

**Letter of Findings: 04-20100584**  
**Sales and Use Tax**  
**For Tax Years 2007 and 2008**

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**ISSUE**

**I. Use Tax – Imposition: Manufacturing Exemption.**

**Authority:** IC § 6-2.5-1-3; IC § 6-2.5-2-1; IC § 6-2.5-4-1; IC § 6-2.5-3-2; IC § 6-2.5-5, et seq.; IC § 6-2.5-5-3; IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Gross Income Tax Division v. National Bank and Trust Co., 79 N.E.2d 651 (Ind. 1948); Sales Tax Information Bulletin 60 (July 2006), 20060823 Ind. Reg. 045060287NRA.

Taxpayer protests the imposition of use tax on curb machines and other items, claiming a manufacturing exemption.

**STATEMENT OF FACTS**

Taxpayer is an Indiana corporation engaged primarily as a paving contractor. As a result of an audit, the Indiana Department of Revenue ("Department") determined that taxpayer had purchased two curb machines without paying sales tax at the time of purchase. Taxpayer did not subsequently self-assess use tax on the two machines. Accordingly, the Department issued a proposed assessment for use tax and interest on both curb machines, and on other purchases associated with those machines. Taxpayer protested the use tax assessment. An administrative hearing was held and this Letter of Findings results. Additional facts will be provided as necessary.

**I. Use Tax – Imposition: Manufacturing Exemption.**

**DISCUSSION**

Taxpayer protests the assessment of use tax on the purchase of two curb machines, and on parts and accessories purchased to maintain the two machines (generally referred to as "curb machines"). Taxpayer argues that the curb machines qualify for the manufacturer's equipment exemption under IC § 6-2.5-5-3. Taxpayer also refers to Sales Tax Information Bulletin 60 (July 2006), 20060823 Ind. Reg. 045060287NRA, which states that "asphalt plant and pavers" are exempt.

All tax assessments are prima facie evidence that the Department's claim for the tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

In accordance with IC § 6-2.5-2-1, a sales tax, known as state gross retail tax, is imposed on Indiana retail transactions unless a valid exemption is applicable. IC § 6-2.5-4-1 provides that a retail transaction involves the transfer of tangible personal property. Indiana imposes a use tax on tangible personal property stored, used, or consumed in Indiana when no sales tax was paid at the time of purchase. IC § 6-2.5-3-2. Statutory exemptions from the use tax include a manufacturing equipment exemption. IC § 6-2.5-5, et seq. All exemptions must be strictly construed against the party claiming the exemption. Gross Income Tax Division v. National Bank and Trust Co., 79 N.E.2d 651, 653 (Ind. 1948).

In its audit, the Department cited Sales Tax Information Bulletin 60, which specifically excludes "graders, rollers, distributors, front-end loaders and other construction equipment." During the hearing, taxpayer explained that taxpayer's use of a curb machine reduced the amount of materials, and labor, required as part of taxpayer's contract work. Taxpayer also confirmed that delivery of the product, concrete, remained the same. Based upon Sales Tax Information Bulletin 60, taxpayer would not enjoy the manufacturing exemption for the materials taxpayer's curb machine replaces. Taxpayer has failed to present evidence sufficient to overcome the Department's assessment of use tax on both the taxpayer's purchase of two curb machines, and on other purchases associated with those machines.

**FINDING**

Taxpayer's protest is respectfully denied.

**CONCLUSION**

Taxpayer's protest of the assessment of use tax on curb machines and other items is denied.

*Posted: 04/27/2011 by Legislative Services Agency*

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