

DEPARTMENT OF STATE REVENUE
Revenue Ruling #2009-10 ST
September 4, 2009

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ISSUES

Sales Tax – Sale of CO₂ and Rental of Bulk CO₂ Tanks and High Pressure Cylinders

A company ("Taxpayer") is seeking a Revenue Ruling ("Ruling") regarding Indiana sales tax treatment of the following:

- I. Rental of bulk CO₂ tanks and high-pressure cylinders to Indiana customers;
- II. Sale of CO₂ to Indiana customers;
- III. Invoiced amounts that do not separately state rental charges for the CO₂ tanks and sales charges for the CO₂; and
- IV. Fees, charges and surcharges in connection with rental of the CO₂ tanks and sales of the CO₂.

Authority: [IC 6-2.5-1-5](#); [IC 6-2.5-1-5\(a\)\(4\)](#); [IC 6-2.5-1-5\(b\)](#); [IC 6-2.5-1-11.5\(b\)](#); [IC 6-2.5-2-1](#); [IC 6-2.5-2-2\(a\)](#); [IC 6-2.5-4-10\(a\)](#); [IC 6-2.5-5-6](#); [IC 6-2.5-5-9](#); [IC 6-8.1-5-4](#); [45 IAC 2.2-4-27\(c\)](#); [45 IAC 2.2-5-14\(b\)](#); [45 IAC 2.2-5-14\(d\)](#); [45 IAC 2.2-5-16\(d\)](#); [45 IAC 2.2-5-16\(d\)\(2\)](#); [45 IAC 2.2-5-16\(d\)\(3\)](#).

STATEMENT OF FACTS

Taxpayer provides the following facts regarding its request for a Ruling. Taxpayer, a wholesale company located in a state other than Indiana, provides its Indiana customers with liquid and gaseous carbon dioxide for use in beverage carbonation systems. In relevant part, Taxpayer notes:

Taxpayer's customers include restaurants, convenience stores, movie theaters, theme parks and sports venues. Taxpayer delivers liquid CO₂ to customers that is stored in a stainless steel cryogenic tank installed at the customer's premises ("Bulk CO₂ Tank") while gas CO₂ is delivered to customers in portable cast iron steel containers ("High Pressure Cylinder"). The customer connects the Bulk CO₂ Tank or the High Pressure Cylinder to its beverage carbonation machine (a soda fountain) where the liquid or gas CO₂ is mixed with water and soda syrup (obtained by the customer from a third party vendor) to produce a fountain soda. Taxpayer's customers sell fountain sodas to their patrons, each of whom pays sales tax, as appropriate, on his or her purchase of the fountain soda. When the liquid CO₂ in a Bulk CO₂ Tank or gas CO₂ in a High Pressure Cylinder runs out, Taxpayer refills it and continues to do so until the relationship terminates. Upon termination, the customer is obligated to return the Bulk CO₂ Tank or High Pressure Cylinder to Taxpayer.

Taxpayer therefore engages in two transactions with its customers. First, it rents the Bulk CO₂ Tanks and High Pressure Cylinders and second, it sells liquid and gas CO₂.

In addition, a Taxpayer customer may be charged the following fees, charges and surcharges: (a) delivery fees for delivering liquid CO₂ or High Pressure Cylinder containing gas; (b) energy/fuel surcharge; (c) hazardous materials fees (for handling hazardous materials and regulatory compliance); (d) Bulk CO₂ Tank inspection and/or permit fee (also for regulatory compliance); and (e) personal property tax charge.

DISCUSSION

Part I. Rental of bulk CO₂ tanks and high-pressure cylinders to Indiana customers

In general, and pursuant to [IC 6-2.5-2-1](#), sales tax is imposed on retail transactions made in Indiana. Taxpayer's rental/lease of CO₂ tanks and high-pressure cylinders to its Indiana customers is subject to Indiana sales tax as a retail transaction. 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."

The Department's regulation found at [45 IAC 2.2-4-27\(c\)](#) explains further:

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.

However, an exemption from sales tax is provided for returnable containers. [IC 6-2.5-5-9](#) provides in relevant part:

- (a) As used in this section, "returnable containers" means containers customarily returned by the buyer of the contents for reuse as containers.
- (b) Sales of returnable containers are exempt from the state gross retail tax if the transaction constitutes selling at retail as defined in [IC 6-2.5-4-1](#) and if the returnable containers contain contents..
- (c) Sales of returnable containers are exempt from the state gross retail tax if the containers are transferred empty for the purpose of refilling.

The Department's regulation found at [45 IAC 2.2-5-16\(d\)](#) clarifies two scenarios regarding returnable containers sold at retail that may be applicable to Taxpayer's situation. The first scenario involves returnable containers sold at retail with contents. [45 IAC 2.2-5-16\(d\)\(2\)](#) states in pertinent part:

To qualify for this exemption, the returnable containers must be:

- (A) Sold in a taxable transaction of a retail merchant constituting selling at retail; and
- (B) Billed as a separate charge by the retail merchant to his customer. If there is a separate charge for such containers, the sale of the container is exempt from tax under this regulation [[45 IAC 2.2](#)].

The second scenario involves returnable containers that are sold empty. [45 IAC 2.2-5-16\(d\)\(3\)](#) states in pertinent part:

To qualify for this exemption the returnable container must be resold with the purpose of refilling. The sale of returnable containers to the original or first user thereof is taxable.

In the first scenario, Taxpayer's leases of the CO₂ tanks and high-pressure cylinders to its Indiana customers are exempt from Indiana sales and use tax, provided that the leases constitute otherwise valid leases, the lease charges are separately stated on applicable invoices, and the tanks/cylinders are leased along with contents. In the second scenario, Taxpayer's leases of the CO₂ tanks and high-pressure cylinders to its Indiana customers are exempt from Indiana sales and use tax, provided that Taxpayer paid applicable taxes on its original acquisition of the CO₂ tanks and high-pressure cylinders and the tanks/cylinders are sold empty. Note that the two scenarios are distinct from one another in three significant aspects. First, one scenario involves containers sold with contents, while the other involves containers sold without contents. Second, the first scenario contains no requirement that Taxpayer must have paid applicable taxes on its original acquisition of the property. Third, the second scenario contains no requirement that Taxpayer must separately state its lease charges on applicable invoices.

Implicit in the requirement contained in the first scenario that the lease charges be separately stated on applicable invoices is the need for a taxpayer and the Department to be able to accurately quantify exempt charges related to the returnable container itself from potentially non-exempt charges related to the contents of the container. Such a need is not presumed in the second scenario in which containers are sold empty. Pursuant to [IC 6-2.5-1-11.5\(b\)](#), whenever two or more otherwise distinct and identifiable products are sold for one non-itemized price, the sale is considered a "bundled transaction." Such a transaction is a retail transaction and subjects all the products sold for the non-itemized price to taxation. [IC 6-2.5-4-15\(b\)](#).

Nevertheless, when a taxpayer can reasonably identify exempt charges based on the taxpayer's books and records kept in the regular course of business, the Department may grant an exemption for otherwise exempt products. In the case at hand, if Taxpayer's leases of the CO₂ tanks and high-pressure cylinders that qualify for an exemption under [IC 6-2.5-5-9](#) are not separately stated on invoices to Taxpayer's customers, then the entire amount of the invoice is subject to taxation. However, if Taxpayer can reasonably identify and segregate exempt charges from any non-exempt charges on the invoice, then the Department will allow the exemption for the otherwise exempt products. If all the charges on the invoice relate to otherwise exempt products, no segregation is necessary.

Part I. Ruling

Taxpayer's leases of the CO₂ tanks and high-pressure cylinders are exempt from Indiana sales tax, provided that charges for products are either separately stated on applicable invoices or are reasonably identifiable and capable of segregation from any non-exempt charges.

Part II. Sale of CO₂ to Indiana customers

Taxpayer's sales of CO₂ to its Indiana customers qualify as retail transactions subject to sales tax. However, an exemption from Indiana sales tax is provided under [IC 6-2.5-5-6](#), which states in relevant part:

Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for incorporation as a material part of other tangible personal property which the purchaser manufactures, assembles, refines, or processes for sale in his business.

The Department's regulation found at [45 IAC 2.2-5-14\(b\)](#) adds:

The exemption provided by this regulation [[45 IAC 2.2](#)] applies only to tangible personal property to be incorporated as a material or an integral part into tangible personal property produced for sale by a purchaser engaged in the business of manufacturing, assembling, refining or processing. This regulation [[45 IAC 2.2](#)] does not apply to persons engaged in producing tangible personal property for their own use.

The Department's regulation found at [45 IAC 2.2-5-14\(d\)](#) qualifies the definition of tangible personal property that has been "incorporated as a material or an integral part" of property "produced for sale" to mean:

- (1) That the material must be physically incorporated into and become a component of the finished product;
- (2) The material must constitute a material or an integral part of the finished product; and
- (3) The tangible personal property must be produced for sale by the purchaser.

In the situation at hand, Taxpayer asserts that its customers mix CO₂ in with other materials in beverage carbonation machines in order, ultimately, to produce fountain soda or beer. Taxpayer's customers then sell, as part of their normal business practices, the fountain soda or beer to their patrons. As such, the use of the CO₂ by Taxpayer's customers satisfies the requirements of [IC 6-2.5-5-6](#) and [45 IAC 2.2-5-14\(d\)](#).

Part II. Ruling

Taxpayer's sales of CO₂ to its customers are exempt from Indiana sales tax, provided that charges for this product are either separately stated on applicable invoices or are reasonably identifiable and capable of segregation from any non-exempt charges, and the customer provides Taxpayer with an exemption certificate.

Part III. Invoiced amounts that do not separately state rental charges for the CO₂ tanks and sales charges for the CO₂

As stated previously, whenever two or more otherwise distinct and identifiable products are sold for one non-itemized price, the sale is considered a "bundled transaction." [IC 6-2.5-1-11.5\(b\)](#). Such a transaction is a retail transaction and subjects all the products sold for the non-itemized price to taxation. [IC 6-2.5-4-15\(b\)](#).

Nevertheless, when a taxpayer can reasonably identify exempt charges based on the taxpayer's books and records kept in the regular course of business and in accordance with [IC 6-8.1-5-4](#), the Department may grant an exemption for otherwise exempt products. In the case at hand, if Taxpayer's leases of the CO₂ tanks and high-pressure cylinders that qualify for an exemption under [IC 6-2.5-5-9](#) are not separately stated on invoices to Taxpayer's customers, then the entire amount of the invoice is subject to taxation. However, if Taxpayer can reasonably identify and segregate exempt charges from any non-exempt charges on the invoice, then the Department will allow the exemption for the otherwise exempt products. If all the charges on the invoice relate to otherwise exempt products, no segregation of charges is necessary to maintain applicable exemptions.

Part III. Ruling

Both Taxpayer's leases of the CO₂ tanks and high-pressure cylinders as well as Taxpayer's sales of CO₂ to its customers are exempt from Indiana sales tax, provided that charges for these products are either separately stated on applicable invoices or are reasonably identifiable and capable of segregation from any non-exempt charges. If, however, the entire charge related to a bundled transaction consists of sub-charges for otherwise exempt products, the lack of segregation of charges will not result in taxability.

Part IV. Fees, charges and surcharges in connection with rental of the CO₂ tanks and sales of the CO₂

The sales tax that is imposed on retail transactions made in Indiana, pursuant to [IC 6-2.5-2-1](#), is measured by the gross retail income received by a retail merchant in a retail unitary transaction. [IC 6-2.5-2-2\(a\)](#). Gross retail income in Indiana is defined at [IC 6-2.5-1-5](#). In relevant part, subsection (a) defines gross retail income to include: the total gross receipts, of any kind or character, received in a retail transaction, including cash, credit,

property, and services, for which tangible personal property is sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for:

- (1) the seller's cost of the property sold;
- (2) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- (3) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- (4) delivery charges; or
- (5) the value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise.

For purposes of subdivision (4), delivery charges are charges by the seller for preparation and delivery of the property to a location designated by the purchaser of property, including but not limited to transportation, shipping, postage, handling, crating, and packing.

However, pursuant to [IC 6-2.5-1-5\(b\)](#), gross retail income does not include:

- (1) the value of any tangible personal property received in a like kind exchange in the retail transaction, if the value of the property given in exchange is separately stated on the invoice, bill of sale, or similar document given to the purchaser;
- (2) the receipts received in a retail transaction which constitute interest, finance charges, or insurance premiums on either a promissory note or an installment sales contract;
- (3) discounts, including cash, terms, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;
- (4) interest, financing, and carrying charges from credit extended on the sale of personal property if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;
- (5) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser; or
- (6) installation charges that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.

In the case at hand, Taxpayer charges its customers the following fees, charges and surcharges: (a) delivery fees for delivering liquid CO₂ or High Pressure Cylinder containing gas; (b) energy/fuel surcharge; (c) hazardous materials fees (for handling hazardous materials and regulatory compliance); (d) Bulk CO₂ Tank inspection and/or permit fee (also for regulatory compliance); and (e) personal property tax charge.

Delivery fees are included explicitly in gross retail income pursuant to [IC 6-2.5-1-5\(a\)\(4\)](#) and are, therefore, subject to sales tax. Unless items (b) through (e) described above represent taxes legally imposed directly on Taxpayer's customers and not on Taxpayer, and also are separately stated on the invoice, they are also included in gross retail income and subject to sales tax.

Part IV. Ruling

To the extent that Taxpayer's fees, charges and surcharges, including items (a), (b), (c), (d) and (e) described above, are not separately stated or do not represent taxes legally imposed directly on Taxpayer's customers (or do not qualify under any of the other exclusions from gross retail income found at [IC 6-2.5-1-5\(b\)](#)), such fees, charges and surcharges represent recognized elements of gross retail income and, accordingly, are subject to Indiana sales tax.

CONCLUSION

Taxpayer's leases of the CO₂ tanks and high-pressure cylinders are exempt from Indiana sales tax, provided that charges for products are either separately stated on applicable invoices or are reasonably identifiable and capable of segregation from any non-exempt charges.

Taxpayer's sales of CO₂ to its customers is exempt from Indiana sales tax, provided that charges for this product are either separately stated on applicable invoices or are reasonably identifiable and capable of segregation from any non-exempt charges.

Both Taxpayer's leases of the CO₂ tanks and high-pressure cylinders as well as Taxpayer's sales of CO₂ to its customers are exempt from Indiana sales tax, provided that charges for these products are either separately stated on applicable invoices or are reasonably identifiable and capable of segregation from any non-exempt charges. If, however, the entire charge related to a bundled transaction consists of sub-charges for otherwise

exempt products, the lack of segregation of charges will not result in taxability.

To the extent that Taxpayer's fees, charges and surcharges, including items (a), (b), (c), (d) and (e) described above, are not separately stated or do not represent taxes legally imposed directly on Taxpayer's customers (or do not qualify under any of the other exclusions from gross retail income found at [IC 6-2.5-1-5\(b\)](#)), such fees, charges and surcharges represent recognized elements of gross retail income and, accordingly, are subject to Indiana sales tax.

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.

Department of State Revenue

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