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Trade tax exemption for certain care facilities billed through third party

Certain care facilities are exempt from trade tax if, in at least 40 percent of cases, the costs of care are covered in full or for the most part by statutory social insurance or social welfare providers. According to a decision of the Supreme Tax Court, this also applies if the services are billed through a third party.

Background

The Supreme Tax Court was asked to comment on the scope of the trade tax exemption under Section 3 No. 20 Letter d of the Trade Tax Act (TTA). This exemption is meant to improve the care structure for needy individuals and to relieve social insurance agencies of costs.

Section 3 No. 20 Letter d TTA requires that, in at least 40 percent of cases, the costs of care be borne in full or for the most part by statutory social insurance agencies or social welfare (the latter of which is administered by local municipal authorities).

In the case in dispute, a limited liability company (GmbH) operated an outpatient nursing service with a focus on specialized outpatient palliative care (SAPV). It received some of its assignments directly from individuals in need of care and billed the health insurance companies for these services itself. Mostly, however, it was a member of a “palliative care team” organized as a cooperative. The GmbH provided care directly for the patients using its own staff but billed the cooperative for its services. Only then did the cooperative bill the health insurance companies for the team’s total SAPV services.

The tax office only exempted services from trade tax which were settled directly with the health insurance companies.

Decision

According to the decision of the Supreme Tax Court, the only requirement for private long-term care facilities to qualify for trade tax exemption is that services are provided to individuals in need of care. The provision does not require direct reimbursement of costs to the outpatient care facility. The healthcare costs may also have been borne merely indirectly by the statutory social insurance carriers or social welfare agencies.

For the Supreme Tax Court, the decisive factor is the wording of the provision along with its purpose of reducing healthcare costs and improving healthcare infrastructure. The civil law structure of the service and billing relationships do not preclude tax exemption.

After all, Section 3 No. 20 Letter d TTA does not provide tax exemption for business enterprises as such but rather regulates the tax exemption for

individual commercial activities. The provision therefore does not provide a personal tax exemption but rather tax exemption based on the specific activities pursued which are consistent with the nature of the trade tax for a taxation based on the earning capacity of the business.

If the tax exemption were not activity-related, a corporation whose activities - pursuant to Section 2 (2) Sentence 1 TTA - always rank as business activities in their entirety would be exempt from trade tax solely because it also operates a facility providing outpatient care for sick persons and those in need of care. This, however, would not be in line with the legislative intent of the provision, the Supreme Tax Court said.

In the case in dispute, the costs of the care services provided by the plaintiff were borne in full or for the most part by social insurance or social welfare agencies in at least 40 percent of the cases during each survey period; this is sufficient to qualify for the tax exemption.

Source:

Supreme Tax Court judgment, of 28 July 2026 (VII R 35/24) published on 1 October 2026.

Keywords

health care, trade tax exemption