

Memorandum of Decision: 04-20160617R
Indiana Sales Tax
For Tax Years 2013 - 2015

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HOLDING

Publisher's utility purchases were exempt under the predominant use test.

ISSUE

I. Sales Tax - Exemption.

Authority: IC § 6-2.5-1-2; IC § 6-2.5-2-1; IC § 6-2.5-4-1; IC § 6-2.5-4-5; IC § 6-2.5-1-27(2); IC § 6-2.5-5-3; IC § 6-2.5-5-5.1; [45 IAC 2.2-2-1](#); [45 IAC 2.2-4-13](#)(e); Sales Tax Information Bulletin 55 (May 2012).

Taxpayer protests the partial denial of refund it requested of sales tax paid on certain utility purchases.

STATEMENT OF FACTS

Taxpayer, an Indiana corporation, prints three newspapers at its Indiana publishing facility on a weekly basis. Taxpayer has a single meter which powers its entire publishing facility. Taxpayer also has two separate locations which house its administrative operations. In January 2016, Taxpayer submitted a Claim for Refund ("GA-110L") for sales tax paid on utility purchases made to power the publishing facility for tax years 2012 - 2015. In support of its claim, Taxpayer submitted summaries of tax paid, copies of invoices and explanations of the items used in its printing operation.

The Indiana Department of Revenue ("Department") granted the refund in part and denied it in part. Specifically, the Department denied the amount claimed for tax year 2012 as it had surpassed the statute of limitations for claiming refunds. The Department also denied \$4,057.36 of refund as it pertained to the publishing facility, because Taxpayer "[did] not have an exemption on file under this Tax Identification Number"

Taxpayer timely protested. An administrative hearing was held. This Memorandum of Decision results. Additional facts will be supplied as required.

I. Sales Tax - Exemption.

DISCUSSION

Taxpayer believes that the utilities it purchased for its publishing facility should be exempt as the utilities were used in a manufacturing process. The Department argued that these purchases cannot be exempt because Taxpayer did not have an exemption on file.

Indiana imposes a sales tax on retail transactions made in Indiana. IC § 6-2.5-2-1(a); [45 IAC 2.2-2-1](#). A retail transaction is a transaction made by a retail merchant that constitutes "selling at retail." IC § 6-2.5-1-2(a). Selling at retail occurs when a person "(1) acquires tangible personal property for the purpose of resale; and (2) transfers that property to another person for consideration." IC § 6-2.5-4-1(b). Tangible personal property includes electricity and gas. IC § 6-2.5-1-27(2). A person who acquires tangible personal property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b).

The legislature has deemed it appropriate to allow a number of specific sales tax exemptions. See IC § 6-2.5-5-1 et seq. For purposes of these exemptions, commercial printing is "treated as the production and manufacture of tangible personal property." IC § 6-2.5-5-3(a)(2). Under [IC 6-2.5-5-5.1](#):

(a) "[T]angible personal property" includes electrical energy, natural or artificial gas, water, steam, and steam

heat.

(b) Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for direct consumption as a material to be consumed in the direct production of other tangible personal property in the person's business of manufacturing, processing, refining, repairing, mining, agriculture, horticulture, floriculture, or arboriculture. **This exemption includes transactions involving acquisitions of tangible personal property used in commercial printing. (Emphasis added).**

The Department has offered additional guidance on the taxability of utility purchases. Utility transactions are exempt from sales and use tax when the sales "are (1) by public utilities or power subsidiaries; (2) used in manufacturing, production, etc.; and (3) either separately metered or predominately used in an excluded manner." Sales Tax Information Bulletin 55 (May 2012), 20120530 Ind. Reg. 045120251NRA. See also Sales Tax Information Bulletin 55 (August 2011), 2011098 Ind. Reg. 045110518NRA.

To clarify, utility transactions are sales tax exempt provided:

[T]he services are consumed as an essential and integral part of an integrated process that produces tangible personal property and those sales are separately metered for the excepted uses listed in this subdivision, or if those sales are not separately metered but are **predominately used** by the purchaser for the excepted uses listed in this subdivision. (IC § 6-2.5-4-5(c)(3) as in effect for the tax years at issue) **(emphasis added)**.

"Predominately used" has been defined as:

Where public utility services are sold from a single meter and the services or commodities are utilized for both exempt and nonexempt uses, the entire gross receipts will be subject to tax unless the services or commodities are used predominately for excepted purposes. Predominant use shall mean that more than fifty percent (50[percent]) of the utility services and commodities are consumed for excepted uses. [45 IAC 2.2-4-13\(e\)](#).

Generally, to qualify for predominate use, a purchaser of a utility must show that more than fifty percent of the utility is used "as an essential and integral part of an integrated part of an integrated production process." Sales Tax Information Bulletin 55 (May 2012).

The issue in this case is not whether the exemption applies to Taxpayer, but rather whether Taxpayer's purchase and use of the utility was exempt because its "production use" was significant enough to overcome the 50[percent] hurdle of predominate use.

Taxpayer did not provide adequate supporting documentation with its GA-110L to prove that its utility purchases were exempt under the predominant use test. However, at the administrative hearing, Taxpayer provided the Department with a utility study conducted on the publishing facility and meter in question. Subsequent to the hearing, the Department's experts analyzed this utility study and determined that Taxpayer's utility purchases qualified for exemption under the predominant use test.

FINDING

Taxpayer's protest is sustained.

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