

DEPARTMENT OF STATE REVENUE

04-20231221.ODR

Final Order Denying Refund: 04-20231221
Sales Tax
For The Tax Year 2022

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 on the purchase of a spa.

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

Authority: [IC 6-8.1-9-1](#); [IC 6-2.5-2-1](#); [IC 6-2.5-13-1](#); [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 spa.

STATEMENT OF FACTS

Taxpayer protests the Indiana Department of Revenue's ("Department") denial of his claim for refund of the sales tax paid on the purchase of a spa. Taxpayer initially filed his protest without providing the full Protest Submission Form ("Form"). The Department then reached out to Taxpayer regarding the incomplete Form, and the Taxpayer submitted the Form requesting a "Final determination without a hearing." The Form also states that in waiving his 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**

Taxpayer states in his protest letter that he purchased a spa and that he "could have requested a prescription from my family doctor . . . [b]ut being a primary physician I would not have thought he would have the expertise to make a convincing statement to IDOR supporting my claim" for refund for the spa. Taxpayer states that instead he contacted "two (2) surgeons who have operated on me on two separate, unrelated times." After stating what the two surgeries were regarding, Taxpayer states "[a]ll of these injuries required lengthy rehabilitation and pain management, of which a spa relieved much of the stress of tissue and fragmentation."

The Department determined Taxpayer was not entitled to a refund. In its refund denial letter, dated August 19, 2022, the Department explained:

The taxpayer purchased a hot tub/spa on 5/11/2022 from [Company]. After the purchase, the taxpayer received a letter, dated 6/13/2022, 6/14/2022[,] from [his] physicians recommending the purchase of a hot tub/spa. However, the taxpayer did not provide any information from their physician stat[ing] the item was prescribed.

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

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\(b\)](#). Since Taxpayer is arguing that the purchase of the spa should be exempt, it should also be noted that 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.*

As noted, the Department's denial letter references to Sales Tax Information Bulletin 48 (October 2020), 20201202 Ind. Reg. 045200595NRA. That information bulletin provides guidance regarding licensed practitioners and medical supplies and equipment. The 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.

Sales Tax Information Bulletin 48 states that items such as hot tubs "would typically not be exempt," Taxpayer nonetheless argues that "this spa is only a 2 person spa, and could not be used for entertaining or any other event other than pain relief." Taxpayer provided two letters from doctors. The first letter, dated June 13, 2022, states in relevant part: "It is my medical opinion that a hot tub or home spa may be beneficial to help relieve musculoskeletal back pain." The second letter, dated June 14, 2022, states that Taxpayer is "a patient under my medical care for orthopaedic conditions" and that the "use of warm water therapy is very beneficial for painful joints," and further that Taxpayer "would benefit from an orthopaedic standpoint in purchasing a hot tub because this would allow him to do this." Both letters are dated after the purchase of the spa, and neither letter is a prescription.

Thus, Taxpayer's protest fails on the first issue, namely, Taxpayer purchased the spa *without a prescription*. A prescription is one of the requirements under [IC 6-2.5-5-18\(c\)](#). But, as will be seen below, even if (for the sake of argument) Taxpayer had a prescription before the purchase of the spa, his refund claim still would be denied since the spa is not exempt under Indiana law.

The taxability of the spa is 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, spas are used by people with and without mobility issues or joint pain issues. The spa does not meet any of the criteria found in [IC 6-2.5-5-18](#).

For the reasons outlined in this Order, Taxpayer's protest is denied. Taxpayer did not have a prescription as required under [IC 6-2.5-5-18](#) (instead Taxpayer had two letters from physicians dated after his purchase of the spa). And as noted, even if Taxpayer had a prescription, the spa would not be exempt as explained by the analysis found in the *Stump* case.

FINDING

Taxpayer's protest is denied.

May 9, 2023

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