant part, states:

(b) "Bundled transaction" means a retail sale of two (2) or more products, except real property and services to real property, that are:
(1) distinct;
(2) identifiable; and
(3) sold for one (1) nonitemized price.
(c) The term does not include a retail sale in which the sales price of a product varies, or is negotiable, based on other products that the purchaser selects for inclusion in the transaction.
(d) The term does not include a retail sale that:
(1) is comprised of:
(A) a service that is the true object of the transaction; and
(B) tangible personal property that:
(i) is essential to the use of the service; and
(ii) is provided exclusively in connection with the service;
(2) includes both taxable and nontaxable products in which:
(A) the seller's purchase price; or
(B) the sales price;
of the taxable products does not exceed ten percent (10[percent]) of the total purchase price or the total sales price of the bundled products . . . .

45 IAC 2.2-4-2 further explains:

(a) Professional services, personal services, and services in respect to property not owned by the person rendering such services are not "transactions of a retail merchant constituting selling at retail", and are not subject to gross retail tax. **Where, in conjunction with rendering professional services, personal services, or other services, the serviceman also transfers tangible personal property for a consideration, this will constitute a transaction of a retail merchant constituting selling at retail unless**:
(1) The serviceman is in an occupation which primarily furnishes and sells services, as distinguished from tangible personal property;
(2) The tangible personal property purchased is used or consumed as a necessary incident to the service;
(3) The price charged for tangible personal property is inconsequential (not to exceed 10[percent]) compared with the service charge; and
(4) The serviceman pays gross retail tax or use tax upon the tangible personal property at the time of acquisition.

> (b) Services performed or work done in respect to property and performed prior to delivery to be sold by a retail merchant must however, be included in taxable gross receipts of the retail merchant.
> . . .
> (d) **A serviceman occupationally engaged in rendering professional, personal or other services will be presumed to be a retail merchant selling at retail with respect to any tangible personal property sold by him**, whether or not the tangible personal property is sold in the course of rendering such services. If, however, the transaction satisfies the four (4) requirements set forth in 6-2.5-4-1(c)(010), paragraph (1) [subsection (a) of this section], the gross retail tax shall not apply to such transaction.

(**Emphasis added**).

The Indiana Tax Court has addressed the issue of "mixed transactions" that involve the simultaneous transfer of tangible personal property and the performance of services. In Frame Station, Inc. v. Indiana Dep't of Revenue, 771 N.E.2d 129 (Ind. Tax Ct. 2002), the taxpayer, Framemakers, provided custom framing services. Specifically, Framemakers framed its customers' art in frames that it built or special ordered. Id. at 130. Framemakers, when it billed its customers, "record[ed] separate subtotals on the invoices: one for the service of framing the art and the other for the frame itself." Id. Framemakers collected sales tax only on the price of the frame itself, not on the price for framing the art. Id. The court stated that the issue was "whether Framemakers' sale of custom-framed art constitutes a 'retail unitary transaction' and is thereby subject to Indiana's gross retail and use tax." Id. at 129-30. Specifically, the court focused on "whether Framemakers' services were preformed before or after it transferred property to its customers." Id. at 131. (Emphasis in original). The court explained that services that "are performed with respect to property prior to the transfer of the property" are taxable. Id. Referencing Cowden & Sons Trucking, Inc. v. Indiana Dep't of State Revenue, 575 N.E.2d 718 (Ind. Tax Ct. 1991) and Indiana Dep't of State Revenue v. Martin Marietta Corp., 398 N.E.2d 1309 (Ind. Ct. App. 1979), the court stated "a retail unitary transaction exists when the transfer of the property and rendition of services are 'inextricable and indivisible'" from the property being transferred. Id. at 131. The court concluded that Framemakers' services were performed prior to the transfer of the property and constituted taxable retail unitary transactions pursuant to IC § 6-2.5-4-1(e). Id. Therefore, the court determined that Framemakers' charges (for service) were subject to sales tax. Id.

In Galligan v. Indiana Dep't. of State Revenue, 825 N.E.2d 467 (Ind. Tax Ct. 2005), the taxpayer, a responsible officer of the company, challenged, among other things, the Department's sales/use tax assessments on various purchase invoices, which the taxpayer claimed to be payments for services and "services are not taxable." Id. at 480.

The court stated, in relevant part, that:

> [T]he provision of services is, generally, not taxable. As a practical matter, however, "mixed transactions" often occur where tangible personal property is sold in order to complete a service contract, or where services are provided in order to complete the sale of tangible personal property. For these mixed transactions, distinguishing the taxable sale of property from the non-taxable sale of services is often difficult. Accordingly, the legislature has set forth several parameters for imposing tax on these transactions. First, taxable property does not escape taxation merely because it is transferred in conjunction with the provision of non-taxable services. Second, services, generally outside the scope of taxation, are subject to tax to the extent the income represents "any bona fide charges which are made for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other service performed in respect to the property transferred before its transfer and which are separately stated on the transferor's records." Finally, the legislature imposes tax on services that are provided in a retail unitary transaction, "a unitary transaction that is also a retail transaction." A unitary transaction is one which "includes all items of personal property and services which are furnished under a single order or agreement and for which a total combined charge or price is calculated."

Id. at 480-81. (Internal citations omitted) (Emphasis in original).

Finally, the Department's Sales Tax Information Bulletin 14 (December 2002), 26 Ind. Reg. 914 ("Information Bulletin 14"), in pertinent part, provides that:

> **Purchases by Advertising Agencies for Their Clients:**
>
> If an agency relationship exists between the advertising agent and his client, the principal, the agent may pay the sales tax for the principal when the advertising agency makes purchases of personal property in the client's behalf in the process of performing his services, (e.g., printing plates, photographs, advertising

brochures). The agency may then seek reimbursement from the client at the time of billing. . . .

Failure of the agency to pay the sales tax on purchases as outlined above shall not relieve the principal of liability for the tax due.

Retail Sales by Advertising Agencies:

The transfer of tangible personal property for a consideration shall constitute a retail sale by the advertising agency and is subject to Gross Retail Tax unless transferred to the principal for whom the agency purchased the tangible personal property as outlined in the above paragraph.

Referring to the Information Bulletin 14, Taxpayer claimed that it primarily engaged Vendor A for the branding and marketing services; that in rendering the services, Vendor A acted as Taxpayer's agent, employing printers or manufacturers to produce tangible personal property with Taxpayer's information and logo; that Vendor A paid sales tax on those items and subsequently was reimbursed by Taxpayer. Alternatively, referencing the Department's Sales Tax Information Bulletin 54 (August, 1990) ("Information Bulletin 54"), Taxpayer asserted that if "the Department fails to recognize the agency relationship" between Taxpayer and Vendor A, Vendor A was the customer who "engaged the mass mailing companies and printers" and thus "the printers are required to collect the sales tax from the customer." Thus, Taxpayer asserted that it was not responsible for the sales/use tax. To support its protest, Taxpayer submitted sample invoices both from Vendor A and from a third party printer.

Upon review, however, Taxpayer's reliance on Information Bulletin 14 and Information Bulletin 54 is misplaced. First, when an agent purchases tangible personal property in behalf of its client, the principal, the agent should pay the sales tax and only recoup the same amount from its client. Taxpayer's documentation demonstrated otherwise. Taxpayer's documentation showed that it paid Vendor A for various items, which the tangible personal property was ultimately transferred to Taxpayer or Taxpayer's designated recipients. When Vendor A engaged in the third party printers to produce the tangible personal property that contained Taxpayer's information or logo, the third party printers billed Vendor A. However, Taxpayer's documentation further showed that Vendor A charged Taxpayer additional mark-ups in addition to its incurred costs as opposed to mere reimbursement when it billed Taxpayer. Therefore, in this instance, Vendor A was a retail merchant who transferred tangible personal property to Taxpayer for a consideration. Thus, pursuant to the above mentioned statutes and regulations, Taxpayer's purchases were subject to sales/use tax. Since Taxpayer did not pay sales tax, use tax is properly imposed.

Taxpayer also erred in arguing that Vendor A was responsible for the tax because Vendor A was the customer who engaged the mass mailing companies and printers. In this instance, Vendor A was not audited and its business records were not being examined. Thus, whether Vendor A was responsible for the sales/use tax on items it purchased is irrelevant and beyond the scope of Taxpayer's protest.

In short, Vendor A was a retail merchant when it charged Taxpayer mark-ups on the tangible personal property it transferred to Taxpayer for consideration. Taxpayer's purchases were subject to sales/use tax. Since Taxpayer did not pay sales tax, use tax is properly imposed.

B. Purchases from Various Veterinary Suppliers.

Taxpayer claimed that it was not responsible for the sales/use tax on various supplies, including "[c]atheters, syringes, IV lines, infusion tubes, blood bags, cross match kits," and "food" that it purchased from several vendors at issue because its purchases were exempt.

IC § 6-2.5-5-19 (effective January 1, 2004) provides:

(a) As used in this section, "legend drug" means a drug as defined in IC 6-2.5-1-17 that is also a legend drug for purposes of IC 16-18-2-199.
(b) As used in this section, "nonlegend drug" means a drug (as defined in IC 6-2.5-1-17) that is not a legend drug.
(c) Sales of legend drugs and sales of nonlegend drugs are exempt from the state gross retail tax if:
(1) a registered pharmacist makes the sale upon the prescription of a practitioner who is licensed to prescribe, dispense, and administer those drugs to human beings or animals in the course of his professional practice; or
(2) the licensed practitioner makes the sales.
(d) Sales of a nonlegend drug are exempt from the state gross retail tax, if:

(1) the nonlegend drug is dispensed upon an original prescription or a drug order (as defined in IC 16-42-19-3); and
(2) the ultimate user of the drug is a person confined to a hospital or health care facility.

(e) Sales of insulin, oxygen, blood, or blood plasma are exempt from the state gross retail tax, if the purchaser purchases the insulin, oxygen, blood, or plasma for medical purposes.

(f) **Sales of drugs, insulin, oxygen, blood, and blood plasma are exempt from the 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.

(**Emphasis added**).

45 IAC 2.2-5-36 explains:

(a) The gross retail tax shall apply to the following purchase transactions made by licensed practitioners:
(1) All office furniture, equipment and supplies.
(2) Drugs of a type not requiring a prescription, when not purchased for resale.
(3) Surgical instruments, equipment and supplies.
(4) Bandages, splints, and all other medical supplies consumed in professional use.
(5) X-Ray, diathermy, diagnostic equipment, or any other apparatus used in the practice of surgery or medicine.

(b) The purchase of items for resale by the physician or surgeon. In order to resell items the practitioner must be licensed as a retail merchant, and must quote the selling price of any items separately from the charge for professional service.

The Department's Sales Tax Information Bulletin 48A (February 2010), 20100224 Ind. Reg. 045100099NRA, in relevant part, provides:

I. DEFINITIONS

Legend drug – means a drug that has the legend "may only be dispensed by a veterinarian," "may only be sold through a veterinarian," or "may only be sold by a prescription" or words to that effect.

Licensed practitioner – means a veterinarian licensed by the State of Indiana to prescribe, dispense, and administer drugs, medical equipment, or other supplies to animals in the ordinary course of the veterinarian's professional practice.

. . .

Prescribe – means the issuance by a licensed practitioner of a certificate in writing or a notation in the patient's medical record that the use of the drugs and medications, vaccines, durable medical equipment, medical supplies, and medical devices is necessary to the patient in order to correct or alleviate a condition brought about by injury to, malfunction of, or removal of a portion of the patient's body.

. . .

Patient – means any animal, bird, or fish that is examined, diagnosed, or treated by a licensed practitioner.

II. SALES OF DURABLE MEDICAL EQUIPMENT, DEVICES, DRUGS, AND OTHER SUPPLIES

. . .

B. Sales to Licensed Practitioners

In general, **all purchases of tangible personal property by a licensed practitioner are subject to sales tax. However, an exemption is afforded to sales of certain drugs, vaccines, insulin, oxygen, blood, or blood plasma**.

Sales to licensed practitioners of legend drugs, insulin, oxygen, blood, or blood plasma are exempt from the sales tax if the licensed practitioner buys such items for direct consumption in the course of rendering professional service.

The purchase of food by veterinarians for use in feeding animals or other pets kept on the premises is subject to sales tax at the time of purchase. Sales tax must be collected on the sale of pet food and supplies used to

treat healthy patients. Charges made for housing such animals are not taxable. **Prescription diets, including those diets necessary to correct or alleviate a particular medical condition, are not taxable. Maintenance diets to maintain an animal's good health are taxable**.

III. GENERAL PURCHASES BY LICENSED PRACTITIONERS

Sales tax applies to the following purchase transactions made by licensed practitioners:
(1) All office furniture, equipment, and supplies
(2) Non-legend drugs, when not purchased for resale
(3) **Surgical instruments, equipment, and supplies**
(4) **X-ray, diathermy, or diagnostic equipment, or any other apparatus used in the practice of surgery or veterinary medicine**

If the purchase of taxable items by the licensed practitioner is made outside the State of Indiana and sales tax is not charged thereon, the purchaser becomes liable for the use tax and must remit it directly to the Department. A practitioner who is a registered retail merchant should report the use tax on the sales tax return. Otherwise, the use tax may be paid when the licensed practitioner files an annual income tax return.

(**Emphasis added**).

(1) Medical Supplies.

Taxpayer, in this instance, asserted that it "is an emergency referral veterinary hospital; [and does] not normally examine healthy animals for routine services." Thus, Taxpayer claimed that "all medications are a medical necessity, including but not limited to food, blood and medications." Referencing the Department's Revenue Ruling ST 98-07 (July 24, 1998), Taxpayer further argued that it was not responsible for the sales/use tax on its purchases of "[c]atheters, syringes, IV lines, infusion tubes, blood bags, cross match kits, etc. [because] all [of them were used to] either administer or contain prescription, medication, blood, plasma, etc."

Upon review, however, the Department is not able to agree. Taxpayer referenced Revenue Ruling ST 98-07, which was published in 1998–more than a decade ago, and is not applicable in this case. First, in 2003, the Indiana General Assembly amended IC § 6-2.5-5-19, which only exempts "drugs, insulin, oxygen, blood, and blood plasma" when the licensed practitioner "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." IC 6-2.5-5-19(f). The legislators chose not to exempt tangible personal property, such as "catheters, syringes, IV lines, infusion tubes, blood bags, cross match kits" used by licensed practitioners. Second, the Department updated the same Information Bulletin 48A in February 2010, replacing the September 1989 version. Thus, Taxpayer's reliance on the 1998 ruling is misplaced.

There is no dispute as to whether Taxpayer is a licensed practitioner that provides medical treatments to patients. However, "all purchases of tangible personal property by a licensed practitioner are subject to sales tax," unless the items meet the definitions of the "certain drugs, vaccines, insulin, oxygen, blood, or blood plasma." Information Bulletin 48A. As mentioned earlier, a statute which provides a tax exemption is strictly construed against the taxpayer. RCA Corp., 310 N.E.2d at 97. "[W]here such an exemption is claimed, the party claiming the same must show a case, by sufficient evidence, which is clearly within the exact letter of the law." Id. at 101 (internal citations omitted). Thus, Taxpayer's purchases of medical supplies, including catheters, syringes, IV lines, infusion tubes, blood bags, cross match kits, were not exempt. Since sales tax was not paid at the time of the purchases, use tax is properly imposed.

(2) Food Supplies.

Taxpayer claimed that it purchased "food" from two (2) veterinary suppliers, Vendor C and Vendor W, and should be removed from the audit assessment because the Department's field auditor agreed that those purchases qualified for "[p]rescription diets, including those diets necessary to correct or alleviate a particular medical condition, are not taxable," under Information Bulletin 48A. Nonetheless, in the process of finalizing the audit report, Taxpayer asserted that some purchases were overlooked and remained in the audit, resulting in additional tax on the items at issue.

After a review of the Department's audit report, it is clear that the Department did not assess tax on Taxpayer's purchases from Vendor C. Thus, the issue is moot. As to Taxpayer's purchases from Vendor W, the Department's Audit Division is instructed to remove from the assessment any purchases that qualify for prescription diet, if any.

In short, Taxpayer's purchases from Vendor A and its purchases of medical supplies from various vendors were not exempt. Since Taxpayer did not pay sales tax at the time of its purchases, use tax is properly imposed. As to Taxpayer's purchases from Vender W, the Department's Audit Division is instructed to remove from the assessment any purchases that qualify for prescription diet, if any.

FINDING

Taxpayer's protest is sustained in part and denied in part. Taxpayer's protest of Subpart A, purchases from Vendor A, and Subpart B(1), purchases of medial supplies, is respectfully denied.

As to Taxpayer's protest of Subpart B(2), purchases of food supplies, the Department's Audit Division is instructed to remove from the assessment any purchases that qualify for prescription diet, if any.

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