

**Final Order Denying Refund: 04-20211034**  
**Gross Retail and Use Tax**  
**For the Years 2017, 2018, and 2019**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. 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

Indiana Hospital was denied a refund of sales tax on items consumed or used in providing its patients' medical care; the items were not implanted prosthetics and Indiana Hospital did not sell the items to its patients.

### ISSUES

#### **I. Gross Retail and Use Tax - Exempt Medical Devices and Supplies.**

**Authority:** IC § 6-2.5-2-1; IC § 6-2.5-3-1; IC § 6-2.5-3-2; IC § 6-2.5-4-1; IC § 6-2.5-5-8; IC § 6-2.5-5-18; IC § 6-2.5-13-1; *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Indiana Dep't of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454 (Ind. Ct. App. 1988); *Rhoades v. Ind. Dep't of State Revenue*, 774 N.E.2d 1044 (Ind. Tax Ct. 2002); *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); [45 IAC 2.2-5-27](#); [45 IAC 2.2-5-28](#) (repealed September 6, 2017); [45 IAC 2.2-5-36](#); Sales Tax Information Bulletin 48 (October 2018).

Taxpayer argues that the Department erred in denying it a portion of its original refund request maintaining that certain medical devices and equipment were exempt from sales/use tax.

#### **II. Gross Retail and Use Tax - Prewritten Computer Software.**

**Authority:** IC § 6-2.5-1-27; IC § 6-2.5-2-1; *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Indiana Dep't of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454 (Ind. Ct. App. 1988); *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); [45 IAC 2.2-4-2](#); Sales Tax Information Bulletin 8 (December 2016); Letter of Findings 04-20191189R (September 8, 2020).

Taxpayer claims that the Department erred in denying it a refund of sales tax paid on the purchase of pre-written computer software arguing that the transactions were for the purchase of exempt services.

### STATEMENT OF FACTS

Taxpayer is an Indiana health care provider which routinely purchases supplies and equipment. Taxpayer submitted a refund claim seeking the return of approximately \$160,000 in sales tax it paid on a number of those purchases. The Indiana Department of Revenue ("Department") conducted a review of Taxpayer's refund request and agreed with Taxpayer that it paid sales tax on exempt items and was entitled to a partial refund of approximately \$25,000. The Department denied the remainder of the claim.

Taxpayer disagreed with the Department's decision denying the remainder of the original claim and submitted a protest to that effect. An administrative hearing was conducted by teleconference during which Taxpayer's representatives explained the basis for the protest. This Final Order Denying Refund.

#### **I. Gross Retail and Use Tax - Exempt Medical Devices and Supplies.**

### DISCUSSION

The first issue is whether medical devices "implanted" into a patient to relieve a medical condition - but intended to be removed and then actually removed - are exempt from Indiana's sales/use tax.

### A. Taxpayer's Burden in Claiming a Refund.

When a taxpayer challenges taxability in a specific instance, the taxpayer is required to provide documentation explaining and supporting its challenge. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

### B. Indiana's Gross Retail Tax.

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). "When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location." IC § 6-2.5-13-1(d)(1). "When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser . . . occurs . . . ." IC § 6-2.5-13-1(d)(2).

A statute which provides any tax exemption, such as that sought here by Taxpayer, 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 101 (internal citations omitted). In applying any tax exemption, the general rule is that "tax exemptions are strictly construed in favor of taxation and against the exemption." *Indiana Dep't of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454, 456 (Ind. Ct. App. 1988).

### C. Indiana's Complementary Use Tax.

Indiana also imposes a complementary excise tax called "the use tax" on "the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." IC § 6-2.5-3-2(a). "Use" means the "exercise of any right or power of ownership over tangible personal property." IC § 6-2.5-3-1(a).

In effect and practice, the use tax is generally functionally equivalent to the sales tax. See *Rhoades v. Ind. Dep't of State Revenue*, 774 N.E.2d 1044, 1047 (Ind. Tax Ct. 2002). Indiana's use tax - not sales tax - allows an exception for the "temporary storage" of tangible personal property delivered into Indiana but destined for use outside the state. IC § 6-2.5-3-2(e).

### D. Department's Audit Findings.

After reviewing Taxpayer's refund request, the Department agreed that Indiana law provides an exemption for Taxpayer's purchase of orthopedic prosthetics pursuant to IC § 6-2.5-5-18(c) and [45 IAC 2.2-5-28](#) (repealed September 6, 2017). However, Taxpayer and the Department did not agree every particular item was "an implanted item or a surgical instrument." For example, the Department did not agree that the following items were exempt prosthetics but were simply "consumed" by Taxpayer in providing patient medical care. The descriptions are taken from the audit response.

- Threaded Pins - "[H]olds the implant in place until the permanent screws are placed."
- Suture Kits - "[I]ncludes pins and needles to aid in suturing . . ."
- Steinmann Pins - "[I]nserted into a bone while traction is applied . . . and are replaced by the final screws."
- Torpedo - "Suturing aid which helps in and around joints and tissue."
- Plate Holding Pin - "[I]t is placed in the holes for the bone screws to provide a temporary fixation while drilling and placing bone screws."

According to the Department's audit, Taxpayer mistakenly sought a refund for "disposable tool kits for various types of surgery, sawblades, drill bits, burrs, k wires, guide wires, and implant kits . . . ."

The Department's audit cited to [45 IAC 2.2-5-36\(a\)](#) as authority for denying refund claims associated with items which may be utilized "within the patient," are not permanently "implanted" prosthetics, but were "consumed" by

Taxpayer in providing medical care.

The gross retail tax shall apply to the following purchase transactions made by licensed practitioners:

- (1) All office furniture, equipment and supplies.
- (2) Drugs of a type not requiring a prescription, when not purchased for resale.
- (3) Surgical instruments, equipment and supplies.
- (4) Bandages, splints, and all other medical supplies consumed in professional use.
- (5) X-Ray, diathermy, diagnostic equipment, or any other apparatus used in the practice of surgery or medicine.

#### **E. Taxpayer's Arguments.**

Taxpayer claims that it was entitled to the refund because the disputed items were temporarily and/or implanted to the patient to alleviate a medical condition. Alternatively, Taxpayer argues that it is a retail merchant reselling the disputed items to its patients in orthopedic surgery.

##### **1. Exempt Orthopedic Devices.**

Taxpayer's argument is that the disputed items are "temporarily and/or implanted to the patient to alleviate a medical condition." Taxpayer explains:

Some of the orthopedic devices may be implanted and removed during an orthopedic procedure to alleviate a medical condition. After it has served its medical purpose, it may or may not be necessary to be kept in the body and at that point can be removed from the patient's body.

Taxpayer relies on IC § 6-2.5-5-18(c) as the basis for the refund. That provision states as follows:

Transactions involving the following are exempt from the state gross retail tax if the end user acquires the property upon a prescription or drug order (as defined in [IC 16-42-19-3](#)) from a licensed practitioner:

- (1) Durable medical equipment.
- (2) Mobility enhancing equipment.
- (3) Prosthetic devices, including artificial limbs, orthopedic devices, dental prosthetic devices, eyeglasses, and contact lenses.
- (4) Other medical supplies or devices that are used exclusively for medical treatment of a medically diagnosed condition, including a medically diagnosed condition due to:
  - (A) injury;
  - (B) bodily dysfunction; or
  - (C) surgery.

##### **2. Orthopedic Devices and Other Items Sold to Taxpayer's Patients.**

Taxpayer raises a secondary argument arguing that the hospital is acting as a "retail merchant" by reselling the disputed items to its patients. Taxpayer explains that all items the audit classified as "consumables," were "traceable through the Taxpayer's medical inventory tracking system." Because Taxpayer can trace each "consumable" to each individual patient, Taxpayer concludes that the items were exempt because Taxpayer bought the consumables to resell to its patients. Taxpayer states as follows:

[Taxpayer] is a retail merchant that is engaged in selling at retail when it temporarily transfers any medical supplies and/or orthopedic devices in an orthopedic procedure. As such, any medical supplies and/or orthopedic devices that are temporarily transferred via an orthopedic procedure should be exempt as a sale for resale per IC § 6-2.5-5-8(b).

The cited reference provides:

Except as provided in subsection (j), transactions involving tangible personal property other than a new motor vehicle are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of the person's business without changing the form of the property. IC § 6-2.5-5-8(b).

Taxpayer further relies on IC § 6-2.5-4-1(b) which states:

A person is engaged in selling at retail when, in the ordinary course of the person's regularly conducted trade or business, the person:

- (1) acquires tangible personal property for the purpose of resale; and
- (2) transfers that property to another person for consideration.

Finally, Taxpayer maintains that "selling at retail" does not necessarily require that the purchaser then-and-there take possession of the item being sold. To that end, Taxpayer cites to IC § 6-2.5-4-1(c)(3).

For purposes of determining what constitutes selling at retail, it does not matter whether:

- (1) the property is transferred in the same form as when it was acquired;
- (2) the property is transferred alone or in conjunction with other property or services; or
- (3) the property is transferred conditionally or otherwise.

From Taxpayer's perspective the various items are exempt from sales tax because they were purchased and then prescribed to the patient and are equally exempt from tax because the items were charged to and paid by the patient. Taxpayer either bought the "prosthetic devices" and "other medical supplies or device" (IC § 6-2.5-5-8(b)) as statutorily exempt or because the items were purchased by the hospital for "selling at retail" to its patients. IC § 6-2.5-4-1(c)(3).

## **F. Application of Law and Conclusions.**

### **1. Durable Medical Equipment Prescribed to Taxpayer's Patients.**

Sales of "durable medical equipment" and supplies may be exempt if the equipment is "prescribed" to the purchaser. The Department's regulation, [45 IAC 2.2-5-27](#), explains:

(a) The term "person licensed to issue a prescription" shall include only those persons licensed or registered to fit and/or dispense such devices.

(b) Definition: The term "prescribed" shall mean the issuance by a person described in paragraph 1 of this regulation [*subsection (a) of this section*] of a certification in writing that the use of the medical equipment supplies and devices is necessary *to the purchaser* in order to correct or to *alleviate a condition brought about by injury to, malfunction of, or removal of a portion of the purchaser's body.* (*Emphasis added*).

Under IC § 6-2.5-5-18(a) and [45 IAC 2.2-5-27](#), a person having a "condition brought about by injury, malfunction of, or removal of a portion of the purchaser's body," may be eligible for a sales tax exemption if the "person" receives a proper prescription for the "medical equipment supplies and devices."

Under IC § 6-2.5-5-18(a) and [45 IAC 2.2-5-27](#), sales of prescribed "medical equipment, supplies, or devices" are exempt if they are necessary to "correct or alleviate injury to, malfunction of, or removal of a portion of the *purchaser's body.*" In interpreting this provision, the Department will presume that omission from the list of items enumerated at IC § 6-2.5-5-18(a) renders the omitted item taxable.

Plainly, Taxpayer cannot purchase exempt "durable medical equipment" and supplies under the above cited provisions, because the Taxpayer is not the patient to whom the items were prescribed.

In this instance, the Department notes that many of items are employed by Taxpayer, as a licensed medical practitioner, but finds that the subject transactions are more appropriately addressed at [45 IAC 2.2-5-36](#) which states:

(a) The gross retail tax *shall apply* to the following purchase transactions made by licensed practitioners:

- (1) All office furniture, equipment and supplies.
- (2) Drugs of a type not requiring a prescription, when not purchased for resale.
- (3) *Surgical instruments*, equipment and supplies.
- (4) *Bandages*, splints, and all *other medical supplies consumed in professional use.*
- (5) X-Ray, diathermy, diagnostic equipment, or *any other apparatus used in the practice of surgery or medicine.*

(b) The purchase of items for resale by the physician or surgeon. In order to resell items the practitioner must be licensed as a retail merchant, and must quote the selling price of any items separately from the charge for professional service. (*Emphasis added*).

As to Taxpayer's protest, the Department finds little to quarrel with the audit report's finding that many of the contested items were simply disposable commodities which were "consumed in professional use" and/or "used in the practice of surgery or medicine." *Id.* Clearly, "suture kits," "guide wires," "disposable tool kits," "aspiration kits," and the like were in some form "prescribed" to Taxpayer's patients but were *consumed* by Taxpayer in providing necessary care to those patients.

The Department's position on this issue is stated at Sales Tax Information Bulletin 48 (March 2018), 20201202 Ind. Reg. 045200595NRA, See also Sales Tax Information Bulletin 48 (March 2020), 20201202 Ind. Reg. 045200595NRA. In part, both the 2018 and 2020 bulletins provide:

The following sales and/or rental of durable medical equipment, devices, drugs, and other supplies are exempt from Indiana sales and use tax provided the end user patient acquires the property upon a prescription or drug order (as defined in [IC 16-42-19-3](#)) for the transaction from a licensed practitioner:

- Sales of durable medical equipment that: can stand repeated use; is primarily used to serve a medical purpose; is generally not useful to a person in the absence of an illness or injury; is not worn in or on the body; and is directly required to correct or alleviate injury to, malfunction of, or removal of a portion of the human body.
- Sales of prosthetic devices that are a replacement, corrective, or supportive device worn on or in the body to: artificially replace a missing part of the body; prevent or correct physical deformity or malfunction; or support a weak or deformed part of the body. Such devices include:
  - (1) Artificial limbs
  - (2) Orthopedic devices designed to correct deformities and/or injuries to the human skeletal system including the spine, joints, bones, cartilages, ligaments, and muscles
  - (3) Dental prosthetic devices used for the replacement of missing teeth such as bridges and artificial dentures
  - (4) Corrective eyeglasses and contact lenses.

Nonetheless, the audit report correctly granted refunds on "implanted prosthetics" under IC § 6-2.5-5-18(a). However, Taxpayer argues that certain "orthopedic devices" were classified as taxable but, based on the description provided, should have been exempt because the items fall under the IC § 6-2.5-5-18(a) and [45 IAC 2.2-5-27](#) exemption. Two examples are provided here; the brief descriptions are, of course, Taxpayer's.

- Internal Knee Brace Ligament Augmentation Implant Repair - "[A] bioabsorbable device implanted into bone for attachment [of] tendons either directly or via a suture."
- Speedbridge Implant System - "Device implanted into bone for attachment of tendons."

Based solely on the description provided, the two above items would seem to qualify for the exemption. However, Taxpayer simultaneously points to:

- Primordial Tenodesis Implant System - "Set of medical devices to allow isometric implementation of the implantation of the ligament replacement device or graft."
- Disposable CL Kits - "Devices intended to be used to implant internal orthopedic fixation system."

Again, based solely on Taxpayer's description, the first item (Implant System) is apparently an instrument used by a doctor to assist in the replacement of ligaments. The "CL Kits," as best that can be determined, are consumed in the provision of medical services because the kits are "disposable." Without additional verifiable documentation, such as manufacturer's product information, the Department must conclude that there is insufficient information to support any portion of Taxpayer's protest. Admittedly, it is possible that some of the items may fall within the exemption but whether the items were included in the sampling conducted by the Department's audit is not known.

The Department is unable to agree with Taxpayer that it is entitled to an additional \$135,000 refund because, with the documentation supplied during the protest process, it is not possible to separate items which are used and consumed by Taxpayer and items which *may* have been implanted into the patient such as the item described as a "bioabsorbable device implanted into bone."

## 2. Medical Equipment and Supplies Purchased for Resale.

Taxpayer carefully tracks the cost of items utilized in the provision of medical service to each of its patients.

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Apparently, the patient receives a bill delineating the exact price of each item. Taxpayer provided what it indicated were "patient invoices." Those invoices list the price for each aspirin, Tylenol, lidocaine dose, drill bit, guide wire, needle, sponge, glove scalpel blade, gown, towel, bottle of mineral oil, foot cuff, eye drops charged to and presumably paid by either the patient or that person's insurer.

Taxpayer argues that it is entitled to the refund because Taxpayer bought the items - whether consumed, utilized, or discarded - for the specific purpose of reselling the items to its patients. The Department finds that Taxpayer has not established that the items at question were all resold to its patients. It is clear that the patients pay for these costs but there is little to recommend a finding that items consumed, used, and disposed of in an operating or recovery room were resold to the patient. Presumably patients - or their insurers - pay for everything consumed or used by Taxpayer on behalf of those patients and these items are entirely incidental to the provision of Taxpayer's services. Nonetheless, on the question of whether the patients and Taxpayer engaged in retail transactions in which the patients contemplated and then agreed to purchase sponges, gloves, and the like, the Department is unable to conclude that Taxpayer's conclusion falls "clearly within the exact letter of the law." *RCA Corp.*, 310 N.E.2d at 97.

As to both of Taxpayer's substantive arguments, the Department finds that there is not "sufficient evidence . . . clearly with the exact letter of the law." *Id.* at 100. Therefore, Taxpayer has not established that it is entitled to the claimed refund of sales tax.

### FINDING

Taxpayer's protest is respectfully denied.

## II. Gross Retail and Use Tax - Prewritten Computer Software.

### DISCUSSION

The issue is whether Taxpayer has met its burden of establishing that its purchase of computer software is not subject to sales tax because the purchases consisted strictly of "software-as-a-service" (SaaS). If Taxpayer is correct, the purchases were exempt from sales tax and Taxpayer is entitled to an additional refund.

In its original refund claim, Taxpayer sought the return of sales tax paid at the time it purchased from two computer software vendors; Software Information Services, and Integra Lifesciences. Taxpayer explains that "[p]rior to July 1, 2018, the Indiana Legislature did not address the taxability of SaaS. Taxpayer correctly notes that "the Department relied on Information Bulletin 8 [effective December 2016] to determine the taxability of SaaS transactions."

#### A. Taxpayer's Burden in Claiming a Refund.

As noted in Part I above, when challenging the taxability in a specific instance, the taxpayer is required to provide documentation explaining and supporting its challenge. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

#### B. Computer Software and Indiana's Sales/Use Tax.

IC § 6-2.5-1-27 incorporates "prewritten computer software" in the definition of tangible personal property subject to sales/use tax:

"Tangible personal property" means personal property that:

- (1) can be seen, weighed, measured, felt, or touched; or
- (2) is in any other manner perceptible to the senses.

The term includes electricity, water, gas, steam, and prewritten computer software.

A person who acquires property in a retail transaction (a "retail purchaser") is liable for the tax on the transaction. IC § 6-2.5-2-1(b).

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**C. Sales Tax Information Bulletin 8.**

Taxpayer is correct when it states that Sales Tax Information Bulletin 8 (December 2016), 20170125 Ind. Reg. 045170026NRA, governs the periods in which Taxpayer bought the software.

Charges for accessing prewritten software maintained on [a] vendor or third party's computer servers are not subject to tax when accessed electronically via the Internet if the customer is not transferred the software, does not have an ownership interest in the software, and does not control or possess the software on the server.

Taxpayer further cites to Memorandum of Decision 04-20191189R (September 8, 2020), 20201202 Ind. Reg. 045200583NRA, in which the Department found that the petitioner established that the purchase of software from Workday, Inc. was exempt as follows:

The Agreement makes plain that Workday "own[s] all right, title and interest in and to the [Service]." No such rights were granted to Taxpayer. Rather, [petitioner] was granted a "non-exclusive, non-transferable, right to use the [Service], solely for the internal business purpose of [petitioner] and solely during the term, subject to the terms and conditions of [the Agreement] within the scope of use defined in the relevant Order Form."

In other words, the agreement between Workday, Inc. and the petitioner allowed the petitioner to make use of the software service, but the petitioner never obtained an ownership - or possessory - interest in that software. That is, petitioner and Workday did not engage in a retail transaction in which petitioner acquired tangible personal property from Workday.

Taxpayer argues that its own purchases are analogous to the transactions in Memorandum of Decision 04-20191189R. Taxpayer explains, "The [T]axpayer never gained control or a possessory interest in the underlying software or cloud infrastructure and was purely purchasing.

**D. Application of Law and Conclusion.**

Taxpayer is correct in its position that "services" are not subject to Indiana sales or use tax. Specifically, [45 IAC 2.2-4-2](#) contains a provision exempting the purchase of services from sales tax. [45 IAC 2.2-4-2\(a\)](#) states that, "Professional services, personal services, and services in respect to property not owned by the person rendering such services are not transactions of a retail merchant constituting selling at retail and are not subject to gross retail tax." However, "Where, in conjunction with rendering professional services . . . the serviceman also transfers tangible personal property for a consideration, this will constitute a transaction of a retail merchant constituting selling at retail . . ." *Id.*

However, the Department is bound in its ability to interpret and apply the "services" exemption. A statute which provides any 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 101 (internal citations omitted). In applying any tax exemption, the general rule is that "tax exemptions are strictly construed in favor of taxation and against the exemption." *Indiana Dep't of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454, 456 (Ind. Ct. App. 1988).

The Department does not question whether Taxpayer paid for software - either as tangible personal property or simply as SaaS. However, Taxpayer has not provided *verifiable* information, such as the underlying contracts or "terms of use," which would make it possible to determine the nature of the transaction. Without that *verifiable* information, the Department finds that Taxpayer has not presented a claim to the exemption which falls "clearly within the exact letter of the law." *RCA Corp.*, 310 N.E.2d at 100.

On the question of whether Taxpayer has met its burden of establishing that the software purchases were exempt from sales/use tax, the Department must conclude that it has not met that burden.

**FINDING**

Taxpayer's protest is respectfully denied.

**SUMMARY**

Taxpayer's protest challenging the denial of a refund of tax on the ground that medical items were either purchased for resale or were implanted in Taxpayer's patients is denied. There is insufficient evidence to conclude that Taxpayer purchased exempt software services.

December 28, 2021.

*Posted: 03/02/2022 by Legislative Services Agency*  
An [html](#) version of this document.