

Letter of Findings Number: 04-0409
Sales/Use Tax
For Tax Years 2001 through 2003

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I. Sales/Use Tax—Equipment

Authority: [IC 6-8.1-5-1\(b\)](#); [45 IAC 15-5-3\(b\)](#); [IC 6-2.5-5-3](#); [45 IAC 2.2-5-8](#)

Taxpayer protests the proposed assessment of tax on equipment

II. Tax Administration—Negligence Penalty

Authority: [45 IAC 15-11-2](#)

Taxpayer protests the imposition of a ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer manufactures parts for the automotive industry. The Department audited the taxpayer, and the taxpayer protested various items from that audit. An administrative hearing was held, and this Letter of Finding results from that hearing. More facts will be provided below as needed.

I. Sales/Use Tax—Equipment

DISCUSSION

Before examining the taxpayer's protest, it should be noted that the *taxpayer* bears the burden of proof. [IC 6-8.1-5-1\(b\)](#) states in pertinent part:

The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.

The Indiana Administrative Code also states "[t]he burden of proving that a proposed assessment is incorrect rests with the taxpayer. . . ." [45 IAC 15-5-3\(b\)](#).

The taxpayer characterizes its protest as involving the following issues: (1) uncoiler and related purchases; (2) equipment used to move work-in-progress; (3) component parts; and (4) equipment used to move dies.

(1) Uncoiler and Related Purchases

The Audit Report states the following regarding the taxpayer:

[Taxpayer] receive[s] both pre-cut plate steel and coiled steel rolls. Steel is rolled into coils for ease in shipping. The coils of steel are lifted onto a coil straightener machine to remove the bend in the steel; it does not change the structure of the steel in any way. The roll of steel is then fed directly into the press where the steel is cut to size.

The taxpayer argues that the uncoiler is part of the manufacturing process, stating:

[T]he first step in production is to feed sheet metal into the press with the proper tension on the sheet metal. Although uncoiling sheet metal does not change the metal, uncoiling is an integral part of the integrated series of steps that transform sheet metal into stamped parts.

Taxpayer states that "the uncoiler is essential to [] production process because the uncoiler plays a key role in the process by feeding the cutting machine sheet metal at the correct tension and speed to maximize the efficiency of the cutting machine." The taxpayer's facts are similar to those the Department dealt with in a different Letter of Finding (See 04-0268). The Department found (in pertinent part) in that Letter of Finding ("L.O.F."):

[T]he uncoiler straightened the steel. While this was necessary to begin the process by which Taxpayer produced tangible personal property, the straightening of steel preceded the process in which the steel eventually became steel tubes. As such, the uncoiler did not have an immediate direct effect on the property in production, and thus did not constitute part of the production of other tangible personal property.

The Department adopts the reasoning of L.O.F. 04-0268 and applies it to the case at hand. The uncoiler does not meet the requirements of [IC 6-2.5-5-3\(b\)](#) that the equipment be used for "direct use in the direct production . . . of other tangible personal property." The uncoiler is pre-production, as outlined in [45 IAC 2.2-5-8\(d\)](#). The taxpayer's protest is denied.

(2) Equipment Used to Move Work-in-Progress

The taxpayer next asserts that the purchase of "nut feeders, chutes and conveyors" were erroneously taxed and should be exempt as work-in-process under [45 IAC 2.2-5-8\(f\)](#). Given the nature of the nut feeder, chutes, and conveyors, the Department deals with these items below in section (3) Component Parts.

The taxpayer also argues that cranes are exempt, stating:

[Taxpayer] contends that the cranes are both integral and essential to the integrated series of operations [taxpayer] undertakes to create its products. The cranes are essential because [taxpayer] could not produce stamped parts without lifting the coil onto the uncoiler. The cranes are integral because they play a key role in

the process and actually touch [taxpayer's] raw material after the raw material has been committed to [taxpayer's] production process.

The cranes are taxable per [45 IAC 2.2-5-8\(f\)](#)(Example 10). The taxpayer is denied regarding the cranes.

(3) Component Parts

The taxpayer takes issue with tax assessed "on nut and bolt feeders that feed nuts or bolts into welding machines." The taxpayer states:

The feeders attach to the welders and form a hopper that allows the nuts or bolts to feed into the welder. The feeders also align the nuts or bolts so that the welder does not have to stop their process to align the nut or bolt.

The taxpayer further states,

[T]he feeders are component parts of the welders. [45 IAC 2.2-5-8\(g\)](#) provides in part that "component parts of a unit of machinery or equipment, which unit has an immediate effect on the article being produced, are exempt if such components are an integral part of such manufacturing unit."

The Audit Report states the following:

The nut and bolt feeders are raw material storage devices purchased separately from the robotic welders, but located on the robotic welding lines. Through a pneumatic air system nuts/bolts are delivered through plastic tubing to an area adjacent to the metal part requiring a nut or bolt welded in place. By use of a magnet, the nut/bolt is delivered to the surface of the metal part and instantly released and welded by the robotic welder.

Although it uses aluminum pistons as its example, [45 IAC 2.2-5-8\(c\)](#)(Example 1) notes the following regarding the integrated production process: "functional interrelationship of the various steps and the flow of the work-in-process, the total production process, comprised of such activities, is integrated." The Department finds that nut and bolt feeder and delivery system serve a "functional interrelationship" with the "flow of work-in-process." The taxpayer is sustained on the nut and bolt feeder and the delivery system for the nut and bolt feeder (i.e., the tubing system).

(4) Equipment Used to Move Dies

The last items protested by the taxpayer are cranes used "to move dies to and from the die maintenance area. The die maintenance area repairs or rebuilds dies as needed to allow the dies to continue to perform. . . ."

The taxpayer asserts, "[T]he cranes act as a continuous loop that supplies usable dies to the presses." The taxpayer believes the cranes act in a manner analogous "to a cooling tower loop that supplies water to cool equipment." The Department does not find the analogy apt, and instead points to [45 IAC 2.2-5-8](#) which states:

(h) Maintenance and replacement equipment.

(1) Machinery, tools, and equipment used in the normal repair and maintenance of machinery used in the production process which are predominantly used to maintain production machinery are subject to tax.

The taxpayer's protest is denied on this issue.

FINDING

Taxpayer's protest is denied regarding all issues save for those items dealt with in section "(3) Component Parts."

II. Tax Administration–Negligence Penalty

DISCUSSION

Taxpayer protests the imposition of a penalty. With regard to the penalty, the Department refers to [45 IAC 15-11-2\(b\)](#), which states:

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 read 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.

[45 IAC 15-11-2\(c\)](#) provides in pertinent part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

Taxpayer states that it "routinely reviews purchase invoices to determine whether [taxpayer] should self-assess and remit use tax." Furthermore, the taxpayer says it "protested a majority of the assessment and those items left in the assessment are items that were inadvertently overlooked." Given the fact sensitive nature of the taxpayer's protest (e.g., the uncoiler and nut feeders), the Department agrees that the negligence penalty should be waived.

FINDING

Taxpayer's protest is sustained.

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