

DEPARTMENT OF STATE REVENUE

04-20150174.LOF

Letter of Findings Number: 04-20150174
Use Tax
For Tax Years 2010-13

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

The documentation provided by manufacturer established that certain purchases were repair parts for manufacturing equipment and were therefore exempt. Certain other purchases were established to not be taxable purchases. Therefore, those portions of the Department's proposed assessments for use tax will be removed from the Department's use tax calculations.

ISSUE**I. Use Tax--Additional Purchases.**

Authority: IC § 6-2.5-1-1; IC § 6-2.5-1-27; IC § 6-2.5-2-2; IC § 6-2.5-3-2; IC § 6-2.5-5-3; IC § 6-2.5-5-4; IC § 6-8.1-5-1; IC § 6-2.5-2-1; IC § 6-2.5-5-40; Indiana Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Indiana Dept. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue, 867 N.E.2d 289 (Ind. Tax 2007); Hoosier Roll Shop Services, LLC v. Indiana Dept. of State Revenue, 10 N.E.3d 1051 (Ind. Tax Ct. 2014); [45 IAC 2.2-3-4](#); [45 IAC 2.2-4-2](#); [45 IAC 2.2-4-21](#); [45 IAC 2.2-5-8](#); [45 IAC 2.2-5-16](#).

Taxpayer protests proposed assessments for additional use tax.

STATEMENT OF FACTS

Taxpayer is a manufacturer. As the result of an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer had made some taxable purchases of Tangible Personal Property ("TPP") during the tax years 2010, 2011, 2012, and 2013 without paying sales tax at the time of purchase. The Department therefore issued proposed assessments for use tax for those years. Taxpayer protested a portion of those proposed assessments as well as the imposition of penalty. An administrative hearing was held and this Letter of Findings results. Further facts will be presented as required.

I. Use Tax--Additional Purchases.**DISCUSSION**

Taxpayer protests the imposition of use tax on certain purchases included as taxable in an audit conducted by the Department in the tax years 2010 through 2013. The Department based its proposed assessments on a review of Taxpayer's operations and the available documentation such as invoices, receipts, and Taxpayer's accounting records. The Department determined that certain purchases of TPP had not had sales tax paid at the time of purchase but that those purchases were taxable. The Department therefore issued proposed assessments for use tax. Taxpayer protests that some of the transactions determined to be taxable were actually exempt.

Specifically, Taxpayer's protest is in regards to items included in a statistical sample the Department took to calculate Taxpayer's use tax compliance rate for the tax years. Due to the large number of purchases Taxpayer made during the audit period, the Department and Taxpayer agreed to take a random sample of those purchases and review them for sales and use tax compliance. Total purchases were used as the denominator and sales or use tax properly paid was used as the numerator. The resulting percentage was used as Taxpayer's compliance rate and that rate was applied to Taxpayer's total purchases for the tax years. Taxpayer agrees with the method, but protests that some items listed as taxable but without tax paid were actually exempt purchases and so should not be in the numerator of the calculation. Also, Taxpayer protests that for some exempt purchases it erred and

paid sales or use tax when it should not have. Thus, Taxpayer argues that the sales and/or use taxes it claims were incorrectly paid on those transactions should be reflected as credits in the Department's calculations of Taxpayer's compliance rate.

As a threshold issue, it is the 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." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

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 sales tax is not paid at the time TPP is purchased, use tax will be imposed unless the purchase is eligible for an exemption.

The first group of transactions included in the protest of statistical sample classifications concerns is in regards to Taxpayer's purchase of replacement and repair parts for a grinder which it used to smooth rollers used in its manufacturing process. Taxpayer explains that the rollers need to be smooth to properly perform their manufacturing role, but that they would wear and become pitted and uneven in the course of their use. At that point, the rollers were unusable and Taxpayer would use the grinder to re-smooth the rollers and restore them to a useable state. Taxpayer believes that this grinding and smoothing process constituted the remanufacture of the rollers and that the grinder and its repair parts therefore qualified for the manufacturing exemption. The relevant statute is IC § 6-2.5-5-4, which 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.

Next, [45 IAC 2.2-5-8](#)(h) states:

Maintenance and replacement equipment.

- (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.

-EXAMPLE-

A manufacturer of sheet metal repairs and upgrades used machinery by replacing worn or broken parts and adding new elements and features available in state-of-the-art equipment. All items which become

components of the upgraded machinery are exempt from tax. However, all tools and equipment used to repair or upgrade used machinery would be taxable.
(Emphasis added).

Also, the Indiana Tax Court has addressed the specific question of whether or not the grinding of production rollers constitutes manufacturing or remanufacturing in *Hoosier Roll Shop Services, LLC v. Indiana Dept. of State Revenue*, 10 N.E.3d 1051 (Ind. Tax Ct. 2014) in which the court provided:

In *Rotation Products*, this Court developed four questions that would assist it in determining whether a "remanufacturing" or "repairing" process produces a new product. The Court has determined that, in this case, the answer to each of those four questions favors Hoosier Roll; **that is, Hoosier Roll produces other tangible personal property when it grinds and calibrates its customers' work rolls.**
Id. at 1057. (Emphasis added).

In the instant case, Taxpayer uses the grinder to perform the same activities the taxpayer in *Hoosier Roll* performed with its grinder. Since the grinder constitutes remanufacturing equipment used to produce production machinery, both the grinder and replacement parts for the grinder are themselves production equipment and so are exempt from sales tax as provided by IC § 6-2.5-5-4 and [45 IAC 2.2-5-8\(h\)](#).

The next group of transactions included in the protest of statistical sample classifications concerns the imposition of use tax on Taxpayer's annual renewal of support services for its Infor ERP software ("Service Provider") system. The Department considered these transactions to constitute the purchase of prewritten (or "canned") computer software. IC § 6-2.5-1-27 incorporates "prewritten computer software" such as that purchased by Taxpayer in the definition of tangible personal property as follows:

"Tangible personal property" means personal property that:

- (1) can be seen, weighed, measured, felt, or touched; or
- (2) is in any other manner perceptible to the senses.

The term includes electricity, water, gas, steam, and prewritten computer software.

Taxpayer protests that the transaction at issue was not the purchase of prewritten computer software, but rather was the renewal of support services for a program it originally purchased in 1998. Also, Taxpayer states that the support services agreement specifically lists that the customer (Taxpayer) is only eligible to receive additional security keys to access the Service Provider-owned hardware and software which was originally provided in the original services agreement. In other words, the keys had no function other than to allow access to the previously purchased program in the event of a security or hardware failure. Taxpayer provided documentation supporting its position. After review of the documentation, the Department agrees that the payments in question were not for pre-written computer software. Therefore, Taxpayer has met the burden imposed by IC § 6-8.1-5-1(c) of proving this portion of the proposed assessments wrong.

The next group of transactions included in the protest of statistical sample classifications concerns Taxpayer's purchase of equipment which it states are production equipment, including: a Honeywell ribbon cassette which Taxpayer states was a replacement part for a printer which was attached to a piece of production machinery for quality control purposes; a waterjet used for cutting metal; a garnet used in the waterjet which is used for cutting metal; liquid nitrogen used to cool a cutting laser; a prefilter element for the cutting laser; a monitor used as a recorder on a furnace for quality control purposes; and the repair and calibration of an infrared pyrometer used to measure temperatures of furnaces. The relevant statute is 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.

After review of the documentation and analysis provided in the protest process, the Department agrees that these purchases were for manufacturing machinery and so they were exempt under IC § 6-2.5-5-3(b). Therefore, these purchases will be reclassified as non-taxable in the Department's statistical sample and the compliance rate will be recalculated. Also, for those purchases of tax exempt items upon which Taxpayer previously remitted use tax, those amounts will be considered a credit in the compliance rate calculations. Taxpayer has met its burden under IC § 6-8.1-5-1(c) regarding these items.

The next group of transactions at issue in the statistical sample is in regards to gloves which Taxpayer states are

safety equipment required to allow its employees to participate in the manufacturing process without incurring injury. The relevant exemption is found at [45 IAC 2.2-5-8\(c\)](#), which states in relevant part(s):

The state gross retail tax does not apply to purchases of manufacturing machinery, tools, and equipment to be directly used by the purchaser in the production process provided that such machinery, tools, and equipment are directly used in the production process; i.e., they have an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces tangible personal property.

-EXAMPLES-

- (1) Aluminum pistons are produced in a manufacturing process that begins, after the removal of raw aluminum from storage inside the plant, with the melting of the raw aluminum and the production of castings in the foundry; continues with the machining of the casting and the plating and surface treatment of the piston; and ends prior to the transportation of the completed pistons to a storage area for subsequent shipment to customers. Because of the functional interrelationship of the various steps and the flow of the work-in-process, the total production process, comprised of such activities, is integrated.
- (2) The following types of equipment constitute essential and integral parts of the integrated production process and are, therefore, exempt. The fact that such equipment may not touch the work-in-process or, by itself, cause a change in the product, is not determinative.
...
(F) 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.
(Emphasis Added).

Thus, gloves may be considered exempt if they allow a worker to participate in the production process without injury. After review of the audit report, it is clear that the Department did allow some glove purchases as exempt safety equipment provided that those gloves were purchased through Expense Code 382, labeled "Safety & Health." Other gloves were purchased through Expense Code 305, labeled "General Safety & Health" and were considered taxable since they were used for non-production activities such as inspections, education, awards programs, and for non-production safety activities. Taxpayer states that the gloves purchased through Expense Code 305 were used for exempt purposes eighty percent of the time. Taxpayer was unable to provide documentation supporting this position. Therefore, since the audit report already listed some glove purchases as exempt safety equipment and since there is no documentation to establish that any of the gloves purchased under Expense Code 305 were used in an exempt manner, Taxpayer has not met the burden imposed under IC § 6-8.1-5-1(c) of proving the proposed assessment wrong.

The next transaction at issue in the statistical sample is a payment to ADT Security Systems, Inc. Taxpayer protests that the payment was for security services and not for tangible personal property. The Department included the transaction as taxable because Taxpayer was unable to provide documentation to establish the nature of the transaction. In the course of the protest process, Taxpayer provided a copy of the contract which establishes that the tangible personal property remained the property of ADT and did not transfer to Taxpayer. Therefore, the transaction was for services only, and was not subject to sales or use taxes. Taxpayer has met the burden of proving the proposed assessment wrong, as required by IC § 6-8.1-5-1(c).

The next group of transactions at issue in the statistical sample is in regards to the purchase of cloth mailing bags. Taxpayer states that the bags are shipping materials required to transport the cut metal products it sells to its customers. The relevant regulation is [45 IAC 2.2-5-16\(c\)](#), which states:

General rule. The receipt from a sale by a retail merchant of the following types of tangible personal property are exempt from state gross retail tax:

- (1) Nonreturnable containers and wrapping materials including steel strap and shipping pallets to be used by the purchaser as enclosures for selling tangible personal property.
- (2) Deposits for returnable containers received as an incident to a transaction of a retail merchant constituting selling at retail.
- (3) Returnable containers sold empty for refilling.
(Emphasis added).

In this case, Taxpayer established that the cloth mailing bags were used by the purchaser (Taxpayer) as nonreturnable enclosures for selling tangible personal property. Therefore, Taxpayer's use of the cloth bags qualify for the exemption listed under [45 IAC 2.2-5-16\(c\)](#). Taxpayer has met the burden of proving the proposed assessment wrong, as required by IC § 6-8.1-5-1(c).

The next group of transactions at issue in the statistical sample is in regards to payments Taxpayer states were for testing services at a third-party lab. As provided above, IC § 6-2.5-3-2(a) provides that 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. In this case, Taxpayer provided sufficient documentation and analysis to establish that these payments were for services and that no transfer of tangible personal property occurred. Taxpayer has met the burden of proving the proposed assessment wrong, as required by IC § 6-8.1-5-1(c).

The next group of transactions at issue in the statistical sample is in regards to payments made to various uniform companies. The Department included those transactions as taxable on the basis that uniforms are not required for employees to participate in the manufacturing process and so are taxable transactions. As provided above, IC § 6-2.5-3-2(a) provides that 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. In this case, Taxpayer has provided sufficient documentation and analysis to establish that the payments at issue were for uniform cleaning services and not for the purchase of uniforms. Since the payments were for services and not for the purchase of tangible personal property, Taxpayer has met the burden of proving the proposed assessment wrong, as required by IC § 6-8.1-5-1(c).

The next group of transactions at issue in the statistical sample is in regards to payments made for a scanning electron microscope which Taxpayer states was used for research and development purposes. Taxpayer paid use tax at the time of the transaction and now believes that it should get credit in the compliance rate calculations for overpayment of use tax. Taxpayer refers to IC § 6-2.5-5-40, which during the audit years stated:

- (a) As used in this chapter, 'research and development activities' does not include any of the following:
 - (1) Efficiency surveys.
 - (2) Management studies.
 - (3) Consumer surveys.
 - (4) Economic surveys.
 - (5) Advertising or promotions.
 - (6) Research in connection with literary, historical, or similar projects.
 - (7) Testing for purposes of quality control.
- (b) As used in this section, 'research and development equipment' means tangible personal property that:
 - (1) consists of or is a combination of:
 - (A) laboratory equipment;
 - (B) computers;
 - (C) computer software;
 - (D) telecommunications equipment; or
 - (E) testing equipment;
 - (2) has not previously been used in Indiana for any purpose; and
 - (3) is acquired by the purchaser for the purpose of research and development activities devoted directly to experimental or laboratory research and development for:
 - (A) new products;
 - (B) new uses of existing products; or
 - (C) improving or testing existing products.
- (c) A retail transaction:
 - (1) involving research and development equipment; and
 - (2) occurring after June 30, 2007;is exempt from the state gross retail tax.
(Emphasis added).

Taxpayer states that it used the microscope for research and development processes and so the microscope was exempt. After review of the materials submitted in the protest process, the Department does not agree that Taxpayer has established that the microscope was not previously used in Indiana for any other purpose or that its use was devoted directly to experimental or laboratory research and development for new products, new uses of existing products, or improving or testing existing products, as required by IC § 6-2.5-5-40 during the audit years. Therefore, Taxpayer has not met the burden imposed by IC § 6-8.1-5-1(c).

The next group of transactions at issue in the statistical sample is in regards to payments made to Ergonomics Plus, Inc. Taxpayer states that these payments were for personnel evaluations in hiring situations and that no tangible personal property other than the evaluation form was transferred. The Department referred to [45 IAC 2.2-4-2](#), which states:

(a) Professional services, personal services, and services in respect to property not owned by the person rendering such services are not "transactions of a retail merchant constituting selling at retail", and are not subject to gross retail tax. Where, in conjunction with rendering professional services, personal services, or other services, the serviceman also transfers tangible personal property for a consideration, this will constitute a transaction of a retail merchant constituting selling at retail unless:

- (1) The serviceman is in an occupation which primarily furnishes and sells services, as distinguished from tangible personal property;
- (2) The tangible personal property purchased is used or consumed as a necessary incident to the service;
- (3) The price charged for tangible personal property is inconsequential (not to exceed 10[percent]) compared with the service charge; and
- (4) The serviceman pays gross retail tax or use tax upon the tangible personal property at the time of acquisition.

(b) Services performed or work done in respect to property and performed prior to delivery to be sold by a retail merchant must however, be included in taxable gross receipts of the retail merchant.

(c) Persons engaging in repair services are servicemen with respect to the services which they render and retail merchants at retail with respect to repair or replacement parts sold.

(d) A serviceman occupationally engaged in rendering professional, personal or other services will be presumed to be a retail merchant selling at retail with respect to any tangible personal property sold by him, whether or not the tangible personal property is sold in the course of rendering such services. If, however, the transaction satisfies the four (4) requirements set forth in 6-2.5-4-1(c)(010), paragraph (1) [subsection (a) of this section], the gross retail tax shall not apply to such transaction.

(Emphasis in original).

In this case, the cost of the evaluation form was inconsequential and was below ten percent of the service charge. Therefore, these payments qualify for the exemption described by [45 IAC 2.2-4-2](#). Taxpayer has met the burden imposed by IC § 6-8.1-5-1(c).

The next group of transactions at issue in the statistical sample is in regards to payments made for repairs to a transformer. Taxpayer states that it remitted use tax on the entire amount charged for the repairs, but that it should not have paid tax on the labor charges. Taxpayer requests a credit in the compliance rate calculations for the amount of use tax remitted in regards to the labor charges. The Department refers to IC § 6-2.5-1-1, which states:

(a) Except as provided in subsection (b), "unitary transaction" includes all items of personal property and services which are furnished under a single order or agreement and for which a total combined charge or price is calculated.

(b) "Unitary transaction" as it applies to the furnishing of public utility commodities or services means the public utility commodities and services which are invoiced in a single bill or statement for payment by the consumer.

(Emphasis added).

Also, IC § 6-2.5-2-2(a) states:

The state gross retail tax is measured by the gross retail income received by a retail merchant in a retail unitary transaction and is imposed at seven percent (7[percent]) of that gross retail income.

(Emphasis added).

A review of the invoice for the repair of the transformer shows that the various charges for parts and labor are listed and at the bottom of the list is the phrase "TOTAL DUE" along with the total amount due for the repairs including both labor and materials. This clearly constitutes a retail unitary transaction as defined by IC § 6-2.5-1-1 and so sales and use taxes were properly due on the total amount of the unitary transaction, as provided by IC § 6-2.5-2-2(a). Taxpayer has not met the burden imposed by IC § 6-8.1-5-1(c).

The next group of transactions at issue in the statistical sample is in regards to payments made to millwrights for moving production equipment within Taxpayer's facilities. Millwrights are experts in moving large pieces of production equipment around manufacturing facilities, which often involves physical installation of tangible personal property to both install the equipment in its new position and to remediate the old location to accommodate its new use. These activities constitute the incorporation of tangible personal property into real estate. Taxpayer states that the millwrights paid all appropriate sales taxes at the time the materials were purchased.

The relevant regulation is [45 IAC 2.2-4-21](#), which states:

- (a) In general, all sales of tangible personal property are taxable, and all sales of real property are not taxable. The conversion of tangible personal property into realty does not relieve a liability for any owing and unpaid state gross retail tax or use tax with respect to such tangible personal property.
- (b) All construction material purchased by a contractor is taxable either at the time of purchase, or if purchased exempt (or otherwise acquired exempt) upon disposition unless the ultimate recipient could have purchased it exempt.

A review of the documentation supplied in the course of the protest process shows that the transactions were for improvements to realty and that the contractor stated that taxes were paid when they purchased the tangible personal property which was used in the construction process, as proscribed by [45 IAC 2.2-4-21](#). Therefore, Taxpayer has met the burden imposed by IC § 6-8.1-5-1(c).

The next group of transactions at issue in the statistical sample is in regards to payments made for the purchase of a crane which Taxpayer states was used exclusively to move work-in-process ("WIP") from one manufacturing station to another within its manufacturing process. [45 IAC 2.2-5-8\(a\)](#) elaborates in relevant part:

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.

Therefore, there is an exemption from the sales and use taxes if the tangible personal property in question is directly used in the direct production of a taxpayer's product. Since the crane in question is used to transport work-in-process, it falls within the exemption described in [45 IAC 2.2-5-8\(f\)\(3\)](#). Therefore, Taxpayer has met the burden imposed by IC § 6-8.1-5-1(c) of proving the proposed assessment wrong.

The next group of transactions at issue in the statistical sample is in regards to payments made for strapping used to keep Taxpayer's product coiled during shipping to Taxpayer's customers. [45 IAC 2.2-5-16\(c\)](#) provides:

The receipt from a sale by a retail merchant of the following types of tangible personal property are exempt from state gross retail tax:

- (1) Nonreturnable containers and wrapping materials including steel strap and shipping pallets to be used by the purchaser as enclosures for selling tangible personal property.
- (2) Deposits for returnable containers received as an incident to a transaction of a retail merchant constituting selling at retail.
- (3) Returnable containers sold empty for refilling.

Taxpayer used the strapping in question as an enclosure for the coils it sold to its customers. Therefore, the strapping used to keep the coils coiled qualifies for the exemption described under [45 IAC 2.2-5-16\(c\)](#) and Taxpayer has met the burden imposed under IC § 6-8.1-5-1(c).

The next transaction at issue in the statistical sample is in regards to payment made when Taxpayer purchased the liquid nitrogen which it used for cooling a production laser. Taxpayer states that a portion of that invoice included regulatory compliance charges and that those charges are not subject to use tax. After a review of the invoice, it is clear that the charges in question were federal environmental compliance charges and were not charges for tangible personal property. Also, the regulatory charges are not included in unitary transaction amounts since a unitary transaction includes all items of personal property and services which are furnished under a single order or agreement and for which a total combined charge or price is calculated, as provided by IC § 6-2-1-1(a), and the regulatory charges constitute neither tangible personal property nor services. Taxpayer has met its burden under IC § 6-8.1-5-1(c).

In conclusion, Taxpayer has met its burden under IC § 6-8.1-5-1(c) for most of the items under protest. Taxpayer has not met its burden under IC § 6-8.1-5-1(c) with regard to gloves not already regarded as exempt by the

Department, with regard to the scanning electron microscope, and with regard to labor charges included in a unitary transaction. All other items under protest will either be reclassified as non-taxable purchases or credit will be given for items which are exempt but upon which use tax has previously been remitted. The Department's compliance rate will then be recalculated and applied to Taxpayer's total purchases for the audit years.

FINDING

Taxpayer's protest has been sustained in part and denied in part, as detailed above.

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An [html](#) version of this document.