

Letter of Findings Number: 05-0063
Sales and Use Tax
For Tax Years 2001-04

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ISSUE

I. Sales and Use Tax—Utility Consumption

Authority: Dept. of State Revenue v. Kimball International, Inc., 520 N.E.2d 454 (Ind. Ct. App. 1988); [IC 6-2.5-4-5](#); [45 IAC 2.2-4-13](#)

Taxpayer protests imposition of sales tax on utilities used to heat its plant.

STATEMENT OF FACTS

Taxpayer manufactures boats for recreational use. Taxpayer filed a claim for refund (Claim 2) of sales tax paid on natural gas consumed at its manufacturing facility from 2001 to 2004. The gas is measured from a single meter. Taxpayer had previously filed a claim for refund (Claim 1) which covered 1999 through 2002, which covered some of the same periods as Claim 2. The Department issued refunds pursuant to Claim 1 in their entirety and therefore denied claims covering the same periods under Claim 2. As the result of a refund investigation, the Indiana Department of Revenue ("Department") determined that some of the refunds issued under Claim 1 were in error and issued proposed assessments for 2001 and 2002 and proposed refunds for 2003 and 2004. Taxpayer protests the proposed assessments and continues its refund claims for the years at issue. Further facts will be supplied as required.

I. Sales and Use Tax—Utility Consumption

DISCUSSION

Taxpayer protests the imposition of tax on some of the natural gas used to maintain a constant temperature in its manufacturing plant. On its returns for the years at issue, taxpayer took a credit for twenty-three percent exempt use of the natural gas. In this protest, taxpayer has claimed an exempt use rate of sixty-two point two percent. As a result of the investigation of the claim for refund, the Department determined an exempt use rate of thirty-four percent. The Department refers to [IC 6-2.5-4-5](#), which states in relevant part:

(c) Notwithstanding subsection (b), a power subsidiary or a person engaged as a public utility is not a retail merchant making a retail transaction in any of the following transactions:

...

(3) The power subsidiary or person sells the services or commodities listed in subsection (b) to a person for use in manufacturing, mining, production, refining, oil extraction, mineral extraction, irrigation, agriculture, or horticulture. However, this exclusion for sales of the services and commodities only applies if the services are consumed as an essential and integral part of an integrated process that produces tangible personal property and those sales are separately metered for the excepted uses listed in this subdivision, or if those sales are not separately metered but are predominately used by the purchaser for the excepted uses listed in this subdivision.

Next, [45 IAC 2.2-4-13](#)(e) states:

Where public utility services are sold from a single meter and the services or commodities are utilized for both exempt and nonexempt uses, the entire gross receipts will be subject to tax unless the services or commodities are used predominantly for excepted purposes. Predominant use shall mean that more than fifty percent (50%) of the utility services and commodities are consumed for excepted uses.

Also of relevance is Dept. of State Revenue v. Kimball International, Inc., 520 N.E.2d 454 (Ind. Ct. App. 1988), in which the court explained:

Thus, in the present case, the trial court was required to examine the entire process Kimball uses to transform raw wood into finished wood products and determine if the spray booths, air make up units and their associated parts are essential integral parts of the entire manufacturing process. A review of the record reveals substantial, uncontroverted evidence confirming the trial court's finding that Kimball qualified for the exemption. Virtually every witness testified that without the spray booths, air make up units and associated parts, the manufacturing process would not be possible. It is true, as the Department contends, that the evidence shows that Kimball's process would be economically unfeasible and that *Cave Stone* at least implies that economics is not the appropriate measure. Nonetheless, the evidence also supports the findings that without the equipment Kimball's entire process would be impossible from an operational standpoint and from the standpoint of safety. Accordingly the trial court correctly found that Kimball qualified for the exemption.

Id., at 457.

Therefore, under Kimball, the Department must look at the entire process taxpayer uses to manufacture its boats. Taxpayer has spray booths for paint and decal work, which the Department agreed were exempt. Taxpayer also claims that other areas of its manufacturing facility are required to be heated within certain parameters in order to properly manufacture its boats. Taxpayer has provided additional documentation from its suppliers establishing that the fiberglass used to make the hulls of its boats and glue used to assemble them must be maintained at certain temperatures or the result will be an unmarketable product. The areas used to maintain the appropriate conditions for manufacturing requirements meet the requirements of Kimball.

Also, taxpayer has provided sufficient explanation and documentation to establish that the manufacturing process takes place in more of the manufacturing facility than originally credited by the Department. Taxpayer's figure of sixty-two point two percent usage of natural gas for manufacturing is accurate. Under [IC 6-2.5-4-5\(3\)\(c\)](#), sales of natural gas are exempt, "[I]f those sales are not separately metered but are predominately used by the purchaser for the excepted uses listed in this subdivision." Here, taxpayer qualifies for the exemption found in [IC 6-2.5-4-5\(3\)\(c\)](#).

In conclusion, taxpayer has provided sufficient documentation to establish that sixty-two point two percent of its use of natural gas for environmental control satisfies the test provided in Kimball. Taxpayer has provided sufficient documentation to establish that the natural gas is used more than fifty percent for manufacturing purposes, and so is predominantly used for exempted purposes under [45 IAC 2.2-4-13\(e\)](#). Since the natural gas measured from the sole meter is used "predominately used by the purchaser for the excepted uses listed," taxpayer qualifies for the one hundred percent exemption found in [IC 6-2.5-4-5\(3\)\(c\)](#).

FINDING

Taxpayer's protest is sustained.

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