

DEPARTMENT OF STATE REVENUE

Revenue Ruling # 2023-02ST
June 19, 2023

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ISSUES

Sales and Use Tax - Equipment Rented for Use in Construction

Authority: [IC 6-2.5-1-14.7](#); [IC 6-2.5-4-9](#); [IC 6-2.5-5-16](#); [IC 6-2.5-8-8](#); *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); *Indiana Dept. of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454 (Ind. Ct. App. 1988); Sales Tax Information Bulletin #60 (March 2023).

A taxpayer (the "Company") is seeking a determination regarding whether it should collect sales tax on transactions involving the rental of construction equipment to contractors that are working on behalf of an exempt governmental entity.

STATEMENT OF FACTS

Company rents construction equipment throughout the country, with several locations in Indiana. Company rented equipment to a contractor (the "Contractor"), who was building a school in Indiana. Company added sales tax to their invoice, but the Contractor refused to pay sales tax, apparently citing to departmental guidance. After being advised by Company that an exempt sale could not be made without a valid exemption certificate, that a certificate would only apply to building materials and supplies that were incorporated into real property, and that the exemption didn't extend to rental equipment, the Contractor provided the school's exemption certificate. Company reiterated that sales tax must be collected on the rental transaction. The Contractor still refused to pay sales tax.

DISCUSSION

Company requests the Department to issue a Ruling regarding whether it should collect sales tax on transactions involving the rental of construction equipment to contractors that are working on behalf of an exempt governmental entity. 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\(a\)](#). A person who acquires property in a retail transaction (i.e., the retail purchaser) is liable for the sales tax on the transaction. [IC 6-2.5-2-1\(b\)](#).

In applying any tax exemption, the general rule in Indiana is that "tax exemptions are strictly construed in favor of taxation and against the exemption." *Indiana Dept. of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454, 456 (Ind. Ct. App. 1988). A statute which provides a tax exemption is strictly construed against the taxpayer. *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96, 97 (Ind. Ct. App. 1974). "[W]here such an exemption is claimed, the party claiming the same must show a case, by sufficient evidence, which is clearly within the exact letter of the law." *Id.* at 100-101.

[IC 6-2.5-5-16](#) provides an exemption for purchases of tangible personal property by an agency or instrumentality of the state of Indiana or a political subdivision of the state of Indiana if the agency or instrumentality predominantly uses the property to perform its governmental functions. Per [IC 6-2.5-1-14.7](#), "construction material" is a type of tangible personal property which is converted into real property. Therefore, an agency or instrumentality of a political subdivision of the state of Indiana could purchase construction material exempt from sales tax as long as it predominantly uses the construction material to perform its governmental functions.

[IC 6-2.5-4-9](#) provides a means for a contractor to purchase construction materials exempt from sales tax as follows:

- (a) A person is a retail merchant making a retail transaction when the person sells tangible personal property which:
- (1) is to be added to a structure or facility by the purchaser; and

(2) after its addition to the structure or facility, would become a part of the real estate on which the structure or facility is located.

(b) A contractor is a retail merchant making a retail transaction when the contractor:

(1) disposes of tangible personal property; or

(2) converts tangible personal property into real property;

under a time and material contract. As such a retail merchant, a contractor described in this subsection shall collect, as an agent of the state, the state gross retail tax on the resale of the construction material and remit the state gross retail tax as provided in this article.

(c) Notwithstanding subsections (a) and (b), a transaction described in subsection (a) or (b) is not a retail transaction, if the ultimate purchaser or recipient of the property to be added to a structure or facility would be exempt from the state gross retail and use taxes if that purchaser or recipient had directly purchased the property from the supplier for addition to the structure or facility.

In other words, under subsection (c), a contractor may purchase construction material exempt from sales tax if their customer could have purchased construction material exempt from sales tax. Therefore, because an instrumentality of an Indiana local government could purchase construction material exempt in order to build a school pursuant to [IC 6-2.5-5-16](#), Contractor could purchase construction material exempt pursuant to [IC 6-2.5-4-9\(c\)](#).

However, [IC 6-2.5-4-9\(c\)](#) does not extend an exemption to contractors for any tools, machinery, or equipment purchased or rented on behalf of their exempt customers. It is clearly limited to "property to be added to a structure or facility." The department provides further guidance on the "ultimate purchaser" exemption in Sales Tax Information Bulletin #60 in pertinent part as follows:

Purchase of Construction Material for Exempt Customers (the "Ultimate Purchaser" Exception)

...

NOTE: The exemption only applies to construction material that will be incorporated into real property; it does not extend to any other tangible personal property that will be used or consumed in the fulfillment of the contract. . .

Because the "ultimate purchaser" exemption at [IC 6-2.5-4-9\(c\)](#) is limited to construction material that will be incorporated into real property, and not to other tangible personal property used or consumed in fulfilling the contract, Contractor may not rent equipment exempt from sales tax from the Company or any other rental company in order to fulfill the contract with the school corporation.

As to the issue with Contractor providing their customer's exemption certificate to the Company, [IC 6-2.5-8-8](#) requires that a purchaser issue their own certificate. Sales Tax Information Bulletin #60 goes on to provide guidance concerning the use of exemption certificates when applying the "ultimate purchaser" exemption:

A customer's ability to purchase construction material exempt from tax is evidenced by the customer's properly completed Form ST-105. The contractor must accept their exempt customer's properly completed exemption certificate and then issue their own exemption certificates to their vendors or suppliers when making exempt purchases. Contractors may **not** reissue their customer's exemption certificates to any vendor or supplier of construction material. Exemption certificates issued to and accepted by contractors must be retained by the contractor for a period of a minimum of three years, beginning at the end of the year in which the construction material was purchased or sold.

With this in mind, had the rental of equipment been exempt, Contractor would have been required to provide their own exemption certificate to the Company, not their exempt customer's exemption certificate. Contractor must still follow this rule when purchasing construction materials from other vendors.

RULING

Contractor may not rent equipment exempt from sales tax from the Company or any other rental company. [IC 6-2.5-4-9\(c\)](#) only applies to construction materials, and not to products used or consumed in fulfilling a construction contract on behalf of an exempt customer that are not incorporated into real property. Further, Contractor must issue their own exemption certificate to vendors, and not their exempt customers' exemption certificates.

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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