

DEPARTMENT OF STATE REVENUE

Revenue Ruling #2022-07ST
January 4, 2023

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ISSUES

Sales and Use Tax - Sales Made by a Nonprofit

Authority: [IC 6-2.5-2-1](#); [IC 6-2.5-5-25](#); [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 (October 2022).

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 a youth-oriented organization. Nonprofit is exempt from federal income tax under Internal Revenue Code ("IRC") § 501(c)(3) that operates under the umbrella of a national nonprofit organization. Nonprofit operates a store in Indiana. Nonprofit provides the following information regarding the transactions at issue, reproduced exactly as submitted in its request for a ruling with certain details redacted:

Our store sells uniforms, badges, merit badge books, camping items, literature, etc., which are used in the program to train youth in [Nonprofit's principles], patriotism, courage, self-reliance, ethics, character and kindred values. All of the funds made on our . . . Shop sales go back into our organization to support, develop and deliver the [Nonprofit] program. Because the sales are made to members to help teach them skills and character building which are taught in the [Nonprofit] program, the sales should be exempt through the year.

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 in relevant part:

(a) Sales of tangible personal property by an organization described in section 25(a)(1) of this chapter are exempt from the state gross retail tax, if:

- (1) the organization makes the sale to make money to carry on a not-for-profit purpose; and
- (2) the organization does not make more than twenty thousand dollars (\$20,000) in sales in a calendar year.

Once sales of an organization exceed the amount described in subdivision (2), the organization is required to collect state gross retail tax on sales on an ongoing basis or the remainder of the calendar year.

(b) For purposes of subsection (a), the sales of an organization include sales made by all units operating under the organization's registration pursuant to section 25(c) of this chapter.

(c) If the qualifications of subsection (a) are not met, sales of tangible personal property by an organization described in section 25(a)(1) of this chapter are exempt from the state gross retail tax, if:

- (1) the organization is not operated predominantly for social purposes;
- (2) 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
- (3) 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 dollar threshold on the on the amount of sales that a nonprofit can make within a year before they are required to collect sales tax, and one without. The Department's regulation at [45 IAC 2.2-5-58](#), interpreting [IC 6-2.5-5-26\(c\)](#), 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 (October 2022), which summarizes the exemption as follows:

Sales of tangible personal property by qualified nonprofit organizations of not more than \$20,000 in a calendar year used to raise funds to further the qualified nonprofit purposes of the organization are exempt from sales tax. The \$20,000 rule applies to all such sales by the nonprofit organization. Once sales of an organization reaches \$20,000, the organization is required to collect state gross retail tax on sales on an ongoing basis for the remainder of the calendar year. Furthermore, the sales of an organization include sales made by all units operating under the organization's registration with the department. These provisions also apply to social organizations as well as other qualified organizations.

...

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 . . . \$20,000 cap does not apply and the items may be sold exempt throughout the year.

Nonprofit has confirmed that their sales exceed \$20,000 each year. This means that once Nonprofit makes more than \$20,000 in sales, they could only make exempt sales if they met the requirements under subsection (c). Otherwise, they would be required to collect sales tax on their sales exceeding \$20,000.

First, the department must answer the question of whether Nonprofit is an organization described in section 25(a)(1) of [IC 6-2.5-5](#), the preliminary requirement set forth by [IC 6-2.5-5-26\(c\)](#). If Nonprofit is such an organization, then the three part test in subsection (c) would need to be applied. The organizations described in [IC 6-2.5-5-25\(a\)\(1\)](#) 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 6-2.5-5-25\(a\)\(1\)](#).

Nonprofit meets the first requirement of section 25(a)(1)(B) as they are a nonprofit corporation under [IC 6-2.5-5-25\(a\)\(1\)\(B\)\(vi\)](#). Furthermore, Nonprofit is "organized and operated exclusively for . . . educational [and] civic 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 25(a)(1), the three part test in subsection (c) must be applied, all elements of which are dispositive. If these three issues are answered in the affirmative, then Nonprofit may sell the property exempt from sales tax even if they exceed \$20,000 in sales.

First, there is no question that Nonprofit is not an organization operated predominantly for social purposes. Accordingly, Nonprofit satisfies the exemption's first requirement set forth by [IC 6-2.5-5-26\(c\)\(1\)](#).

The next part of the test in [IC 6-2.5-5-26\(c\)](#) is that "the property sold is designed and intended primarily . . . for the organization's educational [or] cultural . . . purposes, or for improvement of the work skills or professional qualifications of the organization's members," pursuant to [IC 6-2.5-5-26\(c\)\(2\)](#). 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 uniforms, badges, merit badge books, camping items, and literature sold by Nonprofit are designed and intended primarily to further the organization's cultural or educational purposes, as they are used in the program to train their youth members in Nonprofit's principles, patriotism, courage, self-reliance, ethics, character and kindred values. Therefore, these items would meet [IC 6-2.5-5-26\(c\)\(2\)](#). However, as for the "other items" Nonprofit mentions, if they are not designed and intended primarily to further the organization's cultural or educational purposes, then Nonprofit would be required to collect sales tax on those items.

Regarding the third requirement of [IC 6-2.5-5-26\(c\)](#), 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.

Nonprofit indicates that the income derived from these sales go back into their organization to support, develop and deliver the Nonprofit's program. Further, sales are made to members to help teach them skills and character building which are taught in Nonprofit's program. The property sold is clearly not designed or intended primarily for use in carrying on a private or proprietary business, and therefore, all elements of [IC 6-2.5-5-26\(c\)](#) are met. As such, the sales of the tangible personal property would be exempt from sales tax even if Nonprofit exceeds \$20,000 in sales in a calendar year.

CONCLUSION

Nonprofit is eligible to make sales exempt from Indiana sales tax under [IC 6-2.5-5-26\(a\)](#), as Nonprofit is a nonprofit organization organized and operated exclusively for educational or cultural purposes and no part of its income is used for the private benefit or gain of any member, trustee, shareholder, employee, or associate. Once it exceeds \$20,000 in sales, Nonprofit may continue to make exempt sales pursuant to [IC 6-2.5-5-26\(c\)](#) of its uniforms, badges, merit badge books, camping items, and literature because Nonprofit:

1. is not operated predominantly for social purposes;
2. sells property that is designed and intended primarily for Nonprofit's educational or cultural purposes; and
3. sells property that is not designed or intended primarily for use in carrying on a private or proprietary business.

However, it should be noted that the exemption only applies to tangible personal property that is designed or intended primarily for Nonprofit's educational or cultural purposes. Any items sold by Nonprofit that are not designed or intended primarily for Nonprofit's educational or cultural purposes are subject to Indiana sales tax once Nonprofit exceeds \$20,000 in sales.

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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