

**Letter of Findings Number: 08-0081  
Sales and Use Tax  
For the Tax Years 2006**

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**ISSUE**

**I. Sales and Use Tax – Imposition.**

**Authority:** IC § 6-8.1-5-1(c); IC § 6-2.5-2-1(a); IC § 6-2.5-3-2(a); IC § 6-2.5-5-3(b); [45 IAC 2.2-5-8\(c\)](#); [45 IAC 2.2-5-8\(d\)](#).

The Taxpayer protests the imposition of use tax on a Volvo wheel loader.

**STATEMENT OF FACTS**

The Taxpayer is an Indiana corporation that operates an asphalt manufacturing plant. In 2006, the Taxpayer purchased a Volvo wheel loader without paying sales tax at the time of purchase. Pursuant to an investigation, the Indiana Department of Revenue assessed use tax, interest, and penalty on Volvo wheel loader. The Taxpayer protested the assessment. A hearing was held and this Letter of Findings results.

**I. Sales and Use Tax – Imposition.**

**DISCUSSION**

The Department assessed use tax on the Taxpayer's purchase of the Volvo wheel loader pursuant to IC § 6-2.5-3-2(a). The Taxpayer protested this assessment. The Taxpayer argued that the Volvo wheel loader qualified for the manufacturing exemption found at IC § 6-2.5-5-3(b).

All tax assessments are presumed to be valid. IC § 6-8.1-5-1(c). The Taxpayer bears the burden of proving that any assessment is incorrect. *Id.*

Indiana imposes a sales tax on the transfer of tangible personal property in a retail transaction. IC § 6-2.5-2-1(a). Indiana imposes a complementary excise tax, the use tax, on tangible personal property stored, used, or consumed in Indiana. IC § 6-2.5-3-2(a). IC § 6-2.5-5-3(b) provides for an exemption for tangible personal property directly used in the direct production of the Taxpayer's product for sale. This manufacturing exemption is further described at [45 IAC 2.2-5-8\(c\)](#) as follows:

The state gross retail tax does not apply to purchases of manufacturing machinery, tools and equipment to be directly used by the purchaser in the production process, provided such machinery, tools and equipment are directly used in the production process; i.e., they have an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces tangible personal property.

Pre-production and post-production activities are defined at [45 IAC 2.2-5-8\(d\)](#) as follows:

"Direct use in the production process" begins 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.

The Taxpayer explained the production of asphalt as follows. The three major ingredients in asphalt are sand, gravel, and oil. To be used in the asphalt, the sand and gravel must be dry and free of impurities such as twigs and leaves. The sand and gravel suppliers' trucks dump sand and gravel in separate piles at the Taxpayer's facility. These piles are over a system of drainage ditches. The subject Volvo wheel loader often moves the sand and gravel to assist in the drying and removal of the impurities while the sand and gravel are in the original piles. The Volvo wheel loader then moves that dried and reasonably pure sand and gravel to the conveyor belt where the sand and gravel are blended with oil. This blended substance is heated to produce asphalt.

In this asphalt manufacturing facility, the production process begins with the drying of the gravel and sand. The Volvo wheel loader aids in this process. It also moves the sand and gravel from the first production step – drying and removing impurities – to the second production step—blending. Therefore, the Volvo wheel loader is an integral and essential part of the integrated process of producing asphalt and qualifies for the manufacturing exemption pursuant to [45 IAC 2.2-5-8\(c\)](#).

**FINDING**

The Taxpayer's protest is sustained.

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