

Letter of Findings: 04-20191511
Sales and Use Tax
For The Tax Years 2016 and 2017

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Company's purchase of a vehicle was exempt from use tax in Indiana for tax year 2016 because it qualified for the manufacturing exemption.

ISSUE

I. Use Tax - Manufacturing Exemption.

Authority: IC § 6-8.1-5-1; IC § 6-2.5-3-2; [45 IAC 2.2-5-9](#); IC § 6-2.5-5-3; IC § 6-1-2-39; *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 897 N.E.2d 289 (Ind. Tax Ct. 2007); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, (Ind. 2014); *Indiana Dep't of State Revenue v. Cave Stone, Inc.*, 457 N.E.2d 520 (Ind. 1983); *Indiana Dept. of Revenue v. Kimball International, Inc.*, 520 N.E.2d 454 (Ind. Ct. App. 1988); *Tri-States Double Cola Bottling Co. v. Dep't of State Revenue*, 706 N.E.2d 282 (Ind. Tax Ct. 1999); *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); [45 IAC 2.2-3-14](#).

Taxpayer protests the imposition of use tax.

STATEMENT OF FACTS

Taxpayer is an Indiana company in the business of extracting natural resources from the earth. As a result of an audit for tax years 2016 and 2017 the Indiana Department of Revenue ("Department") assessed use and sales tax. Taxpayer protests the imposition of use tax on one transaction. An administrative hearing was held. This Letter of Finding results. Additional facts will be provided as necessary.

I. Use Tax - Manufacturing Exemption.

DISCUSSION

Taxpayer purchased a vehicle outside of Indiana in 2016 and used it in its production process in Indiana. Taxpayer is involved in the production of stone including extraction from the ground, washing, sorting, and preparing the stone for sale to its customers. During the audit process, Taxpayer listed the vehicle as an excavator, and the Department determined it was not eligible for an exemption. In the protest process, Taxpayer later corrected this description and relisted it as a loader. The loader was used to move rock and sand from the extraction point to a plant where it was washed and separated according to size, which was then sold. All actions involving the loader occurred on Taxpayer's property.

As a threshold issue, it is Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[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

shall be entitled to deference.

IC § 6-2.5-3-2 in relevant parts provides guidance on use tax:

- (a) An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.
- (b) The use tax is also imposed on the storage, use, or consumption of a vehicle, an aircraft, or a watercraft, if the vehicle, aircraft, or watercraft:
 - (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.

Indiana imposes a use tax on "the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." IC § 6-2.5-3-2(a). IC § 6-2.5-5-3(b) provides an exemption from sales tax for "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, extraction, mining, processing, refining, or finishing of other tangible personal property." Under [45 IAC 2.2-3-14](#)(2), exemptions that apply to [IC 6-2.5-5](#) also apply to use tax.

Additionally, [45 IAC 2.2-5-9](#) in relevant part provides:

- (a) In general, all purchases of tangible personal property by persons engaged in extraction or mining are taxable. The exemption provided in this regulation [[45 IAC 2.2](#)] extends only to manufacturing machinery, tools, and equipment directly used in mining or extraction. It does not apply to materials consumed in mining or extraction.
- (b) The state gross retail tax shall not apply to sales of manufacturing machinery, tools, and equipment which are to be directly used by the purchaser in extraction or mining.
- (c) Manufacturing machinery, tools, and equipment to be directly used by the purchaser in the extraction or mining process are exempt from tax provided that such machinery, tools and equipment are directly used in the production process; i.e., they have an immediate effect on the item being produced by mining or extraction. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces tangible personal property.

Exemption statutes are strictly construed against the taxpayer and in favor of taxation. *Indiana Dept. of State Revenue v. Cave Stone, Inc.*, 457 N.E.2d 520, 524 (Ind. 1983). Whether a taxpayer qualifies for an exemption from tax is "highly fact sensitive," and it is the taxpayer's burden to prove the exemption criteria have been met. *Indiana Dept. of Revenue v. Kimball International, Inc.*, 520 N.E.2d 454, 456 (Ind. Ct. App. 1988). The exemption cited by Taxpayer, like all tax exemption provisions, is strictly construed against the taxpayer. *Tri-States Double Cola Bottling Co. v. Dep't of State Revenue*, 706 N.E.2d 282, 283 (Ind. Tax Ct. 1999). "[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.*" *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96, 100-01 (Ind. Ct. App. 1974) (*Emphasis added*). Also, when courts "examine a statute that an agency is 'charged with enforcing . . . [the courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014) (internal citation omitted).

Indiana Dep't of State Revenue v. Cave Stone, Inc., previously addressed this situation. Cave Stone was engaged in the business of selling stone removed from their quarries. *Indiana Dep't of State Revenue v. Cave Stone, Inc.*, 457 N.E.2d 520, 521 (Ind. 1983). As explained by the Court, the procedure involved stripping, drilling, blasting, and loading the crude stone into a truck. The crude stone was then crushed, separated, washed, and screened into various grades of aggregate. The graded stone was next taken by conveyor to a front-end loader which loaded it onto a truck which carried it to separated stockpiles from which it was eventually sold. The issue was whether the transportation was an integral part of the production or processing of the stone. The court held that under the facts of the case the equipment was directly used by Cave Stone in the direct production, manufacture, mining, processing or finishing of tangible personal property within the terms of IC § 6-1-2-39(b)(6). The transportation equipment was essential to the achievement of a transformation of the crude stone into aggregate stone; it played an integral part in the ongoing process of transformation. That no specific transformation occurred in the period of time that it was being transported was irrelevant. Thus, the equipment was exempt.

Without an exemption, Taxpayer's vehicle would be subject to use tax according to IC § 6-2.5-3-2, because it was acquired in a transaction outside of Indiana and was used in Indiana. However, [45 IAC 2.2-5-9](#) provides an exemption for machinery directly used in the production process. Per evidence provided by Taxpayer, the loader qualifies for the exemption. Because of the size and weight of the stone, the loader must haul it from the extraction point to the plant, which is also on site. There the crude stone is washed and separated to be sold to the customers. The loader has an immediate effect on the article being produced as it is an essential and integral part of an integrated process which produces tangible personal property.

The present case closely resembles the fact pattern in *Indiana Dep't of State Revenue v. Cave Stone, Inc.*, where the item was transportation equipment, which was essential to the achievement of a transformation of the crude stone into aggregate stone. In the instant case, Taxpayer's loader is manufacturing machinery used directly in the production of stone, and therefore exempt from taxation under [45 IAC 2.2-5-9](#). Following the Court's ruling in *Cave Stone, Inc.*, the loader is exempt from use tax. Taxpayer has met the burden imposed under IC § 6-8.1-5-1(c) of proving this portion of the proposed assessment of use tax incorrect. As a result, the Department's penalty and interest calculations will be adjusted to reflect the above reference exemption.

FINDING

Taxpayer's protest is sustained.

March 10, 2020

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An [html](#) version of this document.