

DEPARTMENT OF STATE REVENUE

Revenue Ruling # 2021-01ST
February 18, 2022

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ISSUE

I. Sales and Use Tax - Nonprofit Status

Authority: [IC 6-2.5-5-21](#); IRC § 501

A voluntary employees' benefit association (VEBA) seeks guidance on whether it is considered a nonprofit under Indiana law.

STATEMENT OF FACTS

Taxpayer is a voluntary employees' benefit association created under IRC § 501(c)(9). Taxpayer is organized as a trust. Taxpayer's members are several private universities in Indiana. Each of the universities is an organization granted nonprofit status under IRC § 501(c)(3). According to the ruling request, the purpose of Taxpayer is to provide health benefits to the employees of the universities.

DISCUSSION

I. Sales and Use Tax - Nonprofit Status

Taxpayer seeks a ruling with regard to whether it should be listed on the Form NP-20A. The form itself is simply an application for Indiana to recognize nonprofit status. Accordingly, the issue is whether Taxpayer is considered a nonprofit for Indiana sales tax purposes.

First, a voluntary employees' benefit association ("VEBA") is recognized for federal purposes as a nonprofit. IRC § 501(c)(9) provides an income tax exemption for:

Voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or designated beneficiaries, if no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual. For purposes of providing for the payment of sick and accident benefits to members of such an association and their dependents, the term "dependent" shall include any individual who is a child (as defined in section 152(f)(1)) of a member who as of the end of the calendar year has not attained age 27.

[IC 6-2.5-5-25](#) provides:

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

For purposes of analysis, it is assumed that Taxpayer uses any acquired property for its purpose as a VEBA.

[IC 6-2.5-5-21](#)(b)(1)(A)-(D) provide the following list of entities:

(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 a 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. . .

In this case, Indiana's list of potentially nonprofit entities for sales and use tax purposes is quite comprehensive and includes most of the entities described in IRC § 501(c). However, it is not a perfect match. [IC 6-2.5-5-21\(b\)\(1\)](#) does not include a VEBA, either directly or from reasonable interpretation. Thus, as a result of the failure to list a VEBA in [IC 6-2.5-5-21\(b\)\(1\)](#) or elsewhere in [IC 6-2.5-5-5](#), a VEBA does not qualify as an entity exempt from sales tax for its purchases under [IC 6-2.5-5-25](#). This lack of exemption applies even though its universities are themselves exempt.

RULING

A VEBA is not considered an exempt entity for Indiana sales and use tax under [IC 6-2.5-5-21\(b\)\(1\)](#). Accordingly, not listing the entity on Form NP-20A is appropriate.

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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