

DEPARTMENT OF STATE REVENUE

Revenue Ruling #2017-06ST
October 2017

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ISSUES

Sales and Use Tax - Applicability of Medical Exemption to Eclipse Viewing Goggles

Authority: [IC 6-2.5-1-18](#); [IC 6-2.5-1-23](#); [IC 6-2.5-1-25](#); [IC 6-2.5-2-1](#); [IC 6-2.5-3-2](#); [IC 6-2.5-5-18](#); [45 IAC 2.2-5-27](#); [45 IAC 2.2-5-28](#); Sales Tax Information Bulletin #48 (May 2016)

A company ("Taxpayer") is seeking a determination regarding whether goggles or glasses used to safely view the sun during a total solar eclipse (the "goggles") are devices exempt from Indiana gross retail and use tax pursuant to [IC 6-2.5-5-18\(c\)](#).

STATEMENT OF FACTS

Taxpayer primarily operates as a tutoring service, specializing in math and science. Taxpayer is seeking to sell the goggles to the public for use in the event of a future solar eclipse occurring in North America. Taxpayer provides the following reasons for finding that the goggles should be exempt from sales tax:

1. This request is in the public health's interest. These goggles . . . are specially designed to block the harmful UV radiation from the sun during all periods, but are mandatory in the period of the intense invisible radiation during the times of the partial solar eclipse heading towards totality and away from it.
2. The total solar eclipse occurs in the region on [August 21, 2017] and the best observation location is just south of Indiana, in Hopkinsville, Kentucky. We expect Indiana residents to flock to this and the nearby places, weather permitting as necessary. Other solar eclipses occur from time to time as well, infrequently.
3. There is a basis for this request in the Indiana Department of Revenue, DoR's previous policy rulings, two attached to this document¹ in as the strongest support to this petition. Exempting the requirement of the Indiana Sales and Use Tax for prescribed eyewear is already in place. [The goggles] have no diopter magnification, yet a mandatory prescribed eyewear for the professionals and doctors, alike.
4. The prescription for the [goggles] is universal as made publicly by opticians, ophthalmologist[s], astronomers, scientists, including NASA personnel.

DISCUSSION

Taxpayer requests that the Department find that the goggles are a device or piece of equipment that it is exempt from Indiana gross retail and use tax pursuant to [IC 6-2.5-5-18\(c\)](#).

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\(a\)](#).

In general, all purchases of tangible personal property are subject to sales and/or use tax unless an enumerated exemption from sales and/or use tax is available. [IC 6-2.5-5-18\(c\)](#) provides an exemption for certain medical devices and equipment in pertinent part:

Transactions involving the following are exempt from the state gross retail tax if the end user acquires the property upon a prescription or drug order (as defined in [IC 16-42-19-3](#)) from a licensed practitioner:

(1) Durable medical equipment.

...

(3) Prosthetic devices, including artificial limbs, orthopedic devices, dental prosthetic devices, eyeglasses,

and contact lenses.

(4) Other medical supplies or devices that are used exclusively for medical treatment of a medically diagnosed condition, including a medically diagnosed condition due to:

- (A) injury;
- (B) bodily dysfunction; or
- (C) surgery.

The first question is whether the goggles would meet the definition of "durable medical equipment," "prosthetic devices," or "other medical supplies and devices." With regard to the first term, "durable medical equipment" is defined in [IC 6-2.5-1-18](#), which provides:

(a) "Durable medical equipment" means equipment, including repair and replacement parts for the equipment, that:

- (1) can withstand repeated use;
- (2) is primarily and customarily used to serve a medical purpose;
- (3) generally is not useful to a person in the absence of illness or injury; and
- (4) is not worn in or on the body.

The term does not include mobility enhancing equipment.

(b) As used in this section, "repair and replacement parts" includes all components or attachments used in conjunction with durable medical equipment.

The goggles would not qualify as "durable medical equipment," because the goggles are worn on the body, they are useful to a person in the absence of injury and illness, and it is unclear whether they can withstand repeated use.

Regarding the third category, the goggles would not qualify as "other medical supplies and devices," as the goggles do not treat a medically diagnosed condition of the person using the goggles. [45 IAC 2.2-5-28](#) expands on this exemption, providing in relevant part:

(g) The sale to the user of medical equipment, supplies, or devices prescribed by one licensed to issue such a prescription are exempt from sales and use tax.

(h) The term "medical equipment, supplies or devices", as used in this paragraph, are those items, the use of which is directly required to correct or alleviate injury to malfunction of, or removal of a portion of the purchaser's body.

Therefore, even if the goggles were prescribed to the purchaser, the goggles would not qualify under this category if their purpose was not to treat a medically diagnosed condition of the person using the goggles.

Finally, regarding the second term, [IC 6-2.5-1-25](#) defines "prosthetic device" as follows:

"Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts for the device, worn on or in the body to:

- (1) artificially replace a missing part of the body;
- (2) prevent or correct physical deformity or malfunction; or
- (3) support a weak or deformed part of the body.

The goggles do not meet the definition of a "prosthetic device." There is no deformity, malfunction, weakness, or missing body part that the goggles correct, support, or replace. A healthy human eye cannot look directly at the sun without risking injury (such as "retinal burns"), and the aid that the goggles provide in allowing a human eye to look at the sun do not correct any malady that this term is meant to cover.

Taxpayer makes the argument that the human eye is indeed weak, but that with enough training, can be strengthened in order to look at the sun. Since the human eye is weak, Taxpayer posits, the goggles support the eyes in order for them to be able to look directly at the sun during a total solar eclipse. Taxpayer makes a similar case that there is a malfunction of the eye affecting its ability to look directly at the sun which the goggles correct.

The Department disagrees. The human eye cannot look directly at the sun without potentially causing damage to it after a period of exposure. If this is seemingly true of all otherwise healthy eyes, then this is not a weakness; it is the baseline strength or ability of an otherwise healthy eye. Given this baseline strength, a "weak" eye would instead not be able to tolerate minimal exposure to sunlight even when not directly looking at the sun. Further, if the Department granted this exemption to all items that the medical community says are recommended to prevent

injury when exposing otherwise healthy bodies to extreme conditions, then applying this logic, the Department would, as an example, have to grant the exemption to scuba oxygen tanks because humans cannot hold their breath underwater for long periods of time. To exempt those items would not be the intent of the statute, and it is not the intent of the statute that the goggle be exempt either.²

The second issue is that the goggles also have to be prescribed to the purchaser by a licensed practitioner in order for the transaction to qualify for the exemption. A "prescription" is defined by [IC 6-2.5-1-23](#) as "an order, a formula, or a recipe issued in any form of oral, written, electronic, or other means of transmission by a licensed practitioner authorized by Indiana law."

Taxpayer states that there is a "universal" prescription "made publicly" via print, internet, and air waves by various medical personnel in order to use the goggles to look at the sun. Taxpayer states that this interpretation requires "nuance" as it applies to a unique set of circumstances (given the nature of the event), and purportedly involves the public interest. Taxpayer cites an article from the National Aeronautics and Space Administration website,³ written by Dr. B. Ralph Chou, MSc, OD, wherein Dr. Chou discusses the importance of wearing safety gear for the eyes when viewing the sun during a solar eclipse. Taxpayer refers to [45 IAC 2.2-5-27](#), which clarifies the definition of "prescribed" as follows:

- (a) The term "person licensed to issue a prescription" shall include only those persons licensed or registered to fit and/or dispense such devices.
- (b) Definition: The term "prescribed" shall mean the issuance by a person described in [subsection (a)] of a certification in writing that the use of the medical equipment[,] supplies[,] **and devices is necessary to the purchaser in order to correct or to alleviate a condition brought about by injury to, malfunction of, or removal of a portion of the purchaser's body. (Emphasis added).**

Taxpayer contends that the article fits this criteria of subsection (a), apparently because Dr. Chou is a Doctor of Optometry. As for the bolded portion of subsection (b), Taxpayer again claims that the goggles fit within the definition of a prosthetic device, which, as discussed above, the Department has determined that they do not.

Taxpayer next discusses a "prescription standard" versus an "industry standard." Taxpayer maintains that "industry standards" (e.g., the requirement that a welder use a similar type of UV protection goggles or mask) differ from "prescription standards," which in Taxpayer's words, "must always be regarded as beyond and above the 'industry standard.'" Taxpayer offers no citation or explanation for what constitutes a "prescription standard," other than the inference that an industry standard applies to all users in the respective industry of the equipment in question, whereas perhaps the prescription standard applies to equipment that is used by the general public for a medically necessary purpose. Ultimately, Taxpayer claims that "but for the prescription[,] these [goggles] shall never exist. [Their] use is not something in vocation, nor something in vogue, either. In fact their use is mandatory."

Contrary to these arguments, the "universal" prescription to which Taxpayer refers does not meet the criteria of [IC 6-2.5-5-18](#) for two reasons. First, the medical community or a member thereof may state that it is recommended these goggles be used in order to safely look at the sun during a solar eclipse, but that it is not a prescription, and Taxpayer has not shown where one exists. The article Taxpayer provided from the NASA website, written by a Doctor of Optometry, is not a prescription. It is general guidance regarding eye protection for people who would like to look at the sun, and not an "order." Furthermore, the goggles at issue are not specifically mentioned in the article, which means that they're not even recommended. The article does not even say that protective lenses are the safest form of viewing an eclipse.

Second, even if there were a "universal" prescription, the statute requires a "prescription . . . from a licensed practitioner." This means a specific prescription from a specific licensed practitioner issued directly to that specific end user purchaser. That some medical practitioners say that the goggles may be recommended does not satisfy the terms of the statute. That recommendation, which again is not an "order," is general in nature and while published to the public at large, is not issued to anyone in particular. Furthermore, a great many purchasers would be ignorant of the article cited or indeed any published article making similar recommendations when making a purchase of the goggles. Unless the purchaser directly received a specific prescription from a licensed practitioner, the purchase could not be exempt. Furthermore, even if the purchaser did receive that prescription, the goggles themselves are still not a medical device or piece of equipment that qualifies under the terms of the statute, which means that the purchase is not exempt regardless of the presence of a prescription.

Taxpayer makes the argument that prescriptions can be made via print, the internet, and airwaves, if it is in the public interest. Taxpayer states the following to support this contention:

With the total solar eclipse safety viewing goggles, the user and the end user are identical, however, the requirement to use the goggles is dictated per the doctor's orders over the Internet and the airwaves, print just like doctors would be forced to alert that everyone must boil water before drinking when floods or infectious epidemic contaminate the municipal water supply. That is, when there is an emergent time as with the total solar eclipse in four weeks from today, there is no need for case by case prescription, as such could be humanely impossible.

Taxpayer further contends that a strict and rigid interpretation of the law could be in conflict with the legislative intent, and maintains that this contention applies here. However, the terms of the statute very clearly do not apply here. Even if the argument that the public interest necessitates a looser interpretation of the statute were valid, this is not an emergency. Scientists are able to predict total solar eclipses seemingly several years in advance. Had the Indiana General Assembly desired to expand the terms of [IC 6-2.5-5-18](#) to include these goggles as an exempt item, it could have done so in prior legislative sessions, but it did not. Further, it may be in the public interest that those viewing the eclipse do so with equipment such as the goggles, but is more than likely an individual's choice to view the eclipse, and not a dire situation which will afflict the public at large without their choosing.

Since the goggles are not a medical device or piece of equipment that qualifies under the terms of the statute, and there is not a prescription issued specifically to the end user purchaser directly by a licensed practitioner (nor would a prescription be satisfactory should one be issued directly to the purchaser), sales of the goggles are not exempt under [IC 6-2.5-5-18](#).

RULING

Taxpayer's goggles are not exempt as a medical device pursuant to [IC 6-2.5-5-18](#), as they do not meet the definition or requirements for any of the categories of exempt equipment. Further, the goggles are not sold to an end user patient pursuant to a prescription if there is merely a general recommendation for their use by medical professionals.

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.

¹ Taxpayer refers to Sales Tax Information Bulletin #48 (October 2016), and Revenue Ruling 2011-02ST ([20110928-IR-045110547NRA](#)). Taxpayer later submitted Revenue Ruling #2015-16ST ([20160330-IR-045160125NRA](#)) for review.

² The Revenue Rulings to which the Taxpayer cited involve actual medical devices that fit within one of the categories of the statute, and do not support Taxpayer's contentions.

³ <https://eclipse.gsfc.nasa.gov/SEhelp/safety2.html> (Apparently originally published (but adapted) from a separate article, NASA RP 1383 *Total Solar Eclipse of 1999 August 11*, April 1997, p. 19)

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