

DEPARTMENT OF STATE REVENUE
Revenue Ruling #2009-09 ST
July 29, 2009

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 It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register.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

ISSUES

Sales and Use Tax – Manufacturing Equipment Exemption and Resale/Lease Exemption

A company ("Taxpayer") is seeking guidance regarding Indiana sales and use tax treatment of certain machinery used by its clients to service the client's materials used in a manufacturing process. More specifically, Taxpayer requests a Revenue Ruling ("Ruling") as to:

- (1) Whether Taxpayer's purchase of machinery, operated by its clients to repair and replace refractory materials used in the client's production of steel, rebar, and glass, is exempt from Indiana sales and use tax under the manufacturing exemption; and
- (2) Whether Taxpayer's purchase of machinery, operated by its clients to repair and replace refractory materials used in the client's production of steel, rebar, and glass, is exempt from Indiana sales and use tax under the resale/lease exemption.

Authority: [IC 6-2.5-2-1](#); [IC 6-2.5-3-2\(a\)](#); [IC 6-2.5-3-4](#); [IC 6-2.5-4-10\(a\)](#); [IC 6-2.5-5-3\(b\)](#); [IC 6-2.5-5-8\(b\)](#); [45 IAC 2.2-4-27](#); [45 IAC 2.2-5-8\(a\)](#); [45 IAC 2.2-5-8\(h\)\(1\)](#); [45 IAC 2.2-5-8\(h\)\(2\)](#); [45 IAC 2.2-5-10\(a\)](#); [45 IAC 2.2-5-15](#); *Indiana Waste Sys. v. Indiana Dep't of State Revenue*, 633 N.E.2d 359, 363 (Ind. Tax Ct. 1994).

STATEMENT OF FACTS

Taxpayer provides the following facts regarding its request for a Ruling. Taxpayer, which is located outside of Indiana, owns certain pieces of machinery that are located at its customers' locations in Indiana. The machinery is used by Taxpayer's clients to repair and/or replace damaged materials used by Taxpayer's clients in the manufacturing of tangible personal property. In pertinent part, Taxpayer describes its business operations thusly:

Taxpayer sells refractory products, such as firebrick and mortar, to customers throughout [Indiana]. These refractory products are installed by customers into their equipment used for manufacturing purposes, such as furnaces and kilns. These furnaces and kilns are used to manufacture items such as steel, rebar, and glass. Since the refractory items are under such severe heat stress in the customer's furnaces and kilns, they must be frequently serviced or entirely replaced.

Taxpayer purchases machinery that is used to service and replace the refractory items (service machinery).

Taxpayer retains ownership and depreciates the service machinery, but this machinery is shipped to the [Indiana] customer's physical location so the customer may use it at any time to service their furnaces or kilns used in the manufacture of products for sale (i.e. the service machinery is not used by Taxpayer, but rather, by the customer). Taxpayer will invoice its customers based on a physical measure of goods produced by the customer, such as cost per tonne. Included in this charge is an amount for the use of this machinery, as well as material and know-how.

DISCUSSION #1

Taxpayer requests that the Department rule:

- (1) Whether Taxpayer's purchase of machinery, operated by its clients to repair and replace refractory materials used in the client's production of steel, rebar, and glass, is exempt from Indiana sales and use tax under the manufacturing equipment exemption.

In general, sales tax is imposed on retail transactions made in Indiana, pursuant to [IC 6-2.5-2-1](#).

Correspondingly, [IC 6-2.5-3-2\(a\)](#) imposes use tax on the storage, use or consumption of tangible personal property in Indiana, if the property was acquired in a retail transaction, regardless of the location of that transaction. Moreover, all purchases of tangible personal property by persons engaged in the direct production, manufacture, fabrication, assembly, finishing, processing, or refining of tangible personal property in Indiana are generally taxable. [45 IAC 2.2-5-8\(a\)](#); [45 IAC 2.2-5-10\(a\)](#).

However, the storage, use, and consumption of tangible personal property in Indiana are exempt from the use tax if either the sales tax has already been paid on the acquisition of the property or the property was acquired in a transaction that is exempt from sales tax and the property is being used, stored, or consumed for the purpose for which it was exempted. [IC 6-2.5-3-4](#). Such an exemption from sales tax is provided in [IC 6-2.5-5-3\(b\)](#), which states:

Except as provided in subsection (c), transactions involving manufacturing machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for direct use in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property.

Nonetheless, it is not enough that a taxpayer seeking to claim the manufacturing equipment exemption acts as one part of a larger overall process that results in the production of tangible personal property. The tangible

personal property must be produced "as part of [the taxpayer's] own process... not as part of an alleged process of another taxpayer." *Indiana Waste Sys. v. Indiana Dep't of State Revenue*, 633 N.E.2d 359, 363 (Ind. Tax Ct. 1994). This requirement, which arises "from the emphasized statutory language" contained in [IC 6-2.5-5-3\(b\)](#), has been restated by the Tax Court, as follows:

[T]he minimum threshold requirement... is that the taxpayer who purchases the equipment in question be the entity that uses the equipment "for his direct use in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property." [IC 6-2.5-5-3\(b\)](#) (emphasis in original). *Id.* at 362-63.

Moreover, the Tax Court found that in order "to have a colorable claim for the equipment exemption" pursuant to [IC 6-2.5-5-3\(b\)](#), a taxpayer must use the equipment "as part of its own process to produce other tangible personal property, not as part of an alleged process of another taxpayer." *Id.* In the case at hand, Taxpayer provides machinery to its clients, who in turn produce a tangible personal product. As such, Taxpayer, itself, does not produce goods. Therefore, Taxpayer does not meet the manufacturing equipment exemption requirement contained in [IC 6-2.5-5-3\(b\)](#).

Moreover, assuming arguendo that Taxpayer's machinery was part of its direct use in the direct production or manufacture of tangible personal property, or that Taxpayer's client was the party asking for the applicable exemption, the machinery would still fail to qualify as exempt due to the Department's regulation found at [45 IAC 2.2-5-8\(h\)\(1\)](#), which states that "[m]achinery, 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." While replacement parts might be exempt pursuant to [45 IAC 2.2-5-8\(h\)\(2\)](#) (to the extent that the furnace or kiln is exempt), the machinery used to service the replacement parts would not be exempt from Indiana sales and use tax. The Department's regulations contain the following pertinent example:

A manufacturer of sheet metal repairs and upgrades used machinery by replacing worn or broken parts and adding new elements and features available in state-of-the-art equipment. All items which become components of the upgraded machinery are exempt from tax. However, all tools and equipment used to repair or upgrade used machinery would be taxable.

RULING #1

For the reasons stated above, Taxpayer's purchase of machinery, operated by its clients to repair and replace refractory materials used in the client's production of steel, rebar, and glass, is not exempt from Indiana sales and use tax under the manufacturing equipment exemption.

DISCUSSION #2

Taxpayer requests that the Department rule:

(2) Whether Taxpayer's purchase of machinery, operated by its clients to repair and replace refractory materials used in the client's production of steel, rebar, and glass, is exempt from Indiana sales and use tax under the resale/lease exemption.

Indiana's resale/lease exemption is provided at [IC 6-2.5-5-8\(b\)](#), which states:

Transactions involving tangible personal property other than a new motor vehicle are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of his business without changing the form of the property.

[45 IAC 2.2-5-15](#) clarifies the purchase for resale/lease exemption as follows:

(a) The state gross retail tax shall not apply to sales of any tangible personal property to a purchaser who purchases the same for the purpose of reselling, renting or leasing, in the regular course of the purchaser's business, such tangible personal property in the form in which it is sold to such purchaser.

(b) General rule. Sales of tangible personal property for resale, rental or leasing are exempt from the tax if all of the following conditions are satisfied:

- (1) the tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;
- (2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and
- (3) The property is resold, rented or leased in the same form in which it was purchased.

(c) Application of General rule.

(1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendering of services or performance of work with respect to the property.

(2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.

(3) The property must be resold, rented or leased in the same form in which it was purchased.

Provided that Taxpayer qualifies for the resale/lease exemption discussed above, it must still collect sales tax

on the lease of the machinery to its clients. Pursuant to [IC 6-2.5-4-10\(a\)](#), "[a] person, other than a public utility, is a retail merchant making a retail transaction when he rents or leases tangible personal property to another person other than for subrent or sublease." Such a retail transaction is subject to Indiana sales tax pursuant to [IC 6-2.5-2-1](#). The Department's regulation found at [45 IAC 2.2-4-27](#) explains further:

- (a) In general, the gross receipts from renting or leasing tangible personal property are taxable. This regulation [[45 IAC 2.2](#)] only exempts from tax those transactions which would have been exempt in an equivalent sales transaction.
- (b) Every person engaged in the business of the rental or leasing of tangible personal property, other than a public utility, shall be deemed to be a retail merchant in respect thereto and such rental or leasing transaction shall constitute a retail transaction subject to the state gross retail tax on the amount of the actual receipts from such rental or leasing.
- (c) In general, the gross receipts from renting or leasing tangible personal property are subject to tax. The rental or leasing of tangible personal property constitutes a retail transaction, and every lessor is a retail merchant with respect to such transactions. The lessor must collect and remit the gross retail tax or use tax on the amount of actual receipts as agent for the state of Indiana. The tax is borne by the lessee, except when the lessee is otherwise exempt from taxation.
- (d) The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.
 - (1) Amount of actual receipts. The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental or lease agreement; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.
 - (2) Rental or lease period. For purposes of the imposition of the gross retail tax or use tax on rental or leasing transactions, each period for which a rental is payable shall be considered a complete transaction. In the case of a weekly rate, each week shall be considered a complete transaction. In the case of a continuing lease or contract, with or without a definite expiration date, where rental payments are to be made monthly or on some other periodic basis, each payment period shall be considered a completed transaction.

RULING #2

Provided that Taxpayer complies with the provisions contained in [IC 6-2.5-5-8\(b\)](#) and [45 IAC 2.2-5-15](#), and collects and remits sales tax on the lease payments made by Taxpayer's clients for the use of the machinery at issue, Taxpayer's purchase of the machinery, operated by its clients to repair and replace refractory materials used in the client's production of steel, rebar, and glass, is exempt from Indiana sales and use tax under the resale/lease exemption. However, Taxpayer, in compliance with [45 IAC 2.2-4-27](#), must collect and remit sales tax on the lease payments made by Taxpayer's clients for the use of the machinery at issue.

CONCLUSION

Taxpayer's purchase of machinery, operated by its clients to repair and replace refractory items used in the client's production of steel, rebar, and glass, is not exempt from Indiana sales and use tax under the manufacturing equipment exemption.

However, provided that Taxpayer complies with the provisions contained in [IC 6-2.5-5-8\(b\)](#) and [45 IAC 2.2-5-15](#), and collects and remits sales tax, pursuant to [45 IAC 2.2-4-27](#), on the lease payments made by Taxpayer's clients for the use of the machinery at issue, Taxpayer's purchase of the machinery, operated by its clients to repair and replace refractory materials used in the client's production of steel, rebar, and glass, is exempt from Indiana sales and use tax under the resale/lease exemption.

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.

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