DEPARTMENT OF STATE REVENUE

Revenue Ruling #2019-01ST
June 5, 2019

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the department's official position concerning a specific issue.

ISSUES

Sales and Use Tax - Purchases Made by a Nonprofit

Authority: IC 6-2.5-2-1; IC 6-2.5-5-21; IC 6-2.5-5-26; IRC § 501(c)(3); 45 IAC 2.2-5-25; 45 IAC 2.2-5-58; Sales Tax Information Bulletin #10 (December 2018).

A taxpayer ("Nonprofit") is seeking an opinion as to whether it is eligible for the exemption for sales made by nonprofits from the Indiana sales tax.

STATEMENT OF FACTS

Nonprofit is exempt from federal income tax under Internal Revenue Code ("IRC") § 501(c)(3). Nonprofit primarily sells religious items such as bibles, books, worship materials and other religious resources. Nonprofit is a publishing ministry of a church organization, but it is an independent unit of the church. Despite this, Nonprofit states that it is exempt from federal taxation under the umbrella of a group exemption letter issued in 1988 by the Internal Revenue Service to its parent church organization. However, Nonprofit has since changed its name from the name listed on the letter to a different name.

Nonprofit provided several documents purporting to demonstrate its exempt status, including the group exemption letter from the Internal Revenue Service (including an appendix that includes Nonprofit listed as part of the exempt organization), Nonprofit's Minnesota Department of Revenue's "Certificate of Exemption" (form ST3), and an "Affidavit of Publication" showing that they published their change of name in a Minnesota newspaper which lists Nonprofit's legal name and DBA name.

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).

To that point, Nonprofit asks that the department issue a ruling addressing whether it is eligible for the exemption from the sales tax under IC 6-2.5-5-26, the exemption generally applicable to sales made by nonprofit entities. IC 6-2.5-5-26 states the following:

> (a) Sales of tangible personal property are exempt from the state gross retail tax, if:
> (1) the seller is an organization that is described in section 21(b)(1) of this chapter;
> (2) the organization makes the sale to make money to carry on a not-for-profit purpose; and
> (3) the organization does not make those sales during more than thirty (30) days in a calendar year.
> (b) Sales of tangible personal property are exempt from the state gross retail tax, if:
> (1) the seller is an organization described in section 21(b)(1) of this chapter;
> (2) the seller is not operated predominantly for social purposes;
> (3) the property sold is designed and intended primarily either for the organization's educational, cultural, or religious purposes, or for improvement of the work skills or professional qualifications of the organization's members; and
> (4) the property sold is not designed or intended primarily for use in carrying on a private or proprietary business.

This statute essentially provides for two separate exemptions, one with a time limitation on the amount of days that tangible personal property may be sold, and one without. The Department's regulation at 45 IAC 2.2-5-58, interpreting IC 6-2.5-5-26(b), provides in relevant part:

(a) The state gross retail tax shall not apply to sales by qualified not-for-profit organizations of tangible personal property of a kind designated and intended primarily for the educational, cultural or religious purposes of such qualified not-for-profit organization and not used in carrying out a private or proprietary business.
(b) The gross receipts from each sale of tangible personal property by a qualified not-for-profit organization are exempt under this rule only if:
(1) The nature of the property sold will further the educational, cultural or religious purposes of the organization; and
(2) The organization is not carrying on a private or proprietary business with respect to such sales.
(c) Furthering the educational, cultural or religious purpose. The primary purpose of the property sold must be to further the educational, cultural, or religious purpose of the qualified not-for-profit organization.

The Department's guidance regarding this exemption is found in Sales Tax Information Bulletin #10 (December 2018), which summarizes the exemption as follows:

Sales of tangible personal property by qualified nonprofit organizations carried on for a total of not more than 30 days in a calendar year and engaged in as a fundraising activity to raise funds to further the qualified nonprofit purposes of the organization are exempt from sales tax. The 30-day rule applies to all such sales by the nonprofit organization. Each day in which selling activities are conducted is a "selling day" for purposes of determining whether a qualified nonprofit organization has conducted sales for more than 30 days during any calendar year. This provision applies to social organizations as well as other qualified organizations.

If an organization conducts sales or fundraising activities during 31 or more days (not necessarily consecutive) in a calendar year, the organization is a retail merchant and must collect sales tax on all sales made during the calendar year.

. . .

However, when the nonprofit organization sells items, such as periodicals, books, or other property, that are intended primarily to further the educational, cultural, or religious purposes of the organization or for the improvement of the work skills or professional qualifications of the organization's members, and the sales are not used in carrying out a private or proprietary business, the 30-day restriction does not apply and the items may be sold exempt throughout the year.

The "30-day rule" exemption from collecting sales tax contained in IC 6-2.5-5-26(a) would not apply to Company, because, although they do not state this explicitly, selling books and other materials over the internet will most likely mean that the taxpayer's sales occur for more than thirty days in a calendar year. This means that if they sell tangible personal property for more than thirty days, they would either have to be eligible for the exemption under subsection (b), or not at all.

Applying the four part test in subsection (b), there is no question that Nonprofit is not an organization operated predominantly for social purposes. Accordingly, Nonprofit satisfies the exemption's second requirement set forth by IC 6-2.5-5-26(b)(2). However, three questions, all 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 6-2.5-5-26(b)(1). If Nonprofit is such an organization, then it remains to be determined whether the property Nonprofit sells is designed and intended primarily for the organization's religious purposes in order to satisfy 6-2.5-5-26(b)(3), and finally whether the property sold is not designed or intended primarily for use in carrying on a private or proprietary business in order to satisfy 6-2.5-5-26(b)(4). If these three issues are answered in the affirmative, then Nonprofit may sell the property exempt from sales tax without any limitations on the number of days they may be sold.

Turning to the question of whether Nonprofit is an organization described in Section 21(b)(1) of IC 6-2.5-5, 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 meets the first requirement of section 21(b)(1)(B) as they are a nonprofit corporation under IC 6-2.5-5-21(b)(1)(B)(vi). Furthermore, Nonprofit is "organized and operated exclusively for religious . . . purposes," - thus meeting the "exclusive purpose" test - and evidence presented by Nonprofit shows that no part of its income is "used for the private benefit or gain of any member, trustee, shareholder, employee, or associate" - thus meeting the "private benefit" test.

Having established that Nonprofit is an organization described in Section 21(b)(1), the next part of the test in IC 6-2.5-5-26(b) is that "the property sold is designed and intended primarily . . . for the organization's . . . religious purposes . . . ." pursuant to IC 6-2.5-5-26(b)(3). The following examples are provided in 45 IAC 2.2-5-58(c) to show how this exemption would apply to various scenarios:

(1) The sale of textbooks and supplies by a parochial, public or private not-for-profit school is exempt if made to students of the school in grades one through twelve. Such sales are primarily intended to further the educational purposes of the school.
(2) The sale of bibles, choir robes and prayer books by a religious organization is exempt. Such sales are primarily intended to further the religious purposes of the organization.
(3) The sale of meals by an art gallery is taxable. The meals are intended primarily for the convenience of visitors.
(4) The sale of textbooks and other educational materials by a secretarial school which is operated for profit is taxable. A profit-making educational enterprise is not a qualified not-for-profit organization under this regulation [45 IAC 2.2].
(5) The sale of greeting cards by a church bookstore is taxable. Such sales are not primarily intended to further the religious purposes of the organization.

The items that Nonprofit mentions - bibles, books, worship materials, and other religious resources - fit within the criteria of IC 6-2.5-5-26(b)(3) since they appear to be primarily intended to further the religious purposes of the organization. Therefore, these items would meet IC 6-2.5-5-26(b)(3).

Regarding the fourth requirement of IC 6-2.5-5-26(b), that the property sold is not designed or intended primarily for use in carrying on a private or proprietary business, neither the statute nor the Department's regulations explain what is meant by private or propriety business activity. As it pertains to the exemption for purchases made by governmental agencies and subdivisions, 45 IAC 2.2-5-25(c) provides the following:

(c) Proprietary activities by governmental agencies and subdivisions include:
(1) Activities in connection with the sale of tangible personal property, such as college book stores, food services, concessions, etc.
(2) Activities in connection with the rental of tangible personal property made to the general public.

There are for-profit Christian bookstores or for-profit bookstores that sell Christian books and music. However, because the sale of the bibles, books, worship materials, and other religious resources are being used to promote the charitable purpose and mission of the religious Nonprofit and the resulting funds do not inure to the private benefit of any individual, Nonprofit is not operating as a private business. Therefore, all elements of IC 6-2.5-5-26(b) are met, and the sales of the tangible personal property would be exempt from sales tax.

CONCLUSION

Nonprofit is eligible to make sales exempt from Indiana sales tax under IC 6-2.5-5-26, as Nonprofit:

1. is not operated predominantly for social purposes;
2. is a nonprofit organization organized and operated exclusively for religious purposes and no part of its income is used for the private benefit or gain of any member, trustee, shareholder, employee, or associate;
3. sells property that is designed and intended primarily for the organization's religious purposes; and
4. sells property that is not designed or intended primarily for use in carrying on a private or proprietary business.

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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