

## DEPARTMENT OF STATE REVENUE

Revenue Ruling #2015-22ST  
January 19, 2016

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## ISSUES

Sales and Use Tax - Purchases of Construction Materials

Authority: [IC 6-2.5-1-2](#); [IC 6-2.5-2-1](#); [IC 6-2.5-1-27](#); [IC 6-2.5-4-1](#); [IC 6-2.5-4-9](#); [IC 6-2.5-5-16](#); [IC 6-25-5-44](#); [45 IAC 2.2-3-8](#); [45 IAC 2.2-3-9](#); [45 IAC 2.2-5-24](#)

A political subdivision of Indiana is seeking a determination regarding the following issues:

1. Whether a recreational park facility will be predominantly used in the performance of a governmental function; and
2. Whether Taxpayer is the ultimate purchaser or recipient of the recreational park facility.

## STATEMENT OF FACTS

A political subdivision of Indiana ("Taxpayer") will enter into a business arrangement with a contractor to construct a recreational park facility (primarily a sports park; "park"). The contractor will pay for the materials used in constructing the park at its own cost. The contractor will lease the park to Taxpayer with a term of 25 years. The arrangements made for the construction of this park are viewed by both parties as a financing transaction in the form of a capital lease. The lease payments will cover 100% of the costs of construction, as well as a 4.5% financing and interest charge. For accounting and income tax purposes, Taxpayer will be viewed as the owner from the outset.

Taxpayer has the option to purchase the title to the park prior to the expiration of the lease, and the Taxpayer anticipates that it will do so. However, pursuant to the terms of the lease, when the lease ends, title would transfer to Taxpayer, with no obligation to pay any additional amounts to the contractor, as the lease payments cover the entire cost of the project.

## DISCUSSION

Indiana imposes sales tax on all retail transactions made in the state. [IC 6-2.5-2-1\(a\)](#). The term "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](#)." [IC 6-2.5-1-2\(a\)](#). A person is a retail merchant making a retail transaction when he engages in selling at retail. [IC 6-2.5-4-1\(a\)](#). A person is engaged in selling at retail when, in the ordinary course of his regularly conducted trade or business, he acquires tangible personal property for the purpose of resale and then transfers that property to another person for consideration. [IC 6-2.5-4-1\(b\)](#). The term "tangible personal property" means personal property that can be seen, weighed, measured, felt, touched, or is in any other manner perceptible to the senses. [IC 6-2.5-1-27](#).

[IC 6-2.5-4-9\(b\)](#) provides that the sale of tangible personal property that will be added to a structure or facility by the purchaser, which would become part of the real estate on which the structure is located, is not a retail transaction "if the ultimate purchaser or recipient of the property to be added to the structure or facility would be exempt from the state gross retail and use taxes if that purchaser or recipient had directly purchased the property from the supplier for addition to the structure or facility."

[45 IAC 2.2-3-8](#) expands on this principle, and provides:

- (a) In general, all sales of tangible personal property are taxable, and all sales of real property are not taxable. The conversion of tangible personal property into realty does not relieve the taxpayer from a liability for any owing and unpaid state gross retail tax or use tax with respect to such tangible personal property.

(b) All construction material purchased by a contractor is taxable either at the time of purchase, or if purchased exempt (or otherwise acquired exempt) upon disposition unless the ultimate recipient could have purchased it exempt (see 6-2.5-5 [[45 IAC 2.2-5](#)]).

One of the requirements of [IC 6-2.5-4-9\(b\)](#) is that the ultimate purchaser or recipient would be exempt if they had directly purchased the tangible personal property. In this case, Taxpayer would be exempt from sales and use tax subject to the provisions of [IC 6-2.5-5-16](#), which provides:

Transactions involving tangible personal property, accommodations, public utility commodities, and public utility service are exempt from the state gross retail tax, if the person acquiring the property, accommodations, commodities, or service:

- (1) is the state of Indiana, an agency or instrumentality of the state, a political subdivision of the state, or an agency or instrumentality of a political subdivision of the state, including a county solid waste management district or a joint solid waste management district established under [IC 13-21](#) or [IC 13-9.5-2](#) (before its repeal); and
- (2) predominantly uses the property, accommodations, commodities, or service to perform its governmental functions. (Emphasis added).

[45 IAC 2.2-5-24](#) clarifies this exemption in relevant part as follows:

- (a) As used in this rule, "predominantly for use in the performance of a governmental function" means that the property acquired will be used for more than fifty percent (50%) for the performance of a governmental function.
- (b) The state gross retail tax shall not apply to sales to the state of Indiana, its agencies and instrumentalities, all counties, townships, and municipal corporations, their respective agencies and instrumentalities, and all other state governmental entities and subdivisions of tangible personal property and public utility services and commodities predominantly for use in the performance of governmental functions.

With regards to the first issue, the materials purchased will be used to build a recreational park facility or sports park. Parks are traditionally a governmental function, many of which have various sports fields or recreation centers. Based on this information, the park would meet the test under [45 IAC 2.2-5-24](#) since the parks will be predominantly used to perform Taxpayer's governmental functions.

With regards to the second issue, Taxpayer appears to be the ultimate purchaser of the park, since it is leasing the park and maintaining it for 25 years, after which it will be the outright owner. Since this is a capital lease, it is a financing vehicle for Taxpayer to purchase the property, and under the terms of the lease, Taxpayer would be considered the owner from the outset. Further, if Taxpayer had purchased the construction materials directly, those purchases would have qualified for the sales tax exemption under [IC 6-2.5-5-16](#), because Taxpayer is a municipality and the construction materials will be incorporated into a park that will be used predominately by Taxpayer in the performance of its governmental functions.

### **RULING**

Based upon the facts as presented and as we understand them, Taxpayer is the ultimate purchaser of the park, and the contractor's purchase of building materials would be exempt from sales or use tax as the park is predominately used to carry on Taxpayer's governmental purpose.

### **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: 02/24/2016 by Legislative Services Agency*

