

DEPARTMENT OF STATE REVENUE

Revenue Ruling #2016-08ST
October 13, 2017

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ISSUES

Sales and Use Tax - Purchases Made by a Nonprofit

Authority: [IC 6-2.5-2-1](#); [IC 6-2.5-3-2](#); [IC 6-2.5-3-4](#); [IC 6-2.5-5-21](#); [IC 6-2.5-5-26](#); IRC § 501(c)(3); *Rhoades v. Indiana Dep't of State Revenue*, 774 N.E.2d 1044, 1047 (Ind. Tax Ct. 2002); *Webster's Third New International Dictionary* (1986).

The Indiana Economic Development Foundation, Inc. ("Nonprofit") is seeking an opinion as to whether Nonprofit's purchase of food and beverages are exempt from the Indiana sales tax.

STATEMENT OF FACTS

Nonprofit is based in Indiana. It is exempt from federal income tax under the Internal Revenue Code ("IRC") § 501(c)(3). Nonprofit's purpose is to encourage economic development in Indiana. Specifically, Nonprofit may "solicit and accept private sector funding, gifts, donations, bequests, devises, and contributions" to further this purpose. [IC 5-28-5-13](#). Nonprofit will at times purchase or contract with various individuals for its not-for-profit purpose, including catering companies that provide food and beverages for Nonprofit's fundraising activities in support of economic development efforts for the state of Indiana.

DISCUSSION

Indiana imposes an excise tax, known as the state gross retail tax ("sales tax"), on retail transactions made in Indiana. [IC 6-2.5-2-1\(a\)](#). Absent a specific exemption, the person who acquires property in a retail transaction is liable for the tax on the transaction and is required to pay the tax to the retail merchant as a separate added amount. [IC 6-2.5-2-1\(b\)](#).

Indiana also imposes a complementary excise tax, known as the use tax ("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\(a\)](#). The "use tax is functionally equivalent to [the] sales tax . . ." *Rhoades v. Indiana Dep't of State Revenue*, 774 N.E.2d 1044, 1047 (Ind. Tax Ct. 2002).

The storage, use, or consumption of tangible personal property in Indiana is exempt from the use tax if the property was acquired in a retail transaction that is wholly or partially exempt from the state gross retail tax under any part of [IC 6-2.5-5](#) and the property is being used, stored, or consumed for the purpose for which it was exempted. [IC 6-2.5-3-4\(a\)](#). Thus, transactions exempt from sales tax are also exempt from use tax.

In light of its not-for-profit status, Nonprofit asks that the department issue a ruling addressing whether its purchases of food and beverages are exempt from sales tax under [IC 6-2.5-5-25](#), the exemption generally applicable to acquisitions made by nonprofit entities. [IC 6-2.5-5-25\(a\)](#) provides as follows:

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

- (1) is an organization described in section 21(b)(1) of this chapter;
- (2) primarily uses the property, accommodations, 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.

Applying this three part test, there is no question that Nonprofit is not an organization operated predominantly for social purposes. Accordingly, Nonprofit satisfies the exemption's third requirement set forth by [IC 6-2.5-5-25\(a\)\(3\)](#).

However, two questions, both of which are dispositive, remain. First, the department must answer the question of whether Nonprofit is an organization described in section 21(b)(1) of [IC 6-2.5-5](#), the first requirement set forth by [IC 6-2.5-5-25\(a\)\(1\)](#). If Nonprofit is such an organization, further analysis is required to answer the question of whether Nonprofit primarily uses the property it purchases or acquires (in this case food and beverages) to carry on or to raise money to carry on its not-for-profit purpose, the second requirement set forth by [IC 6-2.5-5-25\(a\)\(2\)](#). If either question is answered in the negative, Nonprofit is not entitled to the exemption under [IC 6-2.5-5-25](#).

A. Organizations Described in Section 21(b)(1)

In this instance, the threshold question is whether Nonprofit is an organization described in Section 21(b)(1) of [IC 6-2.5-5](#), Exempt Transactions of Retail Merchant. If Nonprofit is not, the question of how Nonprofit uses the property it acquires is largely moot. The organizations described in [IC 6-2.5-5-21\(b\)\(1\)](#) include:

(A) A fraternity, a sorority, or a student cooperative housing organization that is connected with and under the supervision of a postsecondary educational institution if no part of its income is used for the private benefit or gain of any member, trustee, shareholder, employee, or associate.

(B) Any:

- (i) institution;
- (ii) trust;
- (iii) group;
- (iv) united fund;
- (v) affiliated agency of a united fund;
- (vi) nonprofit corporation;
- (vii) cemetery association; or
- (viii) organization;

that is organized and operated exclusively for religious, charitable, scientific, literary, educational, or civic purposes if no part of its income is used for the private benefit or gain of any member, trustee, shareholder, employee, or associate.

(C) A group, an organization, or a nonprofit corporation that is organized and operated for fraternal or social purposes, or as a business league or association, and not for the private benefit or gain of any member, trustee, shareholder, employee, or associate.

(D) A:

- (i) hospital licensed by the state department of health;
- (ii) shared hospital services organization exempt from federal income taxation by Section 501(c)(3) or 501(e) of the Internal Revenue Code;
- (iii) labor union;
- (iv) church;
- (v) monastery;
- (vi) convent;
- (vii) school that is part of the Indiana public school system;
- (viii) parochial school regularly maintained by a recognized religious denomination; or
- (ix) trust created for the purpose of paying pensions to members of a particular profession or business who created the trust for the purpose of paying pensions to each other;

if the taxpayer is not organized or operated for private profit or gain.

[IC 6-2.5-5-21\(b\)\(1\)](#).

Nonprofit does not fall within the ambit of section 21(b)(1)(A) of chapter 5, as Nonprofit is not a fraternity or a sorority, nor is it a student cooperative housing organization. See [IC 6-2.5-5-21\(b\)\(1\)\(A\)](#). Nonprofit is also not an organization described in section 21(b)(1)(C): a group, an organization, or a nonprofit corporation that is organized and operated for fraternal or social purposes. See [IC 6-2.5-5-21\(b\)\(1\)\(C\)](#). Section 21(b)(1)(D) is also inapplicable. Nonprofit does, however, meet the first requirement of section 21(b)(1)(B), as Nonprofit is, in fact, a nonprofit corporation. See [IC 6-2.5-5-21\(b\)\(1\)\(B\)\(vi\)](#).

While it is a fact that Nonprofit is a nonprofit corporation, the analysis required to answer the question of whether Nonprofit is an organization described in section 21(b)(1) of chapter 5 is incomplete. To qualify as an organization described in section 21(b)(1) of chapter 5, and more specifically, a nonprofit corporation under section 21(b)(1)(B)(vi) of chapter 5, Nonprofit must be "organized and operated exclusively for religious, charitable, scientific, literary, educational, or civic purposes," - the "exclusive purpose" test - and no part of its income may be "used for the private benefit or gain of any member, trustee, shareholder, employee, or associate" - the "private benefit" test.

1. Exclusive Purpose

To qualify as a nonprofit corporation described in section 21(b)(1) of chapter 5, the department must determine whether Nonprofit is organized and operated exclusively for religious, charitable, scientific, literary, educational, or civic purposes. Again, Nonprofit's statutory purpose is "to solicit and accept private sector funding, gifts, donations, bequests, devises, and contributions" ([IC 5-28-5-13\(a\)](#)), and money received from those activities and sources are to be used to carry out in any manner the purposes and programs under Title 5, Article 28 of the Indiana Code (that is, economic development for the state of Indiana). [IC 5-28-5-13\(b\)\(1\)](#).

Given that Nonprofit's purpose is not religious, charitable, scientific, literary, or educational in nature, the dispositive question here is whether Nonprofit is organized and operated exclusively for civic purposes. Undefined words and phrases are to be given their plain and ordinary meaning. The relevant dictionary definition of "civic" is:

Forming a component of or connected with the functioning, integration, and development of a civilized community (as a town or city) involving the common public activities and interests of the body of citizens . . . concerned with or contributory to general welfare and the betterment of life for the citizenry of a community or enhancement of its facilities; esp.: devoted to improving health, education, safety, recreation, and morale of the general public through nonpolitical means[.]

Webster's Third New International Dictionary, 412 (1986). Applying this definition to Nonprofit, Nonprofit's purposes and functions are concerned with and related to the citizenry of Indiana at large, the Nonprofit directly serves and benefits the state of Indiana as a whole, and it benefits the state on an unrestricted basis. Therefore, Nonprofit is organized and operated exclusively for civic purposes, and satisfies the 'exclusive purpose' test to qualify as a nonprofit corporation under [IC 6-2.5-5-21\(b\)\(1\)\(B\)](#).

2. Private Benefit

Nonprofit's Parent, a body politic and corporate exercising essential public functions, has been statutorily tasked with leading the state's economic development efforts; carrying out the programs under Article 28 of the Indiana Code, including the provision of grants and loans; and performing other essential public services for the state. See [IC 5-28-1-1\(b\)\(2\)](#) and [\(b\)\(3\)](#). Nonprofit, whose existence is authorized by statute, was established to solicit and accept private sector funding, gifts, donations, bequests, devises, and contributions to assist in its Parent's economic development efforts on behalf of the state of Indiana. See [IC 5-28-5-13\(a\)](#), [\(b\)](#).

Given Nonprofit's statutory purpose, "to solicit and accept private sector funding, gifts, donations, bequests, devises, and contributions," and the statutory requirement that money received from the aforementioned activities and sources be used only to carry out in any manner the purposes and programs under Title 5, Article 28 of the Indiana Code (see [IC 5-28-5-13\(a\)](#) and [\(b\)](#)), it is clear that no part of Nonprofit's income may be used for the private benefit or gain of any member, trustee, shareholder, employee, or associate. Indiana law prohibits Nonprofit from using its income in this manner, and Nonprofit's own actions support a finding that Nonprofit's income is not used for the private benefit or gain of any of its members, trustees, shareholders, employees, or associates.

B. Property Primarily Used to Carry on (or to Raise Money to Carry on) Nonprofit's Not-for-Profit Purpose

Having established that Nonprofit is an organization described in Section 21(b)(1), the second part of the test in [IC 6-2.5-5-25\(a\)](#) is that the person acquiring the property "primarily uses the property . . . to carry on or to raise money to carry on its not-for-profit purpose." [IC 6-2.5-5-25\(a\)\(2\)](#). [45 IAC 2.2-5-55\(d\)](#) further clarifies this requirement by providing that:

"[t]his 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%) of the time to further the organization's not-for-profit purpose."

Furthermore, [IAC 2.2-5-55\(b\)\(3\)](#) provides that:

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.

Sales Tax Information Bulletin #10 (April 2012) provides additional guidance on this topic as follows:

The article purchased must be used for the same purpose as that for which the organization is being exempted, and the transaction must be invoiced directly to the nonprofit organization and paid directly via the organization's funds. **Purchases for the private benefit of any member of the organization, such as meals and lodgings, are not eligible for exemption.**

Therefore, a nonprofit organization's purchases of food and beverages would not be exempt from sales tax if they are used for the private benefit of any member. As an example of a meal in which the exemption would not apply, [45 IAC 2.2-5-55](#)(d)(4) uses a medical society to illustrate the point, providing that "[s]ales 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."

Nonprofit provided information to show that food and beverages are purchased for their events that generally include fundraising activities in support of economic development efforts for the state of Indiana. For instance, a catering agreement, where Nonprofit agreed to pay for food, was signed in the hope that Nonprofit is able to raise funds from invitees through contributions and solicitations, which in turn aids the Nonprofit's efforts to promote Indiana's economic development and growth. In this case, the food and beverages would be exempt.

To summarize the elements of this second requirement, a nonprofit organization's purchases of food and beverages would be exempt from sales tax if they are used in carrying on the organization's purpose, the purchases are not for the private benefit of any member, and the purchases are invoiced to and paid by the organization. Nonprofit satisfies all of the elements: the food and beverages are used to carry on Nonprofit's purpose, the food and beverages are not used for the private benefit of any member, and Nonprofit pays for the food and beverages directly.

CONCLUSION

Nonprofit is eligible to make purchases that qualify for the nonprofit sales tax exemption under [IC 6-2.5-5-25](#), as it is a nonprofit organization (described in Section 21(b)(1)) that is operated exclusively for civic purposes and its income is not used for the private benefit of any member of the Nonprofit. As to the purchases of food and beverages at issue, as long as the food and beverages are used to carry on its not-for-profit purpose of promoting economic development in Indiana, the food and beverages are not for the private benefit of any member, and the Nonprofit pays for the food and beverages directly, then the transactions would be exempt from Indiana sales tax.

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.

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