

Letter of Findings: 04-20181449
Gross Retail and Use Tax
For the Years 2014, 2015, and 2016

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of analysis contained in this Letter of Findings.

HOLDING

The Department disagreed with Not-For-Profit Indiana Hospital's argument that anything it purchased was exempt from sales tax; the Department found that Not-For-Profit Indiana Hospital was required to pay sales tax on the purchase of equipment, supplies, and materials not directly related to the provision of healthcare services to sick and injured persons.

ISSUE

I. Gross Retail and Use Tax - Not-for-Profit Exemption.

Authority: IC § 6-2.5-2-1(a); IC § 6-2.5-2-1(b); IC § 6-2.5-3-1(a); IC § 6-2.5-3-2(a); IC § 6-2.5-3-4; IC §§ 6-2.5-5; IC § 6-2.5-5-25(a); IC § 6-8.1-5-1(c); IC § 16-18-2-179; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Conklin v. Town of Cambridge City*, 58 Ind. 130, (1877); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Rhoads v. Ind. Dep't of State Revenue*, 774 N.E.2d 1044 (Ind. Tax Ct. 2002); *Tri-States Double Cola Bottling Co. v. Dep't of State Revenue*, 706 N.E.2d 282 (Ind. Tax Ct. 1999); *General Motors Corp. v. Indiana Dept. of State Revenue*, 578 N.E.2d 399 (Ind. Tax Ct. 1991); *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); [45 IAC 2.2-5-55](#); [45 IAC 2.2-5-55\(d\)\(1\)](#); 42 CFR 413.65(a)(2).

On the ground that it purchased the items used to advance its not-for-profit patient care purposes, Taxpayer argues that the Department erred in imposing sales/use tax on the purchased items.

STATEMENT OF FACTS

Taxpayer is an Indiana not-for-profit hospital. The Indiana Department of Revenue ("Department") conducted a sales/use tax audit of Taxpayer's sales tax returns, monthly sales reports, work papers, and records of purchases made during 2014, 2015, and 2016. The Department's audit report found that Taxpayer issued exemption certificates to each of its vendors and that it had not remitted use tax during the audit period. The audit report stated that Taxpayer "would be exempted from sales tax on purchases of tangible personal property used by the hospital in carrying out its purposes as a hospital." However, the audit also stated that Taxpayer made "purchases that did not directly relate to patient care and [were] therefore subject to tax."

The audit resulted in an assessment of additional sales/use tax. Taxpayer disagreed with the tax assessment and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representatives explained the basis for the protest.

I. Gross Retail and Use Tax - Not-for-Profit Exemption.

DISCUSSION

The issue is whether Taxpayer was exempt from sales and use taxes on purchases of equipment, supplies, and materials. The Department's audit concluded that only those items directly used in providing hospital patient care (e.g. patient beds, diagnostic equipment) were exempt from sales tax; Taxpayer argues that anything it bought was exempt because everything it purchases is used either directly or indirectly in fulfilling its non-profit purposes.

A. Audit Results.

In addition to Taxpayer's financial and business records, the Department reviewed Taxpayer's articles of incorporation and statement of purpose. In small part, Taxpayer's articles of incorporation states that Taxpayer was established "for the care and treatment of sick, injured or disabled persons" However, its articles also state that it has as its purpose "[t]o construct, lease, own, sell, mortgage and otherwise deal with buildings useful or incidental or desirable in carrying on any of the foregoing purposes"

The audit report also summarized the relevant tax imposition and exemption provision:

The Gross Retail Tax Act provides exemption from sales or use tax on purchases by not-for-profit organizations of tangible personal property used in carrying on the non-for-profit purpose for which such organization exempted from sales tax. [Taxpayer] is exempted from income [tax] as a hospital and would be exempted from sales tax on purchases of tangible personal property used by the hospital in carrying out its purpose as a hospital.

Noting that Taxpayer had issued exemption certificates to vendors each time it made a purchase, the Department's audit stated that Taxpayer made "purchases that do not directly relate to patient care and are therefore subject to tax."

The Department's audit made adjustments assessing Taxpayer use tax on the following items or categories of items including but not limited to:

- Art Work;
- Christmas Decorations;
- Office Supplies;
- Computer Repair Parts;
- Computer Software;
- Furniture and Appliances;
- Roller Shades;
- Cabinets and Cabinet Countertops;
- Storage Shelves;
- Light Fixtures and Bulbs;
- Clothing and Shoes;
- Signage;
- Small Tools;
- Outdoor Lawn Furniture;
- Landscaping Supplies;
- Lawn Care Chemicals and Supplies;
- Tents and Chairs;
- Retaining Wall Building Materials;
- Parking Lot Lights;
- Parking Lot Construction and Repair Materials;
- Parking Lot Ice Control Salt;
- Snow Throwers;
- Street Sweeper;
- Bobcat Loader;
- Utility Tractor;
- Lockers;
- Security Cameras;
- Key Card Access System;
- Tasers;
- Safety Training Materials;
- Pickup Truck.

In certain cases, the audit assessed tax on a portion of a category of materials. For example, the Department assessed tax on 50 percent of the window shades by taxing the purchase of window shades used in offices or storage rooms and exempting window shades used in patient rooms.

B. Taxpayer's Response.

Taxpayer argues that the assessments are incorrect because all of its purchases "are consistent with [Taxpayer's] stated purposes," that the Department had no basis for imposing a "narrow definition" of the exemption provision, that its activities "are not limited to patient care," and that the Department's "narrow" application of the exemption would have "unintended consequences" for other not-for-profit organizations such as convents, monasteries, schools, pension trusts, and labor unions.

In particular, Taxpayer cites to the Department's regulation, [45 IAC 2.2-5-55\(d\)\(1\)](#) which provides an example:

A religious organization acquired building materials to construct a new church. The purchase of such materials by the church is exempt since the new church will further the not-for-profit purpose of the organization. The fact that the church basement will occasionally be used for social events does not subject the purchase of construction materials to tax.

Taxpayer states that this example is analogous to Taxpayer's own circumstances. Taxpayer explains that the regulatory example provides the exemption "to parts of the church that would not be used for worship or other strictly religious activities [and that] the Department did not limit the exemption solely to the direct worship activities that would occur in the church sanctuary" That being the case, Taxpayer concludes that Department erred in limiting Taxpayer's own exemption to "patient areas, common areas, and operating rooms."

Taxpayer also cites to statutes and regulations outside the tax provisions in support of its position that Indiana law provides for a much broader interpretation of "hospital" than that of an entity providing patient care. Taxpayer cites to IC § 16-18-2-179 which defines a hospital as "an institution, a place, a building, or an agency that holds out to the general public that it is operated for hospital purposes" Taxpayer also cites to 42 C.F.R. 413.65(a)(2) which defines "hospital" to include:

the physical area immediately adjacent to the provider's main buildings, other areas and structures that are not strictly contiguous to the main buildings but are located within 250 yards of the main buildings, and any other areas determined on an individual case basis

C. Burden of Proof, Statement of Law, and Exemption Provisions.

1. Burden of Proof.

As a threshold issue, it is the Taxpayer's responsibility to establish that the tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Thus, any taxpayer challenging an assessment is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). The taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong.

Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, interpretations of Indiana tax law contained within this decision, as well as the preceding audit, are entitled to deference.

2. Statement of Law.

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).

In effect and practice, the use tax is functionally equivalent to the sales tax. See *Rhoads v. Ind. Dep't of State Revenue*, 774 N.E.2d 1044, 1047 (Ind. Tax Ct. 2002).

An exemption from use tax is granted for transactions where the sales tax was paid at the time of purchase pursuant to IC § 6-2.5-3-4. There are also additional various exemptions from sales tax and use tax under IC §§ 6-2.5-5. In this instance the relevant exemption is found at IC § 6-2.5-5-25(a) which exempts the purchase by not-for-profit organizations of tangible personal property used to "to carry on its not-for-profit purpose"

3. Applying Indiana Exemption Statutes.

IC § 6-2.5-5-25(a), like all tax exemption provisions, is strictly construed against exemption from the tax. *Tri-States Double Cola Bottling Co. v. Dep't of State Revenue*, 706 N.E.2d 282, 283 (Ind. Tax Ct. 1999).

"Exemptions from taxation are not, and ought not to be, especially favored by the courts; and where 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." *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96, 97 (Ind. Ct. App. 1974). (Citing *Conklin v. Town of Cambridge City*, 58 Ind. 130, 133 (1877)).

Nevertheless, the Department is well aware of the countervailing rule that a "statute must not be construed so narrowly that it does not give effect to legislative intent because the intent of the legislature embodied in a statute constitutes the law." *General Motors Corp. v. Indiana Dept. of State Revenue*, 578 N.E.2d 399, 404 (Ind. Tax Ct. 1991).

In this case, [45 IAC 2.2-5-55](#) provides in part as follows:

- (a) Sales to a qualified not-for-profit organization of tangible personal property or services ***used primarily in carrying out the not-for-profit purpose of the organization*** or in raising money for carrying on such purposes are exempt from the gross retail tax.
- (b) In order to qualify for the sales tax exemption on purchases, as a qualified not-for-profit organization, the following conditions must prevail:
 - (1) The organization must be qualified by being named or described in [IC 6-2.1-3-20](#), [IC 6-2.1-3-21](#), or [IC 6-2.1-3-22](#) which deals with fraternities, sororities, student cooperative housing organizations, etc. This includes not-for-profit organizations organized and operated exclusively for one (1) or more of the following purposes:
 - (A) Religious.
 - (B) Charitable.
 - (C) Scientific.
 - (D) Fraternal.
 - (E) Educational.
 - (F) Literary.
 - (G) Civic.
 - (2) Also included are the following specifically named not-for-profit organizations:
 - (A) Labor unions.
 - (B) ***Licensed hospitals.***
 - (C) Churches.
 - (D) Monasteries.
 - (E) Convents.
 - (F) Cemetery associations.
 - (G) Public schools.
 - (H) Parochial schools.
 - (I) Pension trust.
 - (J) Business leagues.
 - (3) The organization is not operated predominantly for social purposes. 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. Purchases used for social purposes are never exempt.
 - (4) ***The fact that an organization is being exempted by the federal government or by the state of Indiana for income tax purposes does not necessarily mean that a purchase made by the not-for-profit organization is exempt.***

(c) Purchases of tangible personal property by a qualified not-for-profit organization used to raise funds to further the exempt purpose of the organization are exempt even if the resale of such property is not subject to tax. The following are examples:

(1) A qualified religious organization purchases envelopes which are distributed to members for use in making weekly contributions to the church. The purchase of the envelopes by the church is exempt because the envelopes will be used to raise funds for the qualified not-for-profit organization.

(2) A qualified hospital purchases advertising posters to be used in a fundraising drive for the hospital. The purchase of the posters is exempt from the state gross retail tax because the posters will be used to raise funds for the qualified not-for-profit organization.

(d) Purchases of tangible personal property or services used primarily in carrying out the not-for-profit purpose of the qualified organization are exempt from tax. This 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[percent]) of the time to further the organization's not-for-profit purpose.

(Emphasis added).

D. Analysis and Application.

At the outset, the Department specifically rejects Taxpayer's argument that the audit had no basis for narrowly defining the four corners of the exemption provision. To the contrary, it is a well-founded and long held rule under Indiana law that tax exemptions are "strictly construed against exemption from [] tax" and that a taxpayer seeking an exemption must establish that the claim is "within the exact letter of the law." *Tri-States*, 706 N.E.2d at 283; *RCA Corp.*, 310 N.E.2d at 97.

The Department must also disagree that Taxpayer has met its statutory burden under IC § 6-8.1-5-1(c) of establishing that each and every purchase it makes is "used primarily in carrying out the non-for profit purpose of the organization" [45 IAC 2.2-5-55](#)(a). Taxpayer is, after all is said and done, a hospital established for the care and treatment of sick, injured, and disabled persons. Taxpayer was not established for purposes of providing parking spaces, clothing, landscaped lawns, or opportunities to view fine art. Providing parking spaces, ice free sidewalks, and attractive lawns are all functions ancillary to Taxpayer's primary not-for-profit purposes.

The Department respectfully disagrees that the example cited at [45 IAC 2.2-5-55](#)(d)(1) is dispositive. The example provides that a church building - presumably established to provide worshippers and congregants a place for prayer and meditation - does not lose its exempt status because a portion of the church is "occasionally" used for social events. In Taxpayer's case, if its surgery suite was occasionally used to demonstrate the efficacy of new surgical instruments or if one of its patient rooms was occasionally used for storage purposes, neither the surgery suite nor the patient room would lose its exempt status; they do not lose that status because the surgery suite and the patient room are "**used primarily in carrying out the not-for-profit purpose of the organization**" which - in Taxpayer's case - is the treatment of sick, injured, and disabled persons.

The Department's position should not be read to suggest that Taxpayer's disputed purchases were frivolous or unnecessary. Light fixtures, signs, parking lots, and office equipment are all likely necessary to Taxpayer's function but - as described in the audit report - are not "primarily" used to advance Taxpayer's non-profit purpose of providing comfort and healing to sick, injured, and disabled persons.

Bearing in mind that exemption provisions are narrowly interpreted, that Taxpayer is a not-for-for profit organization primarily established to provide health care to sick, injured, and disabled persons, that Taxpayer bears the burden of establishing that the audit assessment was wrong, and that the Department's interpretation of the exemption provision is entitled to deference, Taxpayer's protest is denied.

FINDING

Taxpayer's protest is respectfully denied.

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An [html](#) version of this document.