

DEPARTMENT OF STATE REVENUE

01-20221543.ODR

FINAL ORDER DENYING REFUND: 01-20221543

Sales Tax
For The Tax Year 2021

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Order Denying Refund.

HOLDING

Individual was not entitled to a refund of Indiana sales tax paid for a swim spa.

ISSUE**I. Sales Tax - Claim for Refund.**

Authority: IC § 6-8.1-9-1; IC § 6-2.5-2-1; IC § 6-2.5-1-22; IC § 6-2.5-13-1; IC § 6-2.5-1-21.5; IC § 6-2.5-5-18; *Dep't of Revenue, State of Indiana v. Kimball International, Inc.*, 520 N.E.2d 454 (Ind. Ct. App. 1988); *Stump v. Ind. Dep't. of State Revenue*, 777 N.E.2d 799 (Ind. Tax Ct. 2002); [45 IAC 2.2-2-1](#); Sales Tax Information Bulletin 48 (October 2020).

Taxpayer protests the denial of a claim for refund of sales tax collected on the purchase of a swim spa.

STATEMENT OF FACTS

Taxpayer states that her protest is regarding "the denial of my claim for refund . . . for sales tax on the purchase of a swim spa" that Taxpayer states is "used for my medical treatment."

Taxpayer filed Form GA-110L and requested a refund on sales tax paid on the swim spa. On or about April 8, 2022, the Indiana Department of Revenue ("Department") denied the refund request. Taxpayer filed a protest, noting on her Protest Submission Form ("Form") that she was requesting a "Final determination without a hearing." The Form also states that in waiving her right to a hearing "the taxpayer asks the Department to make its decision based on the written protest and documentation (if any) the taxpayer presents along with the protest . . ." This Final Order Denying Refund results. Further facts will be provided as necessary.

I. Sales Tax - Claim for Refund.**DISCUSSION**

As noted, Taxpayer filed a claim for refund of sales tax she paid on the purchase of a swim spa. The Department determined Taxpayer was not entitled to a refund. In its refund denial letter, the Department explained:

The taxpayer purchased the swim spa prior to receiving a prescription order from a physician. The invoice for the [swim spa] purchase is dated 2/6/2021. The date on the prescription order is dated 4/26/2021. Additionally, the purchase of hot tubs are considered to not be exclusively for medical treatment.

Per [IC 6-2.5-5-18](#), the purchase [of] medical supplies upon a prescription from a license practitioner is exempt of gross retail sales tax if the item is used exclusively for medical treatment.

The Department's denial letter also references to "Information Bulletin #48-Sales Tax Application to Medical Professionals" in denying Taxpayer's refund request.

Taxpayer argued that she is entitled to a refund of sales tax because the swim spa (also referred to by Taxpayer as a "therapy pool") "has room to swim and exercise where a hot tub does not and is made for exercise/therapy." Taxpayer states she has "a specific stretching and exercise routine and [she] combine[s] that with the hydrotherapy." Regarding the timing issues (namely, the swim spa being purchased *before* the prescription) Taxpayer states:

The swim spa sales agreement was filled out on Feb. 6, 2021 however, the swim spa was not delivered until May 3, 2021. Payment was not due until after the delivery was made and the delivery approval form was signed by both parties on May 3, 2021. I returned to the [doctor] [on] Apr. 26, 2021 to get the prescription for the swim spa after the delivery date was set.

Turning to the applicable law, IC § 6-8.1-9-1(a) affords a taxpayer a statutory right to file a claim for refund. This statute provides, in part:

If a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for a refund with the department.

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); [45 IAC 2.2-2-1](#). A retail sale is sourced to Indiana and subject to Indiana sales tax when the transaction is a "retail sale" and the product is received by the purchaser at the business' location in Indiana. IC § 6-2.5-13-1(d)(1). A retail merchant that has a physical presence in Indiana shall collect the tax as an agent for the State. IC § 6-2.5-2-1(b).

Tax exemptions are strictly construed against the taxpayer. *Dep't of Revenue, State of Indiana v. Kimball International, Inc.*, 520 N.E.2d 454, 456 (Ind. Ct. App. 1988). The taxpayer has the burden of establishing qualification under the terms of the exemption. *Id.*

Under IC § 6-2.5-1-21.5 a "licensed practitioner" means "an individual who is a doctor, dentist, veterinarian, or other practitioner licensed to prescribe, dispense, and administer drugs to human beings or animals in the course of the practitioner's professional practice of treating patients."

Further, Sales Tax Information Bulletin 48 (October 2020), 20201202 Ind. Reg. 045200595NRA, provides further guidance regarding licensed practitioners and medical supplies and equipment. This bulletin explains in part II (Definitions):

"Prescribe" means the issuance by a licensed practitioner of a certificate in writing that the use of the drugs, medications, durable medical equipment, supplies, or devices is necessary for the purchaser to correct or alleviate a condition brought about by injury to, malfunction of, or removal of a portion of the purchaser's body.

Section III of the bulletin, "Sales of Durable Medical Equipment, Devices, Drugs, and Other Supplies," states (**emphasis added**):

Other medical supplies or devices used exclusively for medical treatment of a medically diagnosed condition due to injury, bodily dysfunction, or surgery. The phrase "used exclusively" means the intended usage of the device by the manufacturer, not the use made of the device by the purchaser. **Therefore, items such as hot tubs, beds, mattresses, and other items that have general usage would typically not be exempt.** However, if modifications are made to such items for medical treatment described in this bullet point, the department may exempt such tangible personal property used in modifying such device, but not the device itself

Taxpayer attempts to differentiate that the "swim spa, in my case Therapool (therapy pool) is made for and has room to swim and exercise where a hot tub does not and is not made for exercise/therapy." The copy of Taxpayer's prescription says that the swim spa is "to help increase mobility." IC § 6-2.5-1-22 states that "mobility enhancing equipment" means equipment that:

- (1) is primarily and customarily used to provide or increase the ability to move from one (1) place to another and is appropriate for use either in a home or a motor vehicle;
- (2) is not generally used by persons with normal mobility; and
- (3) does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

The swim spa does not meet the definition of mobility enhancing equipment. The taxability of the swim spa is further seen by examining an Indiana Tax Court case, *Stump v. Ind. Dep't. of State Revenue*, 777 N.E.2d 799 (Ind. Tax Ct. 2002). The facts in that case involving a van were as follows:

In 1999, after securing a prescription from his physician, Mr. Stump purchased a van and had it modified for handicap access and operation. While he did not pay sales tax on the purchase of the handicap equipment

installed in the van, he did pay \$1,015 in sales tax on the purchase of the van itself. Mr. Stump subsequently filed a claim for refund with the Department, arguing that the purchase of the van was exempt from sales tax pursuant to Indiana Code § 6-2.5-5-18. On September 25, 2000, the Department denied Mr. Stump's claim. On December 27, 2000, Mr. Stump filed an original appeal with this Court.

On October 2, 2000, Mr. Stump purchased another handicap-modified van, again with a prescription from his physician. Mr. Stump did not pay any sales tax on the transaction. The Department subsequently issued a proposed notice of assessment to Mr. Stump, assessing him sales tax, penalties, and interest on the purchase of the van in the amount of \$1,613.42. Mr. Stump protested the proposed assessment, again claiming the purchase of the van was exempt from sales tax under Indiana Code § 6-2.5-5-18. On January 12, 2001, the Department denied Mr. Stump's claim. Mr. Stump filed another appeal with this Court on July 5, 2001.

Id. at 800-01.

The Indiana Tax Court further stated:

The sole issue in this case is whether Mr. Stump's purchases of two handicap-modified vans are exempt from sales tax under Indiana's medical equipment exemption, as set forth in Indiana Code § 6-2.5-5-18. Mr. Stump claims that the exemption applies not only to the special handicap equipment installed in the vans, but the vans as well. The Department claims, on the other hand, that only the special handicap equipment falls within the ambit of the exemption.

Id. at 801.

The Indiana Tax Court stated, "There is nothing inherently healing or remedial about a van that would make it appropriate only for handicapped people; indeed, vans are driven everyday by handicapped and non-handicapped people alike." *Id.* at 802. Similarly, swim spas are used by people with and without mobility issues alike.

Lastly, the Department also notes that there are also timing issues—namely, the sales agreement for the swim spa is dated February of 2021 (regardless of the delivery of the swim spa being in May of 2021, Taxpayer's *sales agreement* was in February of 2021). The prescription was obtained by Taxpayer in late April of 2021. The swim spa was purchased in February of 2021 without a prescription. See IC § 6-2.5-5-18(c).

For the reasons outlined in this Order, Taxpayer's protest is denied.

FINDING

Taxpayer's protest is denied.

February 6, 2023

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