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**DEPARTMENT OF STATE REVENUE**  
**Revenue Ruling #2009-01 ST**  
**March 30, 2009**

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**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 It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register.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.

**ISSUE**

**Sales/Use Tax – Equipment Rentals**

A company is seeking an opinion on whether it is subject to sales/use tax on rentals of certain equipment.

Authority: [IC 6-2.5-3-2](#); [IC 6-2.5-5-12.5](#); [45 IAC 2.2-5-24](#).

**STATEMENT OF FACTS**

The company is engaged in installing a new sanitary sewer lift station on behalf of a town. During the course of building the lift station, the company rented pumps in order to by-pass and pump the sewage during the building of the lift station. The company requests a ruling on whether the pump rentals are subject to sales/use tax.

**DISCUSSION**

[IC 6-2.5-3-2\(c\)](#) provides:

The use tax is imposed on the addition of tangible personal property to a structure or facility, if, after its addition, the property becomes part of the real estate on which the structure or facility is located. However, the use tax does not apply to additions of tangible personal property described in this subsection, if:

- (1) the state gross retail or use tax has been previously imposed on the sale or use of that property; or
- (2) the ultimate purchaser or recipient of that property would have been exempt from the state gross retail and use taxes if that purchaser or recipient had directly purchased the property from the supplier for addition to the structure or facility.

In addition, [IC 6-2.5-5-12.5\(e\)](#) provides:

Transactions involving tangible personal property are exempt from the state gross retail tax if:

- (1) the property is classified as collection plant and expenses, treatment and disposal plant and expenses, or system pumping plant and expenses; and
- (2) the person acquiring the property is a public utility that collects, treats, or processes wastewater.

Furthermore, [45 IAC 2.2-5-24](#), relating to the exemption for tangible personal property sales to governmental entities, provides in relevant part:

(e) Purchases must be invoiced directly to the governmental entity and paid out of governmental funds.

Purchases of tangible personal property, public utility services, and commodities by the state or a subdivision thereof are exempt from gross retail tax, provided the purchases are invoiced directly to the governmental entity and paid for out of government funds. Purchases which are for use by the governmental entity, but which are not invoiced directly to the state or subdivision or are not paid for out of governmental funds, are subject to the gross retail tax.

(f) Purchases of tangible personal property to be incorporated into improvements to real estate owned by a governmental unit by contractors under a contractual obligation with a governmental entity of tangible personal property incorporated into real property used for a governmental purpose are exempt from the gross retail tax. However, purchases of machinery, tools, forms, and supplies which are used in the construction but are not incorporated into the structure are subject to tax.

Even if a taxpayer is exempt on the purchase of materials incorporated into real property, equipment rentals associated with the otherwise-exempt construction project are not exempt from Indiana sales tax under [45 IAC 2.2-5-24\(f\)](#). The pump was not incorporated into the facility and thus the potential exemption for property incorporated into realty (if the town had purchased the property) is not applicable. Furthermore, the rental of the pump was not directly billed to the city but rather to a contractor working on behalf of the city, and therefore the potential exception under [45 IAC 2.2-5-24\(e\)](#) is not applicable. Therefore, the pump rentals are properly subject to sales tax.

**RULING**

The company is subject to Indiana sales and use tax on its rental of pumps during the construction of a sanitary sewer lift station on behalf of a town.

**CAVEAT**

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling

will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

*Posted: 04/29/2009 by Legislative Services Agency*

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