

DEPARTMENT OF STATE REVENUE

Revenue Ruling #2011-01ST
May 1, 2011

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 It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register.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

A company ("Taxpayer") is seeking an opinion as to whether its purchases of diesel exhaust fluid are exempt from sales and use tax under the exemption applicable to the use of items directly consumed in the rendering of public transportation in Indiana.

Authority: [IC 6-2.5-2-1](#); [IC 6-2.5-5-27](#); [45 IAC 2.2-5-61](#)

STATEMENT OF FACTS

Taxpayer provides the following facts regarding its request for a revenue ruling. Taxpayer, which is located in Indiana, operates a public transportation business. In particular, Taxpayer further provides:

In 1990, the Clean Air Act was passed and directed the Environmental Protection Agency ("EPA") to regulate certain air pollutants. Nitrogen oxides ("NOx") are produced by heavy-duty diesel engines on motor vehicles and are subject to EPA emission standards. In 2010, NOx emissions are limited to 0.2 grams per brake-horsepower-hour.

Most diesel engine manufacturers have elected to use selective catalytic reduction ("SCR") systems on new vehicles to meet the emission requirements of the EPA for NOx. SCR technology reduces emissions of NOx through the use of diesel exhaust fluid ("DEF") and a catalyst. DEF is a liquid containing 32.5% high purity urea and 67.5% deionized water. The SCR system works by injecting DEF from a tank into the exhaust system where the DEF reacts with the heat from the exhaust and creates an output of ammonia and carbon dioxide. The ammonia and NOx exhaust from the engine then pass through the SCR catalytic converter which reduces the gas mixture to nitrogen and water vapor. DEF use is now directly related to the operation of heavy-duty diesel motor vehicles; in fact, many of these new diesel engines will shut down without the presence of DEF.

DISCUSSION

Taxpayer requests that the Department rule whether Taxpayer's purchases of diesel exhaust fluid are exempt from sales and use tax under the exemption applicable to the use of items directly consumed in the rendering of public transportation in Indiana?

In general, [IC 6-2.5-2-1\(a\)](#) imposes sales tax on retail transactions made in Indiana. However, certain categories of transactions are exempt from sales tax. [IC 6-2.5-5](#) et seq. One such exemption category available is for purchasers engaged in public transportation. [IC 6-2.5-5-27](#) provides the following exemption from sales tax for transactions involving public transportation:

Transactions involving tangible personal property and services are exempt from the state gross retail tax, if the person acquiring the property or service directly uses or consumes it in providing public transportation for persons or property.

Public transportation is defined at [45 IAC 2.2-5-61\(b\)](#) in the following manner:

Public transportation shall mean and include the movement, transportation, or carrying of persons and/or property for consideration by a common carrier, contract carrier, household goods carrier, carriers of exempt commodities, and other specialized carriers performing public transportation service for compensation by highway, rail, air, or water, which carriers operate under authority issued by, or are specifically exempt by statute or regulation from economic regulation of, the public service commission of Indiana, the Interstate Commerce Commission, the aeronautics commission of Indiana, the U.S. Civil Aeronautics Board, the U.S. Department of Transportation, or the Federal Maritime Commissioner; however, the fact that a company possesses a permit or authority issued by the P.S.C.I., I.C.C., etc., does not of itself mean that such a company is engaged in public transportation unless it is in fact engaged in the transportation of persons or property for consideration as defined above.

In order to qualify for the public transportation exemption, the tangible personal property and/or services at issue "must be reasonably necessary to the rendering of public transportation." [45 IAC 2.2-5-61\(c\)](#). The following items are reasonably necessary to the rendering of public transportation: vehicles used for public transportation, items used for repairs and maintenance of such vehicles, equipment and items purchased to meet federal requirements, items used to keep vehicles clean and safe for the passengers, and cleaning supplies. [45 IAC 2.2-5-61\(d\)](#). However, in order for the exemption to apply, the entity acquiring otherwise taxable tangible personal property or services must use such items or services directly in public transportation that it provides.

RULING

Taxpayer's purchases of diesel exhaust fluid are reasonably necessary to the rendering of public transportation. Accordingly, Taxpayer's purchases of diesel exhaust fluid used directly in its public transportation operations are exempt from Indiana sales and use 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.

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