

Letter of Findings Number: 04-20140003
Sales and Use Tax
For Tax Years 2010-12

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.

ISSUE

I. Sales and Use Tax—Imposition.

Authority: IC § 6-2.5-2-1; § 6-2.5-3-2; IC § 6-2.5-5-3; IC § 6-2.5-5-9; IC § 6-8.1-5-1; [45 IAC 2.2-3-4](#); [45 IAC 2.2-5-8](#).

Taxpayer protests the assessment of sales and use tax.

STATEMENT OF FACTS

Taxpayer is an industrial processor. The Indiana Department of Revenue ("Department") conducted a sales and use tax audit for the years 2010-2012. The audit resulted in the assessment of additional sales and use tax for the years at issue. Taxpayer protested the imposition of sales and use tax on certain items. An administrative hearing was conducted and this Letter of Findings results. Further facts will be presented as required.

I. Sales and Use Tax—Imposition.

DISCUSSION

Taxpayer protests the imposition of sales and use tax on certain items listed as taxable in the Department's calculations for the years 2010, 2011, and 2012. The Department based its calculations on a review of Taxpayer's records. First, Taxpayer states that the Department did not exempt certain items of safety equipment. Second, Taxpayer states that the Department did not exempt certain items used in the production process. Third, Taxpayer states that the Department did not exempt certain wrapping materials. Taxpayer also claims that duplicate invoices and a number of out-of-state sales were subjected to sales and use tax which they should not have been. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

Sales tax is imposed by IC § 6-2.5-2-1, which states:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

Use tax is imposed under 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.

[45 IAC 2.2-3-4](#) further explains:

Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana state gross retail tax has been collected at the point of purchase.

Therefore, when tangible personal property ("TPP") is used, stored, or consumed in Indiana, use tax is due unless sales tax was paid at the time of the transaction, or if there is an applicable exemption to sales and use taxes.

Taxpayer's first point of protest is in regards to certain items it claims are safety equipment. Taxpayer claims that nitrile gloves, Kevlar gloves/sleeves, safety glasses, headgear, goggles, and clothing to protect workers from paint spray are exempt under [45 IAC 2.2-5-8](#), safety clothing or equipment which is required to allow a worker to participate in the production process without injury or to prevent contamination of the product during production.

Taxpayer has provided documentation which shows that the safety glasses, headgear, goggles, and clothing are used during the painting of aluminum parts. It is not possible for workers to paint the aluminum parts without this equipment as it would cause serious harm to them. Therefore, this safety equipment complies with [45 IAC 2.2-5-8](#) as it is required for workers to participate in the production process without injuring themselves.

In regards to the Kevlar gloves/sleeves, Taxpayer has provided documentation which supports that these items are used during the production process and that the absence of these items would cause worker injury. These items prevent workers from being cut by sharp edges and hot parts of the aluminum parts. These items also comply with [45 IAC 2.2-5-8](#) and thus an exemption is warranted.

Additionally, Taxpayer claims that the purpose of nitrile gloves used by its workers is to prevent anodizing chemicals from injuring their hands and to prevent paint from clogging pores on the hands and arms. The documentation provided by Taxpayer shows that these gloves do not cover the arms. Therefore, they are incapable of protecting the arms and do not comply with [45 IAC 2.2-5-8](#). They are not required for a worker to participate in the production process without injury as injury on the arms will occur regardless if the gloves are worn or not.

Taxpayer's second point of protest is in regards to knit gloves and tack cloths that Taxpayer claims were used to rub down the aluminum parts before they went into the paint line. Taxpayer claims that these items fall under [45 IAC 2.2-5-8](#) which exempts "tangible personal property consumed in direct production by the purchaser in the business of producing tangible personal property by manufacturing, processing, refining, or mining."

[45 IAC 2.2-5-8\(d\)\(1\)](#) states:

"Direct use in the production process" begins at the point of the first operation or activity constituting part of the integrated production process and ends at the point that the production has altered the item to its completed form, including packaging, if required.

Taxpayer has provided documentation which shows that the tack cloth was used for the purpose of rubbing down the aluminum parts before they went into the paint line. This is well after the first operation/activity but before the production process ended. Thus, the tack cloth falls under the [45 IAC 2.2-5-8](#) exemption as it was directly used in the production process.

In regards to the knit gloves, Taxpayer claims they are exempt for the same reasons as the tack cloth. Taxpayer additionally refers to [45 IAC 2.2-5-8\(c\)\(2\)\(f\)](#) and states that the knit gloves are either safety equipment or equipment that protects against contamination of the product. After review, the documentation provided by Taxpayer demonstrates that it is possible to wipe down the aluminum parts with the tack cloth and forego the use of the knit gloves altogether. Therefore, the knit gloves are not exempt under [45 IAC 2.2-5-8](#) because it is possible to prevent contamination of the product during production without them.

Taxpayer's third point of protest is in regards to wrapping materials. Taxpayer receives parts from its customers, processes them, and then returns them. In the course of this process the Taxpayer employs the use of plastic wrapping or steel strapping as needed. Taxpayer refers to IC § 6-2.5-5-3(b) which states:

Except as provided in subsection (c), 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.

The Department refers to IC § 6-2.5-5-9(d)(2) which states:

(d) Sales of wrapping material and empty containers are exempt from the state gross retail tax if the person acquiring the material or containers acquires them for use as nonreturnable packages for:

(1) selling the contents that the person adds; or

(2) shipping or delivering tangible personal property that:

- (A) is owned by another person;
- (B) is processed or serviced for the owner; and
- (C) will be sold by that owner either in the same form or as a part of other tangible personal property produced by that owner in the owner's business of manufacturing, assembling, constructing, refining, or processing.

Taxpayer has provided documentation which shows that the parts it serviced belonged to others, were processed by the Taxpayer, and that the owners of the parts intended to sell them either in the same form or as a part of other TPP produced by that owner's business. Thus, the plastic wrapping and steel strapping are exempt under IC § 6-2.5-5-9.

Taxpayer stated that certain out-of-state sales were listed as taxable during the audit. Taxpayer has provided documentation for these sales which shows the individuals and locations where the serviced items were billed and shipped. They are outside of Indiana. Taxpayer is correct that no sales tax is due on these items. These transactions do not comply with IC § 6-2.5-2-1(a) which states that a retail transaction must be made in Indiana in order for it to be subject to sales tax.

Taxpayer has also stated that duplicate invoices were included within the audit report. Taxpayer has provided documentation which shows that certain invoices were assessed sales and use tax twice. The Department will review and adjust its assessment with respect to the select invoices that were duplicated. A supplemental audit will be required.

In conclusion, regarding Taxpayer's first point of protest, Taxpayer is sustained regarding the Kevlar gloves/sleeves, safety glasses, headgear, goggles, and safety clothing. Taxpayer is denied with regards to the nitrile gloves. In regards to Taxpayer's second point of protest, Taxpayer is sustained regarding the tack cloths but denied regarding the knit gloves. In regards to Taxpayer's third point of protest, Taxpayer is sustained in regards to the wrapping materials. Taxpayer is also sustained regarding out-of-state sales and duplicate invoices.

FINDING

Taxpayer's protest to the imposition of sales and use tax is sustained in part and denied in part as described above and subject to the results of a supplemental audit.

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