

Supplemental Letter of Findings Number: 04-20110214
Use Tax
For the Years 2008-2009

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ISSUE

I. Use Tax—Manufacturing Exemption

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

Taxpayer protests the Department's assessment of use tax on items claimed to be used in manufacturing.

STATEMENT OF FACTS

Taxpayer is a corporation doing business in Indiana. The Indiana Department of Revenue ("Department") audited Taxpayer and determined that Taxpayer did not self-assess use tax on various items. The Department assessed use tax on these items. Taxpayer protested a portion of the assessment, the Department conducted an administrative hearing, and this Letter of Findings results.

The Department originally issued a Letter of Findings partially sustaining and partially denying Taxpayer's protest. Taxpayer requested a rehearing on two items denied in the original Letter of Findings. The Department granted the rehearing request and conducted an administrative hearing. This Supplemental Letter of Findings results. Additional facts will be supplied as necessary.

I. Use Tax—Manufacturing Exemption

DISCUSSION

A. Computer Software

Taxpayer protests the assessment of use tax on computer software claimed to be used in manufacturing. Per Taxpayer's protest, the software in question produces a computer disc. The disc is in turn used to program Taxpayer's equipment. The equipment is used in manufacturing.

Taxpayer cites to [45 IAC 2.2-5-8\(g\)](#), example (6) for the proposition that the software is exempt. This example states:

Computers which are interconnected with and control other production machinery or are used to make tapes which control computerized production machinery are exempt from tax.

Taxpayer's equipment is used to burn a disc that controls Taxpayer's manufacturing machinery. Notwithstanding the changes in technology, Taxpayer has provided sufficient information to conclude that the computer software is used for an exempt purpose as provided by Department regulation and thus Taxpayer's protest of use tax on the referenced computer software is sustained.

B. Welding Tanks

Separately, the Department imposed use tax on the rental of gas cylinders. The gases in question were used in manufacturing; however, the auditor determined that the cylinders were not used in manufacturing and assessed use tax on the rental of the cylinders.

Under IC § 6-2.5-5-3(b):

Except as provided in subsection (c) [relating to electrical distribution and transmission equipment purchased by a public electric utility], transactions involving manufacturing machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for direct use in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property.

Department regulation [45 IAC 2.2-5-8\(c\)](#) provides that materials are directly used in the production process if "they have an immediate effect on the article being produced." In particular, Taxpayer cites to [45 IAC 2.2-5-8\(c\)](#), example (3)(A), for the proposition that the welding tanks were exempt from sales tax. The example cited by Taxpayer states:

The following types of equipment constitute essential and integral parts of the integrated production process and are, therefore, exempt. The fact that such equipment is built in a manner to service various pieces of exempt equipment, as an alternative to building the equipment into each of the pieces of exempt machinery, is not determinative.

(A) Pumping and filtering equipment and related tanks and tubing used to supply lubricating and coolant fluids to exempt drilling and cutting machinery.

In the case of tanks and storage, the use of the tanks is fact sensitive. The lubrication and cooling from the tanks is applied as the manufacturing process is ongoing. The application of lubrication and coolant occurs during a continuous manufacturing process as opposed to separate from the process. However, if a tank contained a coolant or lubricant that was applied during breaks in manufacturing, the tank would not be exempt.

In this case, the cylinders used by Taxpayer are used to contain gas just prior to the manufacturing process. Taxpayer's manufacturing process relating to welding begins with the heating of the gases necessary to properly weld Taxpayer's equipment. The tanks do not serve a function during the manufacturing process but rather as containment prior to the manufacturing process. Even though the cylinders serve a crucial function in Taxpayer's overall process, the function of the cylinders is prior to the manufacturing process as opposed to a function during the steps of the manufacturing process.

FINDING

Taxpayer's protest is sustained with regard to the computer software and denied with regard to the cylinders used to contain welding tanks.

SUMMARY

Taxpayer's protest is sustained on the computer software and denied on the welding cylinders listed in this Supplemental Letter of Findings. Any appropriate adjustments to the sample used for the assessment consistent with the original Letter of Findings and this Supplemental Letter of Findings shall be made by the Department by means of a supplemental audit.

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