

**Supplemental Memorandum of Decision: 04-20160270R**  
**Sales Tax**  
**For The Tax Years 2011-13**

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**HOLDING**

Business was able to produce sufficient documentation and analysis to establish that repair parts for equipment used in its restaurant qualified for the manufacturing exemption. Therefore, refund of sales tax previously paid was warranted.

**ISSUE**

**I. Sales Tax—Manufacturing Exemption.**

**Authority:** IC § 6-2.5-2-1; IC § 6-2.5-5-3; IC § 6-8.1-9-1; Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014); Aztec Partners LLC v. Ind. Dept. of State Revenue, 35 N.E.3d 230 (Ind. Tax 2016).

Taxpayer protests the denial of a claimed refund of sales tax.

**STATEMENT OF FACTS**

Taxpayer is an Indiana business operating several restaurants. Taxpayer filed a claim for refund of sales tax it paid during the tax years 2011, 2012, and 2013 ("Tax Years") on repair parts for soft drink machines used in its restaurants. The Indiana Department of Revenue ("Department") determined that Taxpayer had not provided sufficient documentation to verify its refund claim and therefore denied the claim. Taxpayer filed a protest of that denial. An administrative hearing was scheduled, but neither Taxpayer nor its representative appeared or contacted the Hearing Officer at that time. According to Department policy, the protest was deemed withdrawn. Taxpayer filed a written request for rehearing, which was granted. In the course of the rehearing, Taxpayer explained the basis for its claim for refund. This Supplemental Memorandum of Decision results. Further facts will be presented as required.

**I. Sales Tax—Manufacturing Exemption.**

**DISCUSSION**

Taxpayer protests the denial of a claim for refund of sales tax it paid on restaurant equipment repair parts in 2011-13. Taxpayer states that its vendor charged sales tax on repairs to soft drink machines used in its restaurants, but that this equipment was exempt from sales tax. Specifically, Taxpayer states that the equipment combined raw materials in the form of syrup and carbonated water to produce a new product in the form of a soft drink. Taxpayer therefore filed a claim for refund of the sales tax. The Department denied the claim on the basis that Taxpayer had not provided sufficient documentation to verify the claim. Subsequently, Taxpayer filed the instant protest along with additional documentation supporting its claim.

The Department notes that, "[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.

IC § 6-8.1-9-1(a) states:

If a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for a refund with the department. Except as provided in subsections (f) and (g), in

order to obtain the refund, the person must file the claim with the department within three (3) years after the latter of the following:

- (1) The due date of the return.
- (2) The date of payment.

For purposes of this section, the due date for a return filed for the state gross retail or use tax, the gasoline tax, the special fuel tax, the motor carrier fuel tax, the oil inspection fee, or the petroleum severance tax is the end of the calendar year which contains the taxable period for which the return is filed. The claim must set forth the amount of the refund to which the person is entitled and the reasons that the person is entitled to the refund.

In this case, Taxpayer determined that it had paid more sales tax than was due for the Tax Years and so it filed the claim for refund. The Department did not approve that refund claim because Taxpayer did not substantiate the claim.

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.

Next, the Department refers to IC § 6-2.5-5-3(b), which states in part:

[T]ransactions 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.

Finally, in *Aztec Partners LLC v. Ind. Dept. of State Revenue*, 35 N.E.3d 230 (Ind. Tax 2016), the Indiana Tax Court issued an opinion on manufacturing as it applies to restaurants. In that opinion, the court provides:

The Indiana Supreme Court has explained that equipment used within an integrated production process qualifies for an exemption when the equipment has an "immediate effect" on the property being produced. See *Indiana Dep't of State Revenue v. Cave Stone, Inc.*, 457 N.E.2d 520, 525-27 (Ind.1983). The phrase "immediate effect" means that the equipment is "essential and integral" to the taxpayer's integrated production process. See *id.* Thus, Aztec's electricity will qualify for the consumption exemption if it was essential and integral to Aztec's integrated production process. *Id.* at 325-26.

Therefore, if a piece of equipment is essential and integral to the restaurant's integrated production process, it will qualify for the exemption found under IC § 6-2.5-5-3(b).

In the instant case, Taxpayer has provided sufficient documentation to establish that it paid sales tax on repair parts for soft drink machines which were used in an essential and integral manner to produce a new item of tangible personal property as part of Taxpayer's integrated production process. Thus, the equipment qualifies for the exemption provided by IC § 6-2.5-5-3(b). Since this was the Department's only stated reason for denying the claim for refund, Taxpayer has established that it is entitled to the claimed refund.

### FINDING

Taxpayer's protest is sustained.

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