

DEPARTMENT OF STATE REVENUE

Revenue Ruling #2015-12ST
May 31, 2016

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ISSUE

Sales & Use Tax – Purchases of "New Motor Vehicles", Incorporation into a Product for Sale

Authority: [IC 6-2.5-2-1](#)(a) and (b); [IC 6-2.5-5-6](#); [IC 6-2.5-5-8](#)(b) and (c); [IC 9-13-2-111](#); [45 IAC 2.2-5-8](#)(k); [45 IAC 2.2-5-14](#)(a); [45 IAC 2.2-5-14](#)(d)(1) through (3); [45 IAC 2.2-5-14](#)(e)(3); [45 IAC 2.2-5-15](#)(c)(1) and (c)(3); *Brambles Industries, Inc. v. Indiana Dep't of State Revenue*, 892 N.E.2d 1287 (Ind. Tax Ct. 2008); *Miles, Inc. v. Indiana Dep't of State Revenue*, 659 N.E.2d 1158 (Ind. Tax Ct. 1995); *Greensburg Motel Assocs. v. Indiana Dep't of State Revenue*, 629 N.E.2d 1302 (Ind. Tax Ct. 1994); *Indiana Bell Tel. Co. v. Indiana Dep't of State Revenue*, 627 N.E.2d 1386 (Ind. Tax Ct. 1994); *USAir, Inc. v. Indiana Dep't of State Revenue*, 542 N.E.2d 1033 (Ind. Tax Ct. 1989)

A corporation ("Taxpayer") is seeking a determination with respect to the following questions:

- (1) Whether Taxpayer's purchases of new cab-and-chassis trucks are exempt from the state gross retail tax under Ind. Code 6-2.5-5-6 if Taxpayer modifies these trucks at its own facilities by incorporating other components and one of three different kinds of attachments to the ultimate end of selling the finished products to its customers.
- (2) Whether Taxpayer's purchases of cab-and-chassis trucks are exempt from the state gross retail tax under Ind. Code 6-2.5-5-6 if the incorporation of other components and one of three different kinds of attachments into the trucks is performed by a third party at the third party's facilities for the same ultimate purpose of selling finished products to Taxpayer's customers.

STATEMENT OF FACTS

Taxpayer provides the following facts relevant to its request for a Revenue Ruling. Taxpayer's current, ordinary course of business is the operation of a Motor Vehicle Dealership. Taxpayer is not a franchisee of any vehicle trade name, trade or service mark, or manufacturer but is a distributor for several body manufacturers. During the ordinary course of business, Taxpayer purchases various kinds of used, Class 8 trucks and tractors for the purpose of reselling them. In the course of reselling used, Class 8 trucks and tractors, Taxpayer "frequently customizes the used vehicles through further manufacturing, such as frame work and body installations." Whether the aforementioned frame work and body installations performed by Taxpayer constitute manufacturing, as that term is used in Title 6, is beyond the scope of this Revenue Ruling. As such, the department's use of the word "manufacturing" in relation to Taxpayer's current, ordinary course of business should not be read in a way that implies Taxpayer's frame work and body installations are, in fact, manufacturing.

In addition to operating as a Motor Vehicle Dealership, Taxpayer has expressed interest in potentially pursuing a new, but related, line of business; the production and sale of Roll-off Trucks, Hook Lift Trucks, and Garbage Packer Trucks (collectively, "Finished Products").

To produce Finished Products, Taxpayer intends to employ a process whereby it will incorporate components, such as hydraulic lines, pumps, fittings, switches, wiring, and mounting brackets (collectively, "Additional Components"), and one of three different kinds of attachments, roll-offs, hook lifts, or garbage packers (collectively, "Attachments"), into cab-and-chassis trucks ("New Trucks"). Taxpayer describes its process as "highly complex and specialized," involving "welding, bolting, and wiring." Regardless of the fact that Taxpayer has the capacity to, and does, perform the incorporation process at its own facility in Indiana, Taxpayer contracts with third parties to perform, in whole or in part, the incorporation process when commercially and/or logistically practical.

DISCUSSION

The state gross retail tax ("sales tax") is imposed on retail transactions made in Indiana. See Ind. Code § 6-2.5-2-1(a). Absent an exemption, of which there are many, the person who acquires property in a retail transaction is liable for the tax on the transaction. See Ind. Code § 6-2.5-2-1(b).

As an initial matter, Taxpayer concedes that, as a matter of law, its purchases of New Trucks do not qualify for any of the sales tax exemptions offered in Ind. Code § 6-2.5-5-8, colloquially known as the "sale for resale" exemptions, because New Trucks are "new motor vehicles", as that term is defined in Ind. Code § 9-13-2-111, and Taxpayer is not a franchisee. Ind. Code § 6-2.5-5-8(b) excludes from the general "sale for resale" exemption transactions involving "new motor vehicles." While Ind. Code § 6-2.5-5-8(c) offers additional "sale for resale" exemptions applicable to transactions involving "new motor vehicles", each additional exemption requires that the acquirer of the "new motor vehicle" be either a franchisee or a person who rents or leases "new motor vehicles" in the ordinary course of the person's business. Taxpayer, admittedly, is neither. Accordingly, Taxpayer is unable to utilize the "sale for resale" exemptions with respect to its purchases of New Trucks for use in its newly contemplated line of business.

Next, in its request for a Revenue Ruling, Taxpayer makes a point to note that "within the context of Taxpayer's newly contemplated line of business, the unavailability of the 'sale for resale' exemptions is unique only with respect to its purchases of the New Trucks." Taxpayer asserts that "the Attachments and Additional Components, neither of which constitute a 'new motor vehicle', are able to be purchased exempt from Indiana sales tax pursuant to either Ind. Code § 6-2.5-5-8(b) or Ind. Code § 6-2.5-5-6."

Although the questions presented by Taxpayer do not seek guidance as to whether the Attachments and Additional Components are able to be purchased exempt from Indiana sales tax pursuant to Ind. Code § 6-2.5-5-8(b), the department finds this to be an appropriate forum to inform Taxpayer that they are not.

The exemption provided by Ind. Code § 6-2.5-5-8(b) requires that ". . . the person acquiring the property acquires it for resale. . . in the ordinary course of the person's business without changing the form of the property." The department's regulations found at [45 IAC 2.2-5-15\(c\)\(1\)](#) explain, "This exemption does not apply to purchasers who intend to . . . add value to the property through the rendition of services or performance of work with respect to such property." The regulation goes on to state, "The property must be resold . . . in the same form in which it was purchased." See [45 IAC 2.2-5-15\(c\)\(3\)](#).

Taxpayer's argument for why its purchase of New Trucks should be exempt from sales tax relies, in large part, on Taxpayer's assertion that when Taxpayer incorporates the Attachments and Additional Components into New Trucks, Taxpayer is engaged in manufacturing. Taxpayer's incorporation process, which results in Finished Products, is manufacturing only if the process is an integrated series of operations which places tangible personal property in a form, composition, or character different from that in which it was acquired. See [45 IAC 2.2-5-8\(k\)](#). The change in form, composition, or character must result in the transformation of property into a different product. See *id.* It's not clear how Taxpayer would be able to place the Attachments and Additional Components in a form, composition, or character different from that in which they were acquired while simultaneously not changing the form of the property, a requirement of Ind. Code § 6-2.5-5-8(b).

According to Taxpayer, "Due to the substantial change that is occasioned by the incorporation of the Additional Components and Attachments into the New Trucks, Taxpayer has indicated that it makes approximately 20-25% profit on the sale of each Attachment incorporated into the Finished Product." It's clear from this statement, which the department accepts as true for the purpose of this ruling, that Taxpayer has added value to the Attachments and Additional Components through the performance of work with respect to its incorporation of the Attachments and Additional Components into the New Trucks. Taxpayer's incorporation process not only adds substantial value, it places Attachments and Additional Components in a form different from that in which they were acquired, the Finished Products.

In addition, the Indiana Tax Court has previously explained that in order to show entitlement to the sale for resale exemption, the taxpayer must demonstrate that it received itemized consideration for the item. *Brambles Industries, Inc. v. Indiana Dep't of State Revenue*, 892 N.E.2d 1287, 1289 (Ind. Tax Ct. 2008). See *Miles, Inc. v. Indiana Dep't of State Revenue*, 659 N.E.2d 1158, 1165 (Ind. Tax Ct. 1995) (discount coupons inserted in boxes were not resold because customers did not pay itemized amount for them); *Indiana Bell Tel. Co. v. Indiana Dep't of State Revenue*, 627 N.E.2d 1386, 1389 (Ind. Tax Ct. 1994) (telephone directories, the cost of which was built into customers' monthly bills, were not resold for purposes of the exemption because their cost was not itemized in the bills); *USAir, Inc. v. Indiana Dep't of State Revenue*, 542 N.E.2d 1033, 1035-36 (Ind. Tax Ct. 1989) (holding that meals provided on airline's flights were not resold because there was nothing in the price of the ticket to

reflect the price of the food). "Moreover, separate bargaining must occur between the customer and the taxpayer for the exchange of that particular item." Miles, 659 N.E.2d at 1165. See also Greensburg Motel Assocs. v. Indiana Dep't of State Revenue, 629 N.E.2d 1302, 1305-06 (Ind. Tax Ct. 1994) (holding that consumable and non-consumable items provided in hotel guest rooms were not resold because the hotel's customers did not bargain for those items).

It's not clear from the facts provided by Taxpayer whether they receive itemized consideration for the Attachments and Additional Components. It's also not clear whether separate bargaining occurs between Taxpayer and Taxpayer's customers for the exchange of the Attachments and Additional Components. To the extent that Taxpayer does not receive itemized consideration and separate bargaining does not occur with respect to these items, Taxpayer's purchase of the Attachments and Additional Components would again fail to meet the requirements of the "sale for resale" exemption.

Notwithstanding the discussion above, Taxpayer's purchases of New Trucks that it intends to modify through its incorporation process are exempt from sales tax under Ind. Code § 6-2.5-5-6 when Taxpayer modifies the New Trucks at its own facilities by incorporating Additional Components and Attachments to the ultimate end of selling the Finished Products to its customers.

Ind. Code § 6-2.5-5-6 provides that "[t]ransactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for incorporation as a material part of other tangible personal property which the purchaser manufactures, assembles, refines, or processes for sale in his business."

The department's regulations provide further guidance as to the scope of this exemption. [45 IAC 2.2-5-14\(d\)](#) states:

The purchase of tangible personal property which is to be incorporated by the purchaser as a material or an integral part is exempt from tax. "Incorporated as a material or integral part into tangible personal property for sale by such purchaser" means:

- (1) That the material must be physically incorporated into and become a component of the finished product;
- (2) The material must constitute a material or an integral part of the finished product; and
- (3) The tangible personal property must be produced for sale by the purchaser.

Taxpayer's proposed incorporation process takes New Trucks, Attachments, and Additional Components, incorporates each into the other, and yields Finished Products, which Taxpayer intends to sell. For purposes of determining the applicability of Ind. Code § 6-2.5-5-6, it is important to determine whether a distinction can be drawn between the tangible personal property to be incorporated (i.e., the New Trucks, the Attachments, and the Additional Components) and the Finished Products.

The department recognizes that prior to the completion of Taxpayer's incorporation process, the New Trucks are functional in the sense that they come equipped with a cab, engine, transmission, axles, etc., and are able to be driven. However, aside from the fact that the New Trucks are able to be driven, a New Truck, and in particular, the chassis, has no purpose. It is not designed for any specific line of work, and it's unable to perform job-specific functions. The Finished Products, on the other hand, are designed to be used in a specific line of work. In addition, it's not until Taxpayer's incorporation process is complete that any single component of the Finished Products are able to perform job-specific functions.

Roll-off trucks are designed to transport, drop off, and pick up open-topped dumpsters commonly utilized at construction sites. Trucks equipped with hook lifts are able to change out flatbeds, mobile mixers, dumpster bodies, and similar containers, and are generally utilized for the transportation of materials by companies in the waste, recycling, scrap, and demolition industries. Garbage packer trucks facilitate the collection and subsequent compression packing of garbage and waste. Each one of these trucks is designed to be used in a specific line of work, performing job-specific functions. The Finished Products are clearly distinguishable from the New Trucks purchased by Taxpayer.

Pursuant to the Department's regulation, in order to be considered "[i]ncorporated as a material or integral part into tangible personal property for sale by such purchaser", all three requirements set forth in [45 IAC 2.2-5-14\(d\)](#) must be satisfied.

Subsection (d)(1) requires that "the material must be physically incorporated into and become a component of the finished product." The New Trucks in question are physically incorporated into the Finished Products. The New

Trucks serve as the foundation into which other tangible personal property, the Attachments and Additional Components, are incorporated. As described above, the incorporation process requires bolting, welding, and wiring. The bolting, welding, and wiring is done in such a way that the various components of the Finished Products, which includes the New Trucks, are physically joined in a permanent way. The requirement of subsection (d)(1) has been satisfied.

Subsection (d)(2) requires that "[t]he material must constitute a material or an integral part of the finished product." In Miles, the Tax Court explained that "[t]he plain, ordinary, and usual meaning of 'material' is '[i]mportant; more or less necessary,'" and "the plain, ordinary, and usual meaning of 'integral' is 'essential to completeness; organically joined or linked.'" With respect to the New Trucks, they are important – more or less necessary – in addition to being essential to the completeness of the Finished Products. Without the New Trucks, there is nothing onto which the Attachments may be mounted and nothing to which the Additional Components may be attached. Moreover, Taxpayer is correct in its assertion that "the New Trucks are, through an extensive and complex process, joined or linked with the Attachments and Additional Components." The requirement of subsection (d)(2) has been satisfied.

Subsection (d)(3) requires that "[t]he tangible personal property must be produced for sale by the purchaser." Taxpayer's sole purpose for producing the Finished Products is for their eventual sale to Taxpayer's customers. The requirement of subsection (d)(3) has also been satisfied.

In addition to the requirements provided by [45 IAC 2.2-5-14](#)(d), Ind. Code § 6-2.5-5-6 requires that the tangible personal property purchased by Taxpayer be incorporated "as a material part of other tangible personal property which the purchaser manufactures, assembles, refines, or processes for sale in his business." As such, a taxpayer seeking to benefit from the exemption provided for by Ind. Code § 6-2.5-5-6 must also show that they are engaged in the manufacture, assembly, refinement, or processing of the finished product that the taxpayer subsequently sells.

The department's regulations provide guidance as to when someone is engaged in manufacturing and assembly. [45 IAC 2-2-5-8](#)(k) provides:

"Direct production, manufacture, fabrication, assembly, or finishing of tangible personal property" is performance as a business of an integrated series of operations which places tangible personal property in a form, composition, or character different from that in which it was acquired. The change in form, composition, or character must be a substantial change, and it must result in a transformation of property into a different product having a distinctive name, character, and use. Operations such as compounding, fabricating, or assembly are illustrative of the types of operations which may qualify under this definition.

As previously discussed, Taxpayer's incorporation process, "an integrated series of operations" that includes bolting, welding, and wiring, take New Trucks, Attachments, and Additional Components, incorporates each into the other, and produces Finished Products. The original form, composition, and character of the unmodified New Trucks are such that the New Trucks had no use other than to be driven, while the Attachments and Additional Components are, as Taxpayer agrees, all but devoid of use until they're incorporated into other tangible personal property, such as the New Trucks. The incorporation process places tangible personal property in a form, composition, and character vastly different from that in which it was acquired.

Moreover, the change in the New Trucks' form, composition, and character is a "substantial change" that results "in a transformation of property into a different product having a distinctive name, character, and use." The resulting name, character, and use is dependent upon which Finished Product Taxpayer produces. Cab-and-chassis trucks with no specific use will be transformed into Finished Products, each with a very specific use that differs from that of the original cab-and-chassis truck. Therefore, with respect to Taxpayer's newly contemplated line of business, its proposed activities qualify as "direct production, manufacture, fabrication, assembly, or finishing of tangible personal property."

Accordingly, all of the requirements for successfully claiming the exemption found in Ind. Code § 6-2.5-5-6 with respect to Taxpayer's purchases of New Trucks have been met. Taxpayer's purchases of New Trucks that it intends to modify through its incorporation process are exempt from sales tax under Ind. Code § 6-2.5-5-6 when Taxpayer modifies the New Trucks at its own facilities by incorporating Additional Components and Attachments to the ultimate end of selling the Finished Products to its customers.

Taxpayer's second question asks whether the same purchases of New Trucks would be exempt from sales tax under Ind. Code § 6-2.5-5-6 if part or all of the incorporation process is contracted out to a third party and

performed at the third party's facilities.

Taxpayer suggests that because the incorporation process would be the same even if performed by a third party, it would still meet all three of the requirements set forth in [45 IAC 2.2-5-14\(d\)](#). Taxpayer goes on to note that "there is neither an explicit statement nor an implicit suggestion in Ind. Code § 6-2.5-5-6 or [45 IAC 2.2-5-14](#) that the incorporation process must be performed exclusively by the taxpayer seeking to utilize the incorporation exemption." With respect to the first suggestion, Taxpayer is incorrect. Taxpayer is correct as to its second statement.

Regardless of who performs the incorporation process, the process itself still qualifies as direct manufacturing or assembly pursuant to the department's regulations. However, Ind. Code § 6-2.5-5-6 is applicable only when "the person acquiring the property acquires it for incorporation as a material part of other tangible personal property which the purchaser manufactures" Furthermore, [45 IAC 2.2-5-14\(a\)](#) states, "The state gross retail tax shall not apply to sales of any tangible personal property which is to be incorporated by the purchaser" [45 IAC 2.2-5-14\(d\)\(3\)](#) says, "The tangible personal property must be produced for sale by the purchaser." And finally, [45 IAC 2.2-5-14\(e\)\(3\)](#) provides, "The finished product must be produced for sale by the purchaser." All four provisions make it clear that the purchaser of the tangible personal property must also be the party actively engaged in process that transforms the property into the finished product. Taxpayer is correct in that none of the four provisions cited explicitly states or implicitly suggests that the incorporation process must be performed exclusively by the taxpayer seeking to utilize the incorporation exemption.

Accordingly, whether a third party may perform part or all of the incorporation process has significant bearing on the proper invocation of the sales tax exemption contained in Ind. Code § 6-2.5-5-6. Taxpayer's purchases of New Trucks are not exempt from sales tax if the entire incorporation process is contracted out to a third party and performed at the third party's facilities. At that point, Taxpayer would not be actively engaged in any incorporation process, as the incorporation process performed by the third party would be its own. On the other hand, because there is no explicit requirement or implicit suggestion that the incorporation process must be performed exclusively by Taxpayer, Taxpayer's integrated series of operations, which transforms New Trucks into Finished Products, may include industrial services provided by a third party. When a third party performs only part of Taxpayer's incorporation process, Taxpayer's purchases of New Trucks are exempt from sales tax.

RULING

Taxpayer's purchases of new cab-and-chassis trucks are exempt from the state gross retail tax under Ind. Code 6-2.5-5-6 if Taxpayer modifies these trucks at its own facilities by incorporating other components and one of three different kinds of attachments to the ultimate end of selling the finished products to its customers.

Taxpayer's purchases of cab-and-chassis trucks are not exempt from the state gross retail tax under Ind. Code 6-2.5-5-6 if the incorporation of other components and one of three different kinds of attachments into the trucks is performed entirely by a third party at the third party's facilities for the same ultimate purpose of selling finished products to Taxpayer's customers.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford taxpayer any protection.

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