

DEPARTMENT OF STATE REVENUE

Revenue Ruling #2016-05ST
July 27, 2016

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ISSUES

Sales and Use Tax - Sale of CO₂ and Rental of Bulk CO₂ Tanks and High Pressure Cylinders.

Authority: [IC 6-2.5-1-5](#); [IC 6-2.5-1-11.5](#); [IC 6-2.5-2-1](#); [IC 6-2.5-2-2](#); [IC 6-2.5-3-7](#); [IC 6-2.5-4-10](#); [IC 6-2.5-5-6](#); [IC 6-2.5-5-8](#); [IC 6-2.5-5-9](#); [IC 6-8.1-5-4](#); [45 IAC 2.2-3-20](#); [45 IAC 2.2-4-27](#); [45 IAC 2.2-5-14](#); [45 IAC 2.2-5-16](#); *Brambles Indus., Inc. v. Indiana Dep't of State Revenue*, 892 N.E.2d 1287 (Ind. T.C. 2008); *R.R. Donnelley & Sons Co. v. Indiana Dep't of State Revenue*, 41 N.E.3d 1053 (Ind. T.C. 2015).

A company ("Taxpayer") is seeking a Revenue Ruling ("Ruling") regarding Indiana sales tax treatment of the following:

- I. Rental of bulk CO₂ tanks and high-pressure cylinders to Indiana customers;
- II. Sale of CO₂ to Indiana customers;
- III. Invoiced amounts that do not separately state rental charges for the CO₂ tanks and sales charges for the CO₂; and
- IV. Fees, charges and surcharges in connection with rental of the CO₂ tanks and sales of the CO₂.

STATEMENT OF FACTS

Taxpayer provides the following facts regarding its request for a Ruling. Taxpayer, a wholesale company located in a state other than Indiana, provides its Indiana customers with liquid and gaseous carbon dioxide for use in beverage carbonation systems. In relevant part, Taxpayer notes:

Taxpayer's customers include restaurants, convenience stores, movie theaters, theme parks and sports venues. Taxpayer delivers liquid CO₂ to customers that is stored in a stainless steel cryogenic tank installed at the customer's premises ("Bulk CO₂ Tank" [or "Tank"]) while gas CO₂ is delivered to customers in portable cast iron steel containers ("High Pressure Cylinder" [or "Cylinder"]). The customer connects the Bulk CO₂ Tank or the High Pressure Cylinder to its beverage carbonation machine (a soda fountain) where the liquid or gas CO₂ is mixed with water and soda syrup (obtained by the customer from a third party vendor) to produce a fountain soda. Taxpayer's customers sell fountain sodas to their patrons, each of whom pays sales tax, as appropriate, on his or her purchase of the fountain soda. When the liquid CO₂ in a Bulk CO₂ Tank or gas CO₂ in a High Pressure Cylinder runs out, Taxpayer refills it and continues to do so until the relationship terminates. Upon termination, the customer is obligated to return the Bulk CO₂ Tank or High Pressure Cylinder to Taxpayer.

Taxpayer therefore engages in two transactions with its customers. First, it rents the Bulk CO₂ Tanks and High Pressure Cylinders and second, it sells liquid and gas CO₂.

In addition, a Taxpayer customer may be charged the following fees, charges and surcharges: (a) delivery fees for delivering liquid CO₂ or High Pressure Cylinder containing gas; (b) energy/fuel surcharge; (c) hazardous materials fees (for handling hazardous materials and regulatory compliance); (d) Bulk CO₂ Tank inspection and/or permit fee (also for regulatory compliance); and (e) personal property tax charge.

Taxpayer asked for further guidance on October 8, 2015, reiterating that the Bulk CO₂ Tank is installed at their customer's location, and asking for clarification on the meaning of "returnable container." Taxpayer provides the following additional information for consideration:

Our company . . . provides our customers with [CO₂] that is used to carbonate the sodas in their fountain machines. The [CO₂] is provided to them in the form of Large Tanks or smaller High Pressure Cylinders. Both are leased to the customer and refilled by us once completed.

...

Our Bulk CO₂ Tanks are initially delivered empty to the customer's location and remain on location to be refilled as need be. They are not returned until the customer does not renew their contract or their business closes down. Once delivered, the tank could remain on the premises for years being refilled on location. It is used for storage and not returned to be refilled. Please clarify if we should be taxing the lease/rental of such Tanks.

Our High Pressure Cylinders are smaller than the Tanks and are delivered filled. Once the cylinder is depleted, it is returned to be refilled and redelivered. Though the cylinder is returned to be refilled, it is still used for storage at the customer's location and remains at location for extended periods of time. Please clarify the taxation of the lease/rental of such Cylinders.

DISCUSSION

Part I. Rental of bulk CO₂ tanks and high-pressure cylinders to Indiana customers

In general, and pursuant to [IC 6-2.5-2-1](#), sales tax is imposed on retail transactions made in Indiana. Pursuant to [IC 6-2.5-4-10\(a\)](#), "[a] person, other than a public utility, is a retail merchant making a retail transaction when he rents or leases tangible personal property to another person other than for subrent or sublease."

The Department's regulation found at [45 IAC 2.2-4-27\(c\)](#) explains further:

In general, the gross receipts from renting or leasing tangible personal property are subject to tax. The rental or leasing of tangible personal property constitutes a retail transaction, and every lessor is a retail merchant with respect to such transactions. The lessor must collect and remit the gross retail tax or use tax on the amount of actual receipts as agent for the state of Indiana. The tax is borne by the lessee, except when the lessee is otherwise exempt from taxation.

However, an exemption from sales tax is provided for returnable containers. [IC 6-2.5-5-9](#) provides in relevant part:

- (a) As used in this section, "returnable containers" means containers customarily returned by the buyer of the contents for reuse as containers.
- (b) Sales of returnable containers are exempt from the state gross retail tax if the transaction constitutes selling at retail as defined in [IC 6-2.5-4-1](#) and if the returnable containers contain contents.
- (c) Sales of returnable containers are exempt from the state gross retail tax if the containers are transferred empty for the purpose of refilling.

The Department's regulation found at [45 IAC 2.2-5-16](#) clarifies two scenarios regarding returnable containers sold at retail that may be applicable to Taxpayer's situation. [45 IAC 2.2-5-16](#) as a whole then states:

- (a) The state gross retail tax shall not apply to sales of nonreturnable wrapping materials and empty containers to be used by the purchaser as enclosures or containers for selling contents to be added, and returnable containers containing contents sold in a sale constituting selling at retail and returnable containers sold empty for refilling.
- (b) In general the gross proceeds from the sale of tangible personal property in a transaction of a retail merchant constituting selling at retail are taxable. This regulation [[45 IAC 2.2](#)] provided an exemption for wrapping materials and containers.
- (c) 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.**
- (d) Application of general rule.
 - (1) Nonreturnable wrapping material and empty containers. To qualify for this exemption, nonreturnable wrapping materials and empty containers must be used by the purchaser in the following way:
 - (A) The purchaser must add contents to the containers purchased; and
 - (B) The purchaser must sell the contents added.

(2) Returnable containers sold at retail with contents. To qualify for this exemption, the returnable containers must be:

(A) Sold in a taxable transaction of a retail merchant constituting selling at retail; and

(B) Billed as a separate charge by the retail merchant to his customer. If there is a separate charge for such containers, the sale of the container is exempt from tax under this regulation [45 IAC 2.2].

(3) Returnable containers sold empty. To qualify for this exemption the returnable container must be resold with the purpose of refilling. The sale of returnable containers to the original or first user thereof is taxable.

(e) Definitions.

(1) Returnable containers. As used in this regulation [45 IAC 2.2], the term returnable container means containers customarily returned by the buyer of the contents for reuse as containers.

(2) Nonreturnable containers. As used in this regulation [45 IAC 2.2], the term "nonreturnable containers" means all containers which are not returnable containers.

(Emphasis added).

In *Brambles Indus., Inc. v. Indiana Dep't of State Revenue*, 892 N.E.2d 1287 (Ind. T.C. 2008), the Indiana Tax Court established an interpretation for "returnable containers," stating the following:

Nonreturnable containers are defined as "containers which are not returnable containers." 45 I.A.C. 2.2-5-16(e)(2). Returnable containers are defined as "containers customarily returned by the buyer of the contents for reuse as containers." A.I.C. § 6-2.5-5-9(a); 45 I.A.C. 2-5-16(e)(1). To the extent that the statute and regulation do not define the word "return," *1291 the Court will give it its plain, ordinary, and usual meaning, as defined in the dictionary. See *Johnson County Farm Bureau Coop. Ass'n v. Indiana Dep't of State Revenue*, 568 N.E.2d 578, 580-81 (Ind. Tax Ct.1991), aff'd by 585 N.E.2d 1336 (Ind.1992). "Return" is defined as "to pass back to an earlier possessor" and "to bring, send, or put (a person or thing) back to or in a former position." Webster's Third New Int'l Dictionary 1941 (2002 ed.).

Neither the statute, the regulation, nor the dictionary definition of the word "return" require that the container go back to the person from whom it was immediately acquired in order to be considered "returned," as the manufacturers contend. It is enough that the pallets are "pass[ed] back to an earlier possessor," which in this case is *Chep. Id.* Consequently, the Court concludes the pallets are returnable containers and therefore the manufacturers' lease payments do not qualify for the nonreturnable container exemption.

Id. at 1290-91.

The Tax Court further ruled in *R.R. Donnelley & Sons Co. v. Indiana Dep't of State Revenue*, 41 N.E.3d 1053 (Ind. T.C. 2015) that a customer need not have an obligation to return a container for a container to be considered a "returnable container:"

RR Donnelley first asserts that the pallets are not "returnable containers" because neither it nor its retailer customers are obligated to return the pallets. (See, e.g., *Pet'r Br.* at 11, 18-19.) This Court has previously stated that the word, "return" for purposes of the Nonreturnable Container Exemption, means "to pass back to an earlier possessor" and "to bring, send, or put (a person or thing) back to or in a former position." *Brambles Indus., Inc. v. Indiana Dep't of State Revenue*, 892 N.E.2d 1287, 1291 (Ind. Tax Ct.2008) (citing Webster's Third New Int'l Dictionary 1941 (2002 ed.).) Nothing in that definition indicates that the word "return" means more precisely "obligated to return." Moreover, the fact that the taxpayer in *Brambles* was contractually obligated to return the pallets, but neither RR Donnelley nor its retailer customers are here, is immaterial. Indeed, the import of the obligation in *Brambles* was simply to answer the question "to whom the pallets must be returned," not to determine whether there was an obligation to return them. *Id.* Accordingly, RR Donnelley's argument is unpersuasive.

Id. at 1056.

With that being said, in answer to Taxpayer's question regarding whether the Bulk CO₂ Tank or the High Pressure Cylinders are "returnable containers" or "nonreturnable containers," Taxpayer's containers are intended to return to Taxpayer, even if there is no obligation to return them for some time. Based on that, both the Tanks and the Cylinders are "returnable containers."

[IC 6-2.5-5-9](#) provides two exemptions for returnable containers. The first exemption found in [IC 6-2.5-5-9\(b\)](#) and clarified in [45 IAC 2.2-5-16\(c\)\(2\)](#) and (d)(2) involves returnable containers sold at retail with contents. This

exemption would not apply to the Bulk CO₂ Tanks because the Tanks are sold empty and filled after installation. As for the High Pressure Cylinders, Taxpayer states that it rents the Cylinders filled with CO₂ and that the Cylinders are returned to be refilled. However, it should be noted that the exemption in [IC 6-2.5-5-9\(b\)](#) only applies to the deposit for a returnable container sold with contents, as clarified by [45 IAC 2.2-5-16\(c\)\(2\)](#). A deposit is money given to the a retail merchant with the intention that it will be returned, as opposed to lease or rental payments, which are kept by the retail merchant. If the sale of the Cylinders is a true lease arrangement, then sales tax must be collected on each lease payment pursuant to [IC 6-2.5-4-10](#), since the exemption in [IC 6-2.5-5-9\(b\)](#) only applies to the deposit, as clarified by [45 IAC 2.2-5-16\(c\)\(2\)](#). On the other hand, if there is a deposit fee, the exemption in [IC 6-2.5-5-9\(b\)](#) applies and that deposit fee is exempt as long as Taxpayer's customers are billed separately for the deposit fee for the Cylinder and the cost of the CO₂ contained therein.

Conversely, if the invoices do not list a separate amount for the deposits for the Cylinders, then it would be assumed that the customers are renting or leasing "returnable containers," and not actually paying a deposit for the containers. Nevertheless, when a taxpayer can reasonably identify exempt charges based on the taxpayer's books and records kept in the regular course of business, the Department may grant an exemption for otherwise exempt products. In the case at hand, if Taxpayer's deposit charges of the high-pressure cylinders that qualify for an exemption under [IC 6-2.5-5-9](#) are not separately stated on invoices to Taxpayer's customers, then the entire amount of the invoice is subject to taxation. However, if Taxpayer can reasonably identify and segregate exempt charges from any non-exempt charges on the invoice, then the Department will allow the exemption for the otherwise exempt products. If all the charges on the invoice relate to otherwise exempt products, no segregation is necessary.

The second exemption in [IC 6-2.5-5-9\(c\)](#) and clarified in [45 IAC 2.2-5-16\(c\)\(3\)](#) and (d)(3) involves returnable containers that are sold empty. This exemption would not apply to the Cylinders, since they are sold with contents. Further, the exemption in [IC 6-2.5-5-9\(c\)](#) is for the seller of gas to purchase "returnable containers" from the manufacturer or seller of such containers without having to pay sales tax as long as they then resell the containers to be refilled with contents. It is essentially like the "sale for resale" exemption found in [IC 6-2.5-5-8](#), where purchase by the vendor of an item that the vendor will subsequently resell is exempt from sales tax. In this case, the sale of the container to Taxpayer is exempt; the lease thereafter to the user of the "returnable container" is not exempt. Therefore, this exemption would not apply to the Bulk CO₂ Tanks either, as Taxpayer's customers are not purchasing "returnable containers" from the manufacturer or seller of containers for the purpose of reselling.

Instead, if the Tanks are rented without the addition of contents, the rental of the Tanks fall under [IC 6-2.5-4-10](#) and Taxpayer must collect rent on each periodic rental transaction.

Part I. Ruling

Taxpayer's Bulk CO₂ Tanks and High Pressure Cylinders are returnable containers. Taxpayer's leases of the Bulk CO₂ Tanks are not exempt from Indiana sales tax. Taxpayer's leases of the Cylinders are also subject to sales tax.² However, if Taxpayer charges for deposits for high-pressure Cylinders, the deposit fees (which are payments made to the retail merchant and returned at a later date) are exempt from Indiana sales tax, provided that the charges for the deposit and charges for the CO₂ are either separately stated on applicable invoices or are reasonably identifiable and capable of segregation from any non-exempt charges, such as charges for leasing the Cylinders or Tanks.

Part II. Sale of CO₂ to Indiana customers

Generally, Taxpayer's sales of CO₂ to its Indiana customers qualify as retail transactions subject to sales tax. However, an exemption from Indiana sales tax is provided under [IC 6-2.5-5-6](#), which states in relevant part:

Transactions 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 regulation found at [45 IAC 2.2-5-14\(b\)](#) adds:

The exemption provided by this regulation [[45 IAC 2.2](#)] applies only to tangible personal property to be incorporated as a material or an integral part into tangible personal property produced for sale by a purchaser engaged in the business of manufacturing, assembling, refining or processing. This regulation [[45 IAC 2.2](#)] does not apply to persons engaged in producing tangible personal property for their own use.

The Department's regulation found at [45 IAC 2.2-5-14](#)(d) qualifies the definition of tangible personal property that has been "incorporated as a material or an integral part" of property "produced for sale" to mean:

- (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.

In the situation at hand, Taxpayer asserts that its customers mix CO₂ in with other materials in beverage carbonation machines in order, ultimately, to produce fountain soda or beer. Taxpayer's customers then sell, as part of their normal business practices, the fountain soda or beer to their patrons. As such, the use of the CO₂ by Taxpayer's customers satisfies the requirements of [IC 6-2.5-5-6](#) and [45 IAC 2.2-5-14](#)(d).

On the other hand, it should be noted that the use of the Cylinders and Tanks do not satisfy the requirements of [IC 6-2.5-5-6](#) and [45 IAC 2.2-5-14](#)(d), because they are not incorporated as a material part of other tangible personal property which the purchaser manufactures. Furthermore, they are not exempt under [IC 6-2.5-5-3](#), because the Cylinders and Tanks are not directly used in the direct production of tangible personal property since they do not have an immediate effect on the beer or soda being produced. See [45 IAC 2.2-5-8](#). The Cylinders and Tanks merely store CO₂, which is not directly used in the direct production of beer or soda, but rather is incorporated as a material part of the manufactured beer or soda.

If the charges for the CO₂ are separately stated from the charges for the Bulk CO₂ Tanks or High Pressure Cylinders, Taxpayer can sell CO₂ to its customers who incorporate the CO₂ in the manufacturing of beer and fountain soda exempt from sales tax. Having said that, Taxpayer must receive a properly completed Sales Tax Exemption Certificate (Form ST-105) from these customers before it can sell the CO₂ without assessing sales tax. [IC 6-2.5-3-7](#) provides in pertinent part:

- (a) A person who acquires tangible personal property from a retail merchant for delivery in Indiana is presumed to have acquired the property for storage, use, or consumption in Indiana. However, the person or the retail merchant can produce evidence to rebut that presumption.
- (b) A retail merchant is not required to produce evidence of nontaxability under subsection (a) if the retail merchant receives from the person who acquired the property an exemption certificate which certifies, in the form prescribed by the department, that the acquisition is exempt from the use tax.

[IC 6-2.5-8-8](#) goes on to provide in relevant part the following:

- (a) A person, authorized under subsection (b), who makes a purchase in a transaction which is exempt from the state gross retail and use taxes, may issue an exemption certificate to the seller instead of paying the tax. The person shall issue the certificate on forms and in the manner prescribed by the department. A seller accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail or use tax on that purchase.
- ...
- (d) A seller that accepts an incomplete exemption certificate under subsection (a) is not relieved of the duty to collect gross retail or use tax on the sale unless the seller obtains:
 - (1) a fully completed exemption certificate; or
 - (2) the relevant data to complete the exemption certificate;within ninety (90) days after the sale.
- (e) If a seller has accepted an incomplete exemption certificate under subsection (a) and the department requests that the seller substantiate the exemption, within one hundred twenty (120) days after the department makes the request the seller shall:
 - (1) obtain a fully completed exemption certificate; or
 - (2) prove by other means that the transaction was not subject to state gross retail or use tax.

Therefore, as long as Taxpayer receives a properly completed Sales Tax Exemption Certificate from these customers, and provided that the charges for the CO₂ are separately stated from the charges for the Bulk CO₂ Tanks or High Pressure Cylinders, Taxpayer may sell CO₂ without charging Indiana sales tax. If Taxpayer does not receive an exemption certificate, Taxpayer is strictly liable for the sales tax if the customer uses the property in a non-exempt manner.

Part II. Ruling

Since Taxpayer's customers use CO₂ in manufacturing, Taxpayer may sell CO₂ without charging Indiana sales tax to these customers as long as they provide Taxpayer with an exemption certificate, and provided that the charges for the CO₂ are separately stated from the charges for the Bulk CO₂ Tanks or High Pressure Cylinders.

Part III. Invoiced amounts that do not separately state rental charges for the CO₂ tanks and sales charges for the CO₂

Pursuant to [IC 6-2.5-1-11.5\(b\)](#), whenever two or more otherwise distinct and identifiable products are sold for one non-itemized price, the sale is considered a "bundled transaction." Such a transaction is a retail transaction and subjects all the products sold for the non-itemized price to taxation. [IC 6-2.5-4-15\(b\)](#).

Nevertheless, when a taxpayer can reasonably identify exempt charges based on the taxpayer's books and records kept in the regular course of business and in accordance with [IC 6-8.1-5-4](#), the Department may grant an exemption for otherwise exempt products. In the case at hand, if Taxpayer's deposit fees for the high-pressure cylinders that qualify for an exemption under [IC 6-2.5-5-9](#) or charges for CO₂ exempt under [IC 6-2.5-5-6](#) are not separately stated on invoices to Taxpayer's customers from lease or rental charges for the returnable containers, then the entire amount of the invoice is subject to taxation. However, if Taxpayer can reasonably identify and segregate exempt charges from any non-exempt charges on the invoice, then the Department will allow the exemption for the otherwise exempt products. If all the charges on the invoice relate to otherwise exempt products, no segregation of charges is necessary to maintain applicable exemptions.

Part III. Ruling

Taxpayer's deposit fees for high-pressure cylinders as well as Taxpayer's sales of CO₂ to its customers are exempt from Indiana sales tax, provided that charges for these products are either separately stated on applicable invoices or are reasonably identifiable and capable of segregation from any non-exempt charges, such as for leasing or renting the Bulk CO₂ Tanks or High Pressure Cylinders. If, however, the entire charge related to a bundled transaction consists of sub-charges for otherwise exempt products, the lack of segregation of charges will not result in taxability.

Part IV. Fees, charges and surcharges in connection with rental of the CO₂ tanks and sales of the CO₂

The sales tax that is imposed on retail transactions made in Indiana, pursuant to [IC 6-2.5-2-1](#), is measured by the gross retail income received by a retail merchant in a retail unitary transaction. [IC 6-2.5-2-2\(a\)](#). Gross retail income in Indiana is defined at [IC 6-2.5-1-5](#). In relevant part, subsection (a) defines gross retail income to include:

- . . . the total gross receipts, of any kind or character, received in a retail transaction, including cash, credit, property, and services, for which tangible personal property is sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for:
- (1) the seller's cost of the property sold;
 - (2) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
 - (3) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
 - (4) delivery charges; or
 - (5) consideration received by the seller from a third party if:
 - (A) the seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;
 - (B) the seller has an obligation to pass the price reduction or discount through to the purchaser;
 - (C) the amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and
 - (D) the price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser.

For purposes of subdivision (4), delivery charges are charges by the seller for preparation and delivery of the property to a location designated by the purchaser of property, including but not limited to transportation, shipping, postage charges that are not separately stated on the invoice, bill of sale, or similar document, handling, crating, and packing. Delivery charges do not include postage charges that are separately stated on the invoice, bill of sale, or similar document.

However, pursuant to [IC 6-2.5-1-5\(b\)](#), gross retail income does not include:

- (1) the value of any tangible personal property received in a like kind exchange in the retail transaction, if the value of the property given in exchange is separately stated on the invoice, bill of sale, or similar document given to the purchaser;
- (2) the receipts received in a retail transaction which constitute interest, finance charges, or insurance premiums on either a promissory note or an installment sales contract;
- (3) discounts, including cash, terms, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;
- (4) interest, financing, and carrying charges from credit extended on the sale of personal property if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;
- (5) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser; or
- (6) installation charges that are separately stated on the invoice, bill of sale, or similar document given to the purchaser;
- (7) telecommunications nonrecurring charges; or
- (8) postage charges that are separately stated on the invoice, bill of sale, or similar document.

In the case at hand, Taxpayer charges its customers the following fees, charges and surcharges: (a) delivery fees for delivering liquid CO₂ or High Pressure Cylinder containing gas; (b) energy/fuel surcharge; (c) hazardous materials fees (for handling hazardous materials and regulatory compliance); (d) Bulk CO₂ Tank inspection and/or permit fee (also for regulatory compliance); and (e) personal property tax charge.

Delivery fees are included explicitly in gross retail income pursuant to [IC 6-2.5-1-5\(a\)\(4\)](#) and are, therefore, subject to sales tax. Unless items (b) through (e) described above represent taxes legally imposed directly on Taxpayer's customers and not on Taxpayer, and also are separately stated on the invoice, they are also included in gross retail income and subject to sales tax.

Part IV. Ruling

To the extent that Taxpayer's fees, charges and surcharges, including items (a), (b), (c), (d) and (e) described above, are not separately stated or do not represent taxes legally imposed directly on Taxpayer's customers (or do not qualify under any of the other exclusions from gross retail income found at [IC 6-2.5-1-5\(b\)](#)), such fees, charges and surcharges represent recognized elements of gross retail income and, accordingly, are subject to Indiana sales tax.

CONCLUSION

Taxpayer's leases of the Bulk CO₂ Tanks and High-Pressure Cylinders are subject to Indiana sales tax. However, deposit fees for the Cylinders are exempt from sales tax provided that charges are either separately stated on applicable invoices or are reasonably identifiable and capable of segregation from any non-exempt charges.

Since Taxpayer's customers use CO₂ in manufacturing, Taxpayer may sell CO₂ without charging Indiana sales tax to these customers as long as they provide Taxpayer with an exemption certificate, and provided that the charges for the CO₂ are separately stated from the charges for the Bulk CO₂ Tanks or High Pressure Cylinders.

Both Taxpayer's deposit fees for the Cylinders as well as Taxpayer's sales of CO₂ to its customers are exempt from Indiana sales tax, provided that charges for these products are either separately stated on applicable invoices or are reasonably identifiable and capable of segregation from any non-exempt charges, such as for leasing or renting the Tanks or Cylinders. If, however, the entire charge related to a bundled transaction consists of sub-charges for otherwise exempt products, the lack of segregation of charges will not result in taxability.

To the extent that Taxpayer's fees, charges and surcharges, including items (a), (b), (c), (d) and (e) described above, are not separately stated or do not represent taxes legally imposed directly on Taxpayer's customers (or do not qualify under any of the other exclusions from gross retail income found at [IC 6-2.5-1-5\(b\)](#)), such fees, charges and surcharges represent recognized elements of gross retail income and, accordingly, are subject to Indiana sales tax.

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 the taxpayer any protection.

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