

Letter of Findings: 04-20120050
Use Tax
For The Tax Years 2008, 2009, and 2010

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ISSUE

I. Use Tax – Manufacturing.

Authority: IC § 6-2.5-3-2; IC § 6-2.5-5-4; [45 IAC 2.2-5-8](#).

Taxpayer protests the imposition of use tax on modular home platforms.

STATEMENT OF FACTS

The Taxpayer was a corporation that designs, manufactures, and sell modular homes with manufacturing facilities in Indiana. Pursuant to an audit, the Indiana Department of Revenue ("Department") determined that tax should have paid on the purchase of modular home platforms ("MHPs") for the 2008, 2009, and 2010 tax years. The Department assessed use tax and interest to the Taxpayer. The Taxpayer protested the imposition of use tax and interest, arguing that MHPs qualify for the manufacturing exemption. An administrative hearing was held and this Letter of Findings results.

I. Use Tax – Manufacturing.

DISCUSSION

MHPs are large platforms with wheels. During the construction process, the Taxpayer attaches modular home parts to the MHPs. The homes being built are moved from station to station in the building process on the MHPs.

A use tax is imposed by IC § 6-2.5-3-2(a), which states:

An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

IC § 6-2.5-5-4, states:

Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for his direct use in the direct production of the machinery, tools, or equipment described in section 2 or 3 of this chapter.

[45 IAC 2.2-5-8](#), elaborates in relevant part:

(a) In general, all purchases of tangible personal property by persons engaged in the direct production, manufacture, fabrication, assembly, or finishing of tangible personal property are taxable. The exemption provided in this regulation [[45 IAC 2.2](#)] extends only to manufacturing machinery, tools, and equipment directly used by the purchaser in direct production. It does not apply to material consumed in production or to materials incorporated into tangible personal property produced.

[45 IAC 2.2-5-8\(f\)\(3\)](#), states as an example:

Transportation equipment used to transport work-in-process or semi-finished materials to or from storage is not subject to tax if the transportation is within the production process.

Accordingly, MHPs are exempt from tax when they are used to transport the modular home during production.

In 2006, Taxpayer was issued a Letter of Finding on the same issue. The Department determined that 90 percent of the MHPs' use was exempt and 10 percent of its use was taxable. This Letter of Findings will follow the same reasoning.

In 2006, the Taxpayer conceded that the MHPs are not used in an exempt manner after they move the modular home out of the production process and ship it to the final construction site. The Department calculated the percentage of time the MHPs were used in an exempt capacity. The Department used Taxpayer's documentation showing that the MHPs are used for transporting the modular homes after production for one day out of the total ten days. Therefore, ten percent of the use is taxable and 90 percent is exempt.

Taxpayer's manufacturing process has not changed since 2006, so the Department will apply the same percentages to the MHPs at issue in this case. In conclusion, the Department will recalculate the amount of use tax due for the years 2008-2010, reflecting the 90 percent exempt rate for the MHPs.

FINDING

Taxpayer's protest is sustained.

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