

DEPARTMENT OF STATE REVENUE

04-20110154.LOF

Letter of Findings Number: 04-20110154
Use Tax
For the Years 2008-2009

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ISSUE

I. Use Tax—Welding Gas.

Authority: IC § 6-2.5-5-1; [45 IAC 2.2-4-2](#); [45 IAC 2.2-5-8](#).

Taxpayer protests the Department's assessment of use tax on welding gases.

STATEMENT OF FACTS

Taxpayer is a corporation that sells industrial equipment. The Indiana Department of Revenue ("Department") audited Taxpayer and determined that Taxpayer did not self-assess use tax on various items.

One of the items on which the Department assessed use tax was welding gases. Taxpayer's customers requested that Taxpayer repair the previously-sold industrial equipment as needed. Taxpayer went to the customer's location to make the necessary repairs. The repairs required welding rods and welding gases. The Department assessed use tax on Taxpayer's purchase price of the gases.

Taxpayer protested the use tax imposed on the purchase price of the welding gases. The Department conducted an administrative hearing and this Letter of Findings results. Additional facts will be supplied as necessary.

I. Use Tax—Welding Gases.

DISCUSSION

Taxpayer protests the assessment of use tax on welding gases. The welding gases in question are consumed as part of Taxpayer's repair to its customers' equipment. The equipment in question is used by Taxpayer's customers for manufacturing in the customers' businesses. The issue is whether Taxpayer's welding gases qualify for tax exemption.

IC § 6-2.5-5-1(b) provides:

(b) Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for direct consumption as a material to be consumed in the direct production of other tangible personal property in the person's business of manufacturing, processing, refining, repairing, mining, agriculture, horticulture, floriculture, or arboriculture. This exemption includes transactions involving acquisitions of tangible personal property used in commercial printing.

Further, [45 IAC 2.2-5-8](#)(h) provides:

(1) Machinery, tools, and equipment used in the normal repair and maintenance of machinery used in the production process which are predominantly used to maintain production machinery are subject to tax.

(2) Replacement parts, used to replace worn, broken, inoperative, or missing parts or accessories on exempt machinery and equipment, are exempt from tax.

When an item is used in the direct production of other tangible personal property, repair parts for the item are generally tax exempt. However, the necessary items to make such repairs, such as the machines used for the repair, are taxable. Even if the customer had made the repairs on its exempt equipment, the welding gases consumed in the repair process would be taxable under [45 IAC 2.2-5-8](#)(h) because the gases do not become part of the otherwise exempt machinery.

When Taxpayer repairs tangible personal property, it provides a service, though Taxpayer is a retail merchant with regard to the tangible personal property charged as part of the service. See [45 IAC 2.2-4-2](#).

In the alternative, Taxpayer asserts that its customers remit any applicable sales and use tax to the Department. First, Taxpayer has not provided exemption certificates or direct pay permits from its customers. If the customers had been billed for certain amount of welding gases, a direct pay permit or an exemption certificate from the customer may have been applicable to relieve Taxpayer from sales and use tax on the welding gases in question. However, the invoices supplied by Taxpayer do not provide the necessary itemization to consider its contentions relating to direct pay permits or exemption certificates. Thus, Taxpayer's protest is denied.

FINDING

Taxpayer's protest is respectfully denied.

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