

DEPARTMENT OF STATE REVENUE

04-20190067R(Redacted).ODR

Final Order Denying Refund Number: 04-20190067R
Sales Tax
For The 2017 Tax Year

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Order Denying Refund.

HOLDING

Indiana Business was not entitled to the refund because it failed to establish that its use of a truck qualified for the manufacturing exemption. As a result, the Indiana Department of Revenue properly denied Indiana Business' refund claim.

ISSUE**I. Sales Tax - Refund - Exemption.**

Authority: IC § 6-2.5-1-2; IC § 6-2.5-2-1; IC § 6-2.5-3-1; IC § 6-2.5-3-2; IC § 6-2.5-3-4; IC § 6-2.5-4-1; IC § 6-2.5-5-3; IC § 6-2.5-13-1; IC § 6-8.1-9-1; [45 IAC 2.2-3-4](#); [45 IAC 2.2-3-14](#); [45 IAC 2.2-2-1](#); [45 IAC 2.2-5-3](#); [45 IAC 2.2-5-6](#); [45 IAC 2.2-5-8](#); [45 IAC 2.2-5-9](#); [45 IAC 2.2-5-10](#); [45 IAC 15-9-2](#); *Rhoades v. Indiana Dep't of State Revenue*, 774 N.E.2d 1044 (Ind. Tax Ct. 2002); *Indiana Dep't of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454 (Ind. Ct. App. 1988); *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Mumma Bros. Drilling Co. v. Department of Revenue*, 411 N.E.2d 676 (Ind. Ct. App. 1980); *General Motors Corp. v. Indiana Dept. of State Revenue*, 578 N.E.2d 399 (Ind. Tax Ct. 1991); *Indiana Dep't of State Revenue v. Cave Stone, Inc.*, 457 N.E.2d 520 (Ind. 1983); Commissioner's Directive 13 (October 2015).

Taxpayer protests the refund denial of sales tax paid on a truck it purchased and used to conduct its business.

STATEMENT OF FACTS

Taxpayer is an Indiana company, which manufactures and supplies "power electronic controls for motors used in commercial and industrial applications." In 2018, Taxpayer filed a Form GA-110L, Claim for Refund (Claim Number 1866753). In its GA-110L Form, Taxpayer requested a refund of \$1,186.37 "sales/use tax paid for truck purchases"

The Indiana Department of Revenue ("Department") reviewed and denied the entire refund claim on October 29, 2018. Taxpayer protested the refund denial. A telephonic hearing was held. Taxpayer requested additional time to submit supporting documentation. This Final Order Denying Refund results. Further facts will be provided as necessary.

I. Sales Tax - Refund - Exemption.**DISCUSSION**

Taxpayer requested a refund of \$1,186.37 of "sales/use tax paid for truck purchases" Upon review, in the October 29, 2018, letter, the Department denied Taxpayer's claim, explaining:

The Indiana Code does not provide an exemption for a truck used in the manner described in the refund claim.

Taxpayer disagreed, claiming that it was entitled to a refund of the tax paid on the truck because its use of the truck - transporting the semi-finished products to its vendors' business locations for specialty processed - was exempt. Thus, the issue in this instance is whether the Department erred in denying Taxpayer's refund claim because Taxpayer's purchase and use of the truck qualified for the manufacturing exemption under Indiana law.

IC § 6-8.1-9-1(a) affords a taxpayer a statutory right to file a claim for refund, which, in relevant part, provides:

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. . . . [I]n 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 . . . 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.

[45 IAC 15-9-2](#) further explains, in relevant part, that:

(b) The department has no legal method of generating a claim for refund. A claim for refund can only be initiated pursuant to [IC 6-8.1-9-1](#).

(d) When filing a claim for refund with the department the taxpayer's claim shall set forth:

- (1) the amount of refund claimed;
- (2) **a sufficiently detailed explanation of the basis of the claim such that the department may determine its correctness;**
- (3) **the tax period for which the overpayment is claimed; and**
- (4) **the year and date the overpayment was made.**

The claim for refund shall be filed on a form prescribed by the department.
(**Emphasis added**).

Thus, when a taxpayer determines it overpaid sales or use tax, the taxpayer must file a GA-110L form as prescribed by the Department in order to claim a refund. IC § 6-8.1-9-1(a); [45 IAC 15-9-2](#); Commissioner's Directive 13 (October 2015), 20151125 Ind. Reg. 045150407NRA. The taxpayer also must clearly state "the amount of the refund," "detailed explanation of the basis of the claim such that the department may determine its correctness," "the tax period for which the overpayment is claimed," and "the year and date of the overpayment." [45 IAC 15-9-2](#).

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana, which includes sales of motor vehicles. 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). A person who acquires tangible person property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b). A retail sale is sourced to Indiana and therefore is subject to Indiana sales tax when the transaction is a "retail sale . . . of a product" and "the product is received by the purchaser at a business location of the seller [in Indiana]" IC § 6-2.5-13-1(d)(1). The purchaser in general "shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction." *Id.* "The retail merchant shall collect the tax as agent for the state." *Id.*

The Indiana use tax is imposed "on the storage, use, or consumption of a vehicle . . . if the vehicle . . . (1) is acquired in a transaction that is an isolated or occasional sale; and (2) is required to be titled, licensed, or registered by this state for use in Indiana." IC § 6-2.5-3-2 (b). "Use" means the "exercise of any right or power of ownership over tangible personal property." IC § 6-2.5-3-1(a). The use tax is generally functionally equivalent to the sales tax. See *Rhoads v. Indiana Dep't of State Revenue*, 774 N.E.2d 1044, 1047 (Ind. Tax Ct. 2002).

Accordingly, all purchases of tangible personal property are taxable unless specifically exempted under Indiana law. [45 IAC 2.2-5-3\(b\)](#); [45 IAC 2.2-5-6\(a\)](#); [45 IAC 2.2-5-8\(a\)](#); [45 IAC 2.2-5-9\(a\)](#); [45 IAC 2.2-5-10\(a\)](#). An exemption from the use tax is granted for transactions where the sales tax was paid at the time of purchase pursuant to IC § 6-2.5-3-4 and [45 IAC 2.2-3-4](#). See also [45 IAC 2.2-3-14\(1\)](#). There are various tax exemptions available outlined in [IC 6-2.5-5](#) which are applicable to both sales tax and use tax. [45 IAC 2.2-3-14\(2\)](#). A statute which provides a tax exemption, however, is strictly construed against the taxpayer. *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96, 97 (Ind. Ct. App. 1974). "[W]here such an exemption is claimed, the party claiming the same must show a case, by sufficient evidence, which is clearly within the exact letter of the law." *Id.* at 101 (internal citations omitted). In applying any tax exemption, the general rule is that "tax exemptions are

strictly construed in favor of taxation and against the exemption." *Indiana Dep't of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454, 456 (Ind. Ct. App. 1988). Thus, in order for Taxpayer to prevail on the issue it raised and received a refund of sales tax, Taxpayer is required to provide documentation explaining and supporting its challenge. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). Also, "all statutes are presumptively constitutional." *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 587 (Ind. 2014) (citing *UACC Midwest, Inc. v. Indiana Dep't of State Revenue*, 629 N.E.2d 1295, 1299 (Ind. Tax Ct. 1994)). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Caterpillar, Inc.*, 15 N.E.3d at 583.

Throughout the protest process, Taxpayer claimed that its purchase and use of the truck qualified for the manufacturing exemption, which is outlined in IC § 6-2.5-5-3. Specifically, IC § 6-2.5-5-3(b), in relevant part, provides that

Except as provided in subsection (d), transactions involving **manufacturing machinery, tools, and equipment, including material handling equipment purchased for the purpose of transporting materials into activities** described in this subsection **from an onsite location**, 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 . . . of other tangible personal property.** (Emphasis added).

Thus, the Legislature granted Indiana manufacturers a sales tax exemption for certain purchases, which are for "direct use in direct production, manufacture . . . of other tangible personal property" and the items are required to be used at "an onsite location." *Id.* In enacting the exemption, the Legislature clearly did not intend to create a global exemption for any and all equipment which a manufacturer purchases for use within or without its manufacturing facility. "Fairly read, the exemption was meant to apply to capital equipment that meets the 'double direct' test." *Mumma Bros. Drilling Co. v. Indiana Dep't of State Revenue*, 411 N.E.2d 676, 678 (Ind. Ct. App. 1980). The capital equipment "in order to be exempt, (1) must be directly used by the purchaser and (2) be used in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of tangible personal property." *Indiana Dep't of State Revenue v. Cave Stone, Inc.*, 457 N.E.2d 520, 525 (Ind. 1983). "The test for directness requires the equipment to have an 'immediate link with the product being produced.'" *Id.* Accordingly, the sales tax exemption is applicable to that equipment which meets the "double direct" test and is "essential and integral" to the manufacture of taxpayer's tangible personal property. *General Motors Corp. v. Indiana Dep't. of State Revenue*, 578 N.E.2d 399, 401 (Ind. Tax Ct. 1991). To be exempted from sales tax, the equipment such as "material handling equipment purchased for the purpose of transporting materials into activities" is required to be used "from an onsite location." IC § 6-2.5-5-3(b). The application of Indiana's double-direct manufacturing exemptions often varies based on a determination of when a taxpayer's manufacturing process is considered to have begun and ended.

An exemption applies to manufacturing machinery, tools, and equipment directly used by the purchaser in direct production. [45 IAC 2.2-5-8\(a\)](#). Machinery, tools, and equipment are directly used in the direct production process if they have an immediate effect on the article being produced. [45 IAC 2.2-5-8\(c\)](#). A machine, tool, or piece of equipment has an immediate effect on the product being produced if it is an essential and integral part of an integrated process that produces the product. *Id.* An integrated process is one where the total production process is comprised of activities or steps that are functionally interrelated and where there is a flow of "work-in-process." [45 IAC 2.2-5-8\(c\)](#), example 1.

[45 IAC 2.2-5-8\(k\)](#) describes direct production as the performance of an integrated series of operations which transforms the matter into a form, composition or character different from that in which it was acquired, and that the change must be substantial resulting in a transformation of the property into a different and distinct product.

[45 IAC 2.2-5-8\(d\)](#) states:

Pre-production and post-production activities. "Direct use in the production process" begins at the point of the first operation or activity constituting part of the integrated production process and ends at the point that the production has altered the item to its completed form, including packaging, if required.

[45 IAC 2.2-5-8\(f\)](#) provides:

(1) Tangible personal property used for moving raw materials to the plant prior to their entrance into the production process is taxable.

- (2) Tangible personal property used for moving finished goods from the plant after manufacture is subject to tax.
- (3) 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.
- (4) **Transportation equipment used to transport work-in-process, semi-finished, or finished goods between plants is taxable, if the plants are not part of the same integrated production process.**

(Emphasis added).

[45 IAC 2.2-5-8](#)(g) further states:

"Have an immediate effect upon the article being produced": Machinery, tools, and equipment which are used during the production process and which have an immediate effect upon the article being produced are exempt from tax. Component parts of a unit of machinery or equipment, which unit has an immediate effect on the article being produced, are exempt if such components are an integral part of such manufacturing unit. **The fact that particular property may be considered essential to the conduct of the business of manufacturing because its use is required either by law or by practical necessity does not itself mean that the property "has an immediate effect upon the article being produced". Instead, in addition to being essential for one of the above reasons, the property must also be an integral part of an integrated process which produces tangible personal property. (Emphasis added).**

Additionally, [45 IAC 2.2-5-8](#)(j) provides:

Machinery, tools, and equipment used in managerial sales, research, and development, or other non-operational activities, are not directly used in manufacturing and, therefore, are subject to tax. This category includes, but is not limited to, tangible personal property used in any of the following activities: **management and administration**; selling and marketing; exhibition of manufactured or processed products; safety or fire prevention equipment which does not have an immediate effect on the product; space heating; ventilation and cooling for general temperature control; illumination; heating equipment for general temperature control; and **shipping and loading. (Emphasis added).**

Taxpayer, in this instance, stated it purchased a used truck in September 2017. Taxpayer "concluded that approximately half of all miles placed on [that] truck during [2017] are directly production, fabrication or R&D related." Taxpayer explained that its employees used the truck to transport semi-finished parts to its vendors in various business locations because those semi-finished parts are required to be specialty processed by outside vendors at its vendors' locations. Thereafter, Taxpayer's employees would pick up the processed semi-finished parts back to Taxpayer's facility to resume its manufacturing or assembly production of marketable finished electronic component parts. In addition to the mileage logs for 2017, Taxpayer further provided additional supporting documents, including its ISO Certificate, production order travelers, purchasing orders, and photos to support its use of the truck.

Upon review, however, Taxpayer's reliance of the above-mentioned manufacturing exemption and supporting document is misplaced. Taxpayer's documentation demonstrated that it has a sophisticated manufacturing process to produce or assemble the electronic component parts at its facility. Its manufacturing process does not extend to its vendors' productions. The fact that the truck at issue may be considered essential to the conduct of the business of manufacturing because its use is required either by law or by practical necessity does not itself mean that the property "has an immediate effect upon the article being produced." As explained earlier, to be exempted from sales tax, the equipment is required to meet the double-direct test and is used from "an onsite location." IC § 6-2.5-5-3(b). That is, the truck is required to be directly used in direct production, "an integral part of an integrated process which produces tangible personal property." [45 IAC 2.2-5-8](#). "Transportation equipment used to transport work-in-process, semi-finished, or finished goods between plants is taxable, if the plants are not part of the same integrated production process." [45 IAC 2.2-5-8](#)(f). Taxpayer's supporting documentation demonstrated that it used the truck to transport semi-finished goods between its facility and its vendors' facilities. In other words, the truck was used to transport Taxpayer's semi-finished parts to its vendors' facilities, which operate distinct and separate processes, owned by others. The vendors' processes were not part of the same integrated production process of Taxpayer. Therefore, the Department is not able to agree that the truck was exempt from Indiana sales tax. Its use of the truck is therefore taxable.

FINDING

Taxpayer's protest is denied.

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