DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0117
SALES AND USE TAX
FOR TAX PERIODS: 1990-1992

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

1. Sales and Use Tax: Labels

Authority: IC 6-2.5-3-2 (a), Indiana Bell Telephone Co. v. Indiana Department of Revenue, 627 N.E. 2d 1386, Ind. Tax Court (1994), IC 6-2.5-5-3 (b), 45 IAC 2.2-5-8 (d).

Taxpayer protests the imposition of tax on certain labels.

2. Tax Administration: Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 2.2-3-16.

Taxpayer protests the imposition of penalty.

Statement of Facts

Taxpayer is a manufacturer of automobile brakes. After an audit, additional tax was assessed. Taxpayer protested the assessment and a hearing was held. Further facts will be provided as necessary.

1. Sales and Use Tax: Labels

Pursuant to IC 6-2.5-3-2 (a), Indiana imposes an excise tax on tangible personal property stored, used or consumed in Indiana. There are several statutory exemptions from the use tax. It is established law that all tax exemptions must be strictly construed against Taxpayers. Indiana Bell Telephone Co. v. Indiana

Department of Revenue, 627 N.E. 2d 1386, Ind. Tax Court (1994). Therefore Taxpayer bears the burden of showing that the subject labels meet all the tests for qualification for exemption.

Taxpayer contends that these labels qualify for exemption pursuant to IC 6-2.5-5-3 (b) as tangible personal property which is directly used in the direct production process of producing a product. 45 IAC 2.2-5-8 (d) defines the direct production process as beginning "at the point of the first operation or activity constituting part of the integrated production process and ends at the point that the production has altered the item to its completed form, including packaging, if required."

Taxpayer protests the assessment of additional use tax on certain adhesive labels. These labels are attached to each box containing one set of brakes which Taxpayer manufactured. Each label indicates information such as a part number, manufacturing date, country of origin, type of production process, product grade environmental hazards that may be caused by the product. The labels are attached to the box and are part of the required packaging process of Taxpayer's product. The use of these labels clearly qualifies them for exemption from the gross retail tax.

Finding

Taxpayer's protest is sustained.

2. Tax Administration: Penalty

Discussion

Taxpayer's final point of protest concerns the imposition of the ten per cent negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

> Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

In this instance, Taxpayer did not have a system to assure the proper payment of use tax. This breach of its duty to properly report and remit use tax constitutes negligence.

Finding

Taxpayer's protest is denied.

KA/PE/MR/00/23/06