

Letter of Findings: 09-0728
Gross Retail Tax
For the Years 2006, 2007, and 2008

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ISSUES

I. Front-End Loader Parts – Gross Retail Tax.

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

Taxpayer argues that parts purchased for a front-end loader are not subject to sales or use tax because the front-end loader is an essential part of the concrete production process.

II. Concrete Batch Plant – Gross Retail Tax.

Authority: IC § 6-2.5-5-3(b); IC § 6-8.1-5-1(c); [45 IAC 2.2-5-10\(k\)](#)

Taxpayer maintains that purchases of equipment, materials, and supplies used in its "batch plant" are not subject to sales or use tax because the batch plant is part of an integrated production process.

STATEMENT OF FACTS

Taxpayer is an Indiana ready-mix concrete business. The Department of Revenue (Department) conducted an audit review of Taxpayer's business records. As a result of that review, the Department assessed additional sales/use tax. Taxpayer disagreed with a portion of that assessment and submitted a protest to that effect. An administrative hearing was conducted by phone during which Taxpayer's representatives explained the basis for its protest. This Letter of Findings results.

I. Front-End Loader Parts – Gross Retail Tax.

DISCUSSION

Taxpayer purchased parts for a front-end loader. The Department's audit found that the parts were subject to use tax. Taxpayer disagrees stating that the front-end loader and its parts are essential to the manufacturing process in which concrete is produced.

According to the audit report, Taxpayer "utilizes a transit-mixed concrete production also known as 'dry-batched.'" In this transit-mixed process, "cement, aggregates and fly ash are kept separate from [] water until all the ingredients are loaded into [Taxpayer's] mixer trucks." After the ingredients are loaded, "The trucks then mix the materials into concrete en route to the delivery site."

The audit report addressed the question of whether the front-end loader was subject to tax. That report stated that the front-end loader was "utilized to move raw materials to the storage tanks in the batch plant...." As such, the audit concluded that the front-end loader was not exempt.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "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."

Pursuant to IC § 6-2.5-2-1, a sales tax, known as state gross retail tax, is imposed on retail transactions made in Indiana unless a valid exemption is applicable. Retail transactions involve the transfer of tangible personal property. IC § 6-2.5-3-2(a). A complementary excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction. IC § 6-2.5-3-2.

[45 IAC 2.2-5-8\(f\)](#) provides guidance in resolving the issue.

(1) Tangible personal property used for moving raw materials to the plant prior to their entrance into the production process is taxable.

(2) Tangible personal property used for moving finished goods from the plant after manufacture is subject to tax.

(3) Transportation equipment used to transport work-in-process or semi-finished materials to or from storage is not subject to tax if the transportation is within the production process.

(4) Transportation equipment used to transport work-in-process, semi-finished, or finished goods between plants is taxable, if the plants are not part of the same integrated production process. **EXAMPLES**

(1) A manufacturer of clay pipe uses forklift tractors to transport the pipe from the machine in which it is formed to the kiln. The forklift tractors are exempt.

(2) A metal and alloy manufacturer pulverizes raw materials for use in an exempt furnace. Weigh bins are utilized for the temporary storage of the exempt materials after pulverization and prior to use in an exempt furnace. Transportation equipment used to transport the pulverized raw material to and from the weigh bins is exempt.

(3) A forklift is used exclusively to move work-in-process from a temporary storage area in a plant and to transport it to a production machine for processing. Because the forklift functions as an integral part of the integrated system comprising the production operations, it is exempt.

(4) A forklift is used exclusively to move finished goods from a storage warehouse and to load them on trucks for shipment to customers. The forklift is taxable because it is used outside the integrated production process.

(5) A forklift is regularly used 40 [percent] of the time for the purpose described in Example (3) and 60 [percent] of the time for the purpose described in Example (4). The taxpayer is entitled to an exemption equal to 40 [percent] of the gross retail income attributable to the transaction in which the fork lift was purchased. (Emphasis added).

Taxpayer states that the front-end loader is "essential in this [manufacturing] due to the weight & volume of the materials that needs to be entered into the process." In effect, Taxpayer believes that its cement manufacturing process begins in the area in which certain raw materials are stored and that the transport of those materials is the first step in the manufacturing process. According to Taxpayer, "The definition of a process is a particular method of doing something, generally involving a number of steps or operations." Taxpayer contends that "the process for the production of concrete starts with the material being loaded onto the conveyor system by the loader."

The Department does not quarrel with Taxpayer's underlying contention that the front-end loader is important to its cement manufacturing process or that, in the absence of the front-end loader, it would be difficult, if not impossible, to produce the concrete. However, sheer necessity is not the touchstone for determining whether a particular item of equipment is exempt. As noted in [45 IAC 2.2-5-8\(g\)](#), "The fact that particular property may be considered essential the conduct of the business of manufacturing because its use is required either by law or by practical necessity does not itself mean that the property 'has an immediate effect upon the article being produced.'" In the absence of more specific information to the contrary, the Department is reluctant to disturb the audit's decision in the absence of that specific and compelling evidence.

FINDING

Taxpayer's protest is respectfully denied.

II. Concrete Batch Plant – Gross Retail Tax.

DISCUSSION

According to the audit report, "During the audit period the taxpayer made purchases of parts for the plan which stores the raw materials as wells as cleaning supplies for the cement trucks." The parts at issue included a "triple compartment aggregate bin, belt conveyor, cement silo, and associated electrical wiring." After reviewing the purchases, the report found that the "items are utilized prior to the raw materials being fed into the [cement] truck for processing." Therefore, the audit found that the purchases were subject to use tax.

Taxpayer disagreed with the assessments believing that its cement production process takes place within the batch plant because once the "correct amount of cement, aggregate, and & fly ash" are combined, "it would be hard to separate the materials to get back to the original raw materials."

IC § 6-2.5-5-3(b) provides an exemption from sales tax for "manufacturing machinery, tools, and equipment... if the person acquiring the property acquires it for direct use in the direct production... [or] processing... of other tangible personal property."

The Department refers to [45 IAC 2.2-5-10\(k\)](#), which states:

Processing or refining is defined as the performance by a business of an integrated series of operations which places tangible personal property in a form, composition, or character different from that in which it was acquired. The change in form, composition, or character must be a substantial change. Operations such as distilling, brewing, pasteurizing, electroplating, galvanizing, anodizing, impregnating, cooking, heat treating, and slaughtering of animals for meal or meal products are illustrative of the types of operations which constitute processing or refining, although any operation which has such a result may be processing or refining. A processed or refined end product, however, must be substantially different from the component materials used.

(Emphasis added.)

Taxpayer indicates that the batch plant is – or includes – a step in which the "mixing and correct measuring of the raw materials" occurs. Taxpayer asserts it is entitled to an exemption for purchasing parts and equipment used in the batch plant because "the batch plan is an integral part of this [cement] production process...."

As noted in Part I above, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "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 Department is unable to agree that taxpayer has met its burden of demonstrating that the batch plant is exempt from sales/use tax because the equipment is not used for "direct use in the direct production... [or] processing... of other tangible personal property." IC § 6-2.5-5-3(b). The facility is equipped to blend cement, fly ash, gravel, and sand which, although altering the characteristics of the final product, does not produce an end

product which is "substantially different from the components used." [45 IAC 2.2-5-10\(k\)](#). The blended result is still essentially cement, fly ash, gravel, and sand.

Because taxpayer's batch plant is not directly engaged in the direct production of a substantially different product than the elements which go into that process, taxpayer's protest must be denied.

FINDING

Taxpayer's protest is respectfully denied.

SUMMARY

Taxpayer's protest is denied in its entirety.

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