

COMMISSIONER'S DIRECTIVE #42

DECEMBER 2011

DISCLAIMER: Commissioner's directives are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is not consistent with the law, regulations, or court decisions is not binding on either the Department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUBJECT: Indiana Tax Exemption Relating to the National Football League and Its Affiliates

REFERENCES: IC 6-2.5; IC 6-3; IC 6-6-1.1; IC 6-6-2.5; IC 6-6-9; IC 6-6-9.7; IC 6-8-12; IC 6-9; IC 6-9-13

EFFECTIVE: Upon Publication

I. INTRODUCTION

IC 6-8-12-3 provides that all property owned by the National Football League and its Affiliates (as defined below) in connection with a Super Bowl Event in Indiana, their revenues, their expenditures, and their transactions in connection with a Super Bowl Event in Indiana, resulting from holding such Super Bowl Event in Indiana, or resulting from making preparatory advance visits to Indiana for such Super Bowl Event are exempt from taxation in Indiana for all purposes.

This directive is for the purpose of providing guidance concerning this exemption to the National Football League, its Affiliates, and retail merchants.

II. DEFINITIONS

Affiliate - means:

- National Football League Management Council, not-for-profit trade association.
- NFL Ventures, L.P.
- NFL Ventures, Inc.
- NFL Productions, L.L.C.
- NFL Enterprises, L.L.C.
- NFL Properties, L.L.C.

- NFL International L.L.C.
- NFL Productions, Inc.
- NFL Network Services, Inc.
- NFL Combine Properties, Inc.
- NFL Charities
- NFL Youth Football Fund

Master Account - means an account established by a retail merchant for the National Football League or its Affiliates that permits authorized employees or agents of the National Football League or its Affiliates to purchase tangible personal property or services on behalf of the National Football League or its Affiliates and for which payment of any charges made to such account is the responsibility and legal obligation of the National Football League or its Affiliates.

National Football League – means a not-for-profit trade association known as the National Football League organized under Section 501(c)(6) of the Internal Revenue Code and the 32 member clubs of such association.

Super Bowl Event - means an event known as the Super Bowl that is conducted after Dec. 31, 2011, by the National Football League.

III. SALES AND USE TAX ON PURCHASES BY THE NATIONAL FOOTBALL LEAGUE AND AN AFFILIATE

Purchases of tangible personal property or taxable services made directly by the National Football League or its Affiliates in connection with the Super Bowl Event in Indiana, resulting from holding a Super Bowl Event in Indiana or resulting from making preparatory advance visits to Indiana for a Super Bowl Event, are exempt from sales and use tax (IC 6-2.5).

To qualify for the exemption, the purchase of tangible personal property or taxable service from a retail merchant must be made directly by the National Football League or its Affiliates.

NOTE: If an employee of the National Football League or an Affiliate purchases an item on behalf of the National Football League or an Affiliate, even if the employee is to be reimbursed by the National Football League or an Affiliate, the purchase is not exempt and the employee must pay sales tax at the time of purchase.

To purchase property or services from a retail merchant exempt from sales and use tax, innkeepers' tax if applicable, and food and beverage tax if applicable, the National Football League or an Affiliate must open a master account with that retail merchant that includes a list of those employees of the National Football League or the Affiliate authorized to make charges to such master account, provide such master account information to the Department, and submit an exemption certificate (Form ST-105 or SSTGB Form F0003) to the retail merchant. To recover taxes paid on exempt purchases, including the purchase of gasoline or special fuel through a metered pump, the National Football League or an Affiliate must file a properly supported claim for refund with the Department.

EXAMPLE :

An employee of the National Football League pays for lodging costs with the employee's own funds. Tax should be collected at the time of payment because payment is not being made directly by the National Football League. However, if an authorized employee charges the lodging to the National Football League's master account at the hotel, which is properly established by the National Football League or its Affiliate, then this is a direct expenditure by the National Football League. Therefore, this transaction is exempt from sales tax.

EXAMPLE:

An employee of an Affiliate hosts a dinner for several employees and charges the dinner on a corporate credit card in the name of the Affiliate. The purchase is not an exempt purchase because the purchase was not charged to a master account. The Affiliate may file a properly supported claim for refund with the Department.

IV. SALES AND USE TAX ON SALES BY THE NATIONAL FOOTBALL LEAGUE OR AN AFFILIATE

Sales by the National Football League and its Affiliates in connection with the Super Bowl Event in Indiana, resulting from holding a Super Bowl Event in Indiana or resulting from making preparatory advance visits to Indiana for a Super Bowl Event, are exempt from sales and use tax (IC 6-2.5). This exemption shall not apply to any gross receipts received by the National Football League or an Affiliate if it is domiciled in Indiana.

To claim the foregoing exemption from any sales tax, the National Football League or an Affiliate shall file with the Department monthly sales tax returns (Forms ST-103) on or before the due date for filing sales tax returns, as may be extended, for any month in which it has exempt or non-exempt sales and shall report such sales. The National Football League or an Affiliate shall not be required to register with the Department in order to claim the exemption, but it will be required to register with the Department and file sales tax returns to the extent it has gross receipts subject to tax.

V. REFUND OF EXCISE TAXES ON PURCHASES BY THE NATIONAL FOOTBALL LEAGUE OR AN AFFILIATE

Purchases and sales by the National Football League and its Affiliates in connection with the Super Bowl Event in Indiana, resulting from holding a Super Bowl Event in Indiana or resulting from making preparatory advance visits to Indiana for a Super Bowl Event, are exempt from state and county excise taxes, including, without limitation, the gasoline or motor fuel tax (IC 6-6-1.1), special fuel tax (IC 6-6-2.5), auto rental excise tax (IC 6-6-9), county auto rental excise tax (IC 6-6-9.7), county food and beverage tax (IC 6-9), innkeeper's tax (IC 6-9), and county admissions tax (IC 6-9-13 and IC 6-9-28) to the extent that such purchases and sales are exempt from sales and use tax (IC 6-2.5).

If excise taxes have been paid on exempt purchases, including the purchase of gasoline or special fuel through a metered pump, the National Football League or an Affiliate must file a properly supported claim for refund with the Department.

VI. INCOME TAX ON INCOME OF THE NATIONAL FOOTBALL LEAGUE OR AN AFFILIATE RELATING TO A SUPER BOWL EVENT

Income of the National Football League and its Affiliates derived from a Super Bowl Event in Indiana, from holding a Super Bowl Event in Indiana, or from making preparatory advance visits to Indiana for a Super Bowl Event are exempt from adjusted gross income tax (IC 6-3).

To claim the foregoing exemption from any income tax on the foregoing income received in a taxable year, the National Football League or an Affiliate shall submit a report detailing its exempt income to the Department on or before the due date for filing income tax returns for such taxable year, as may be extended. The National Football League or an Affiliate also shall include the foregoing report to the Department as an enclosure with its income tax return, but only if it is required to file an income tax return. The National Football League or an Affiliate shall not be required to register with the Department or file an income tax return in order to claim the exemption, but each of them will be required to register with the Department and file income tax returns to the extent it has non-exempt income or is otherwise required to do so by Indiana law. If required to file an income tax return, the National Football League or an Affiliate shall exclude any exempt income from any income, receipts, or expenses reported on such return and shall exclude any exempt receipts from the numerator and denominator of its apportionment factor on its income tax return.

VII. WITHHOLDING TAX ON SALARIES AND WAGES OF EMPLOYEES OF THE NATIONAL FOOTBALL LEAGUE OR AN AFFILIATE RELATING TO A SUPER BOWL EVENT

Except as provided below, the National Football League and its Affiliates are exempt from withholding tax (IC 6-3-2-2.7 and IC 6-3-4-1) on the wages and salaries of their employees paid in connection with services rendered at a Super Bowl Event in Indiana, with respect to holding a Super Bowl Event in Indiana or with respect to making preparatory advance visits to Indiana for a Super Bowl Event. Notwithstanding the foregoing, the National Football League and its Affiliates are not exempt from withholding tax on the salaries and wages paid to those of their employees who are residents of Indiana regardless of whether the salaries and wages are paid to such Indiana residents in connection with services rendered at a Super Bowl Event in Indiana, with respect to holding a Super Bowl Event in Indiana or with respect to making preparatory advance visits to Indiana for a Super Bowl Event.

If the National Football League or an Affiliate is subject to withholding tax on nonresident team member employees (IC 6-3-2-2.7), it shall exclude any wages and salaries of such employee from the total income of such employee and shall exclude the duty days performed in Indiana by such employee in connection with a Super Bowl Event from such employee's Indiana duty days and total duty days (i.e., numerator and denominator of the apportionment factor). *See* Information Bulletin #88.

To claim the foregoing exemption from any withholding tax, the National Football League or an Affiliate shall submit a report to the Department on or before the due date for filing income tax returns for such taxable year, as may be extended, and such report shall provide (1) the total

income of each employee; (2) the total Indiana income of each employee (as determined by apportioning each employee's income to Indiana based on duty days performed in Indiana compared to total duty days in a taxable year); and (3) the total exempt income of each employee (as determined by reference to duty days performed in Indiana in connection with a Super Bowl Event compared to total duty days in a taxable year).

The National Football League or an Affiliate shall not be required to register with the Department or file a withholding tax return in order to claim the foregoing exemption, but each of them will be required to register with the Department and file withholding tax returns to the extent each of them pays non-exempt salaries and wages or is otherwise required to do so by Indiana law.

A handwritten signature in black ink that reads "John Eckart". The signature is written in a cursive style with a large, looping initial "J".

John Eckart
Commissioner