

Supplemental Letter of Findings: 04-20090541
Gross Retail Tax
For the Years 2006 and 2007

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ISSUES

I. Testing Equipment – Gross Retail Tax.

Authority: IC § 6-8.1-5-1; [45 IAC 2.2-5-8](#); *Mynsberge v. Dep't of State Revenue*, 716 N.E.2d 629 (Ind. Tax Ct. 1999); *Tri-States Double Cola Bottling Co. v. Dep't of State Revenue*, 706 N.E.2d 282 (Ind. Tax Ct. 1999); *Indiana Dept. of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454 (Ind. Ct. App. 1988).

Taxpayer argues that the Department of Revenue's audit incorrectly found that certain articles of testing and laboratory equipment were subject to sales/use tax.

STATEMENT OF FACTS

Taxpayer is an Indiana manufacturer which produces plastic pellets. The Department of Revenue conducted a sales/use tax audit of Taxpayer's business records. As a result of the audit, the Department issued proposed assessments of additional sales/use tax. Taxpayer disagreed with the result and submitted a protest to that effect. After reviewing the Taxpayer's written protest, the Department's Audit Division conducted a supplemental review of the original audit conclusions. This follow-up review included a second on-site visit to Taxpayer's facility. The supplemental review made adjustments to the original findings and issued a report to that effect.

Taxpayer continued to disagree with some of the Department's remaining conclusions. A hearing was held at which time Taxpayer withdrew its protest relating to "business meals." Letter of Findings 04-20090541 was issued January 25, 2011, partly sustaining and partly denying Taxpayer's protest.

Taxpayer continued to disagree with some of the Department's conclusions under the category of "Testing Equipment" in the Letter of Findings and, therefore, timely requested rehearing. Rehearing was granted and this Supplemental Letter of Findings ensues. Additional facts will be provided as necessary.

I. Testing Equipment – Gross Retail Tax.

DISCUSSION

Taxpayer on rehearing "requests that the Department reconsider the purchases of machinery and equipment used to test and inspect semi-finished goods prior [to the] end of its production process..." In support of this request, Taxpayer provided additional facts, legal arguments, and documentation.

As a threshold issue, it is 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."

In applying any tax exemption, the general rule is that "tax exemptions are strictly construed in favor of taxation and against the exemption." *Indiana Dept. of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454, 456 (Ind. Ct. App. 1988). IC § 6-2.5-5-3(b), like all tax exemption provisions, is strictly construed against exemption from the tax. *Tri-States Double Cola Bottling Co. v. Dep't of State Revenue*, 706 N.E.2d 282, 283 (Ind. Tax Ct. 1999); *Mynsberge v. Dep't of State Revenue*, 716 N.E.2d 629, 636 (Ind. Tax Ct. 1999).

Taxpayer points to [45 IAC 2.2-5-8\(i\)](#) as support for its argument that the "machinery and equipment" at issue are exempt.

[45 IAC 2.2-5-8\(i\)](#) states:

Testing and inspection. Machinery, tools, and equipment used to test and inspect the product as part of the production process are exempt.

–EXAMPLE–

Selected parts are removed from production according to a schedule dictated by statistical sampling methods. Quality control equipment is used to test the parts in a room in the plant separate from the production line. Because of the functional interrelationship between the testing equipment and the machinery on the production line and because of the product flow, the testing equipment is an integral part of the integrated production process and is exempt.

Taxpayer specifically protests three items: a Sortex Vision System, an Instron Tensile Flex Machine, and a QC Molding Machine screw. Taxpayer provided more detailed description of the use of these items along with documentation of industry standards that illustrate the necessity for their use during production.

Taxpayer demonstrated that the testing and inspection equipment at issue are directly used in Taxpayer's direct production process, and are, therefore, exempt from Indiana Gross Retail Tax.

FINDING

Taxpayer's protest is sustained.

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