

Supplemental Letter of Findings: 10-0207
Gross Retail Tax
For the Years 2006, 2007, and 2008

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ISSUE

I. Sales and Use Tax – Exemptions.

Authority: IC § 6-2.5-5-3; IC § 6-8.1-5-1; [45 IAC 2.2-5-8](#).

Taxpayer repeats its protest of the assessment of tax on purchases of tangible personal property and rentals of equipment.

STATEMENT OF FACTS

Taxpayer is an Indiana manufacturer of auto parts. Taxpayer has two divisions operating as manufacturing plants in Indiana: a metal stamping plant and a plant that manufactures fluid level dipstick holders. The Department of Revenue ("Department") conducted an audit review of taxpayer's records concluding that taxpayer owed additional gross retail (use) tax on items purchased during the 2006, 2007, and 2008 tax years ("Tax Years").

Taxpayer timely protested the assessments. Taxpayer disagreed with a portion of the audit's conclusions and submitted a protest to that effect. To support its protest, taxpayer submitted an itemized list of various items, along with one or two sentence explanations.

The Department gave taxpayer the opportunity to present additional evidence and request an administrative hearing. Taxpayer did not present additional evidence nor request a hearing, leaving the Department to review the protest file and issue a decision based upon the information in the file. The Indiana Department of Revenue ("Department") wrote a Letter of Findings based on the materials in the file, and mailed that Letter of Findings to Taxpayer. The Letter of Findings denied the protest on the underlying liabilities and sustained the protest on the penalty. Missed communications between taxpayer and the Department necessitated taxpayer requesting a rehearing. The Department granted taxpayer's request, scheduling the rehearing for September 9, 2010. This Supplemental Letter of Findings addresses arguments and additional materials provided during the rehearing. Further facts will be supplied as required.

I. Sales and Use Tax – Exemptions.

DISCUSSION

As provided in IC § 6-8.1-5-1(c), the burden of proving a proposed assessment wrong rests with the taxpayer. During the rehearing, taxpayer conceded, i.e., taxpayer agreed with the Department concerning, the use tax assessed on a scrap conveyor, parts conveyor ("slider bed"), power uncoiler, beverages sold to employees, work in progress and finished goods identification tags, and steel sheets. However, Taxpayer repeated its protest of the proposed assessment of use tax on its purchase or rental of a select number of pieces of equipment.

[45 IAC 2.2-5-8](#)(a) states that "[i]n general, all purchases of tangible personal property by persons engaged in the direct production, manufacture, fabrication, assembly, or finishing of tangible personal property are taxable." However, [45 IAC 2.2-5-8](#)(b) notes:

The state gross retail tax does not apply to sales of manufacturing machinery, tools, and equipment to be directly used by the purchaser in the direct production, manufacture, fabrication, assembly, or finishing of tangible personal property.

[45 IAC 2.2-5-8](#)(d) addresses "preproduction" and states in relevant part:

"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 Department assessed use tax on taxpayer's rental of two forklifts. Taxpayer claims it uses one of the forklifts ("Forklift 1") to both receive and move, i.e., introduce, raw materials into taxpayer's manufacturing process, and to load finished goods from the manufacturing process to taxpayer's shipping area. Taxpayer asserts use of the other forklift ("Forklift 2") to transport work in progress, or WIP, from one manufacturing operation to the next.

Revisiting [45 IAC 2.2-5-8](#) as it addresses transportation equipment:

(c) 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 that 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.

....

(f) Transportation equipment.

(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 forklift was purchased.

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(Emphasis added).

Therefore, under the "double direct test," any piece of equipment must be directly used in the direct production of tangible personal property to qualify for the manufacturing exemption, as provided by [45 IAC 2.2-5-8\(c\)](#) and IC § 6-2.5-5-3(b).

During the rehearing, taxpayer requested reconsideration of the use tax assessment on the two forklifts used at taxpayer's North Vernon location; reconsideration based upon an agreement between taxpayer and the Department that resulted in an apportionment of taxable versus tax-exempt use on forklift rentals at taxpayer's Corydon location; reconsideration based upon taxpayer's assertion that taxpayer's use of the two forklifts at its North Vernon location mimics taxpayer's use at its Corydon location. However, Taxpayer did not present any evidence making a comparison of operations between taxpayer's two facilities, or any evidence to support the division of duties between its two forklifts. Consequently, taxpayer's protest cannot overcome the Department's assessment of use tax on both Forklift 1 and Forklift 2 rental fees.

Taxpayer re-asserted its protest of the Department's use tax assessment on a coil straightener. During the rehearing, taxpayer showed the hearing officer drawings of the fuel tank pieces that taxpayer stamps from the coiled steel. Taxpayer argues that tight tolerances required in assembling these pieces necessitate taxpayer's use of a coil straightener. Taxpayer re-asserts that, per the Department's Letter of Findings 07-0125, this machine qualifies for the manufacturing exemption. The Department again reminds taxpayer that each letter of findings or other document issued as a result of an administrative hearing or procedure relies on facts and circumstances specific to a particular taxpayer.

Despite the additional explanation of its use by the taxpayer, the coil straightener does not meet the requirement that the equipment be used for "direct use in the direct production... of other tangible personal property[]" found in IC § 6-2.5-5-3(b). The coil straightener falls within the "pre-production" category of equipment defined in [45 IAC 2.2-5-8\(d\)](#). The coil straightener—a separate, distinct, item of equipment—does not have an immediate effect on the tangible personal property. "The fact particular property may be considered essential to the conduct of the business of manufacturing because its use is required... by practical necessity does not mean that the property 'has an immediate effect upon the article being produced.'" [45 IAC 2.2-5-8\(g\)](#). Taxpayer has not met its burden of proof with respect to the coil straightener.

In the rehearing, Taxpayer re-asserted its argument against the Department's assessment of use tax on storage racks used for taxpayer's finished products. Taxpayer explained that its customers purchase the racks as part of the taxpayer's finished products. However, given another chance during the rehearing, taxpayer has not presented any evidence establishing the storage racks' necessity for moving materials being processed or refined from one production step to another, nor any evidence showing the racks as part of taxpayer's goods sold.

Taxpayer has not presented evidence sufficient to overcome the Department's assessment of use tax on purchase of the storage racks.

FINDING

Taxpayer's protest presented in rehearing is respectfully denied.

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