

**Memorandum of Decision Number: 04-20200059R**  
**Sales/Use Tax**  
**For the 2013 - 2016 Tax Years**

**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 determination.

**HOLDING**

Business failed to establish that items purchased for its landfill operations qualified for the environmental exemption. However, Business did demonstrate that some items of tangible personal property were partially eligible for the manufacturing exemption. Business was entitled to additional refund of tax paid on those items.

**ISSUE**

**I. Sales and Use Tax - Refund - Exemptions.**

**Authority:** 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 § 6-2.5-5-5.1; IC § 6-2.5-5-30; *Rhoades v. Indiana Dep't of State Revenue*, 774 N.E.2d 1044 (Ind. Tax Ct. 2002); *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); *Indiana Dep't of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454 (Ind. Ct. App. 1988); *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); *Brandenburg Indus. Serv. Co. v. Indiana Dep't of State Revenue*, 60 N.E.3d 300 (Ind. Tax Ct. 2016); *General Motors Corp. v. Indiana Dep't. 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); *Indiana Dep't. of Revenue v. Interstate Warehousing, Inc.*, 783 N.E.2d 248, 250 (Ind. 2003); *Rotation Products Corp. v. Indiana Dep't of State Revenue*, 690 N.E. 2d 795 (Ind. Tax Ct. 1998); *White River Envtl. P'ship v. Indiana Dep't of State Revenue*, 694 N.E.2d 1248 (Ind. Tax Ct. 1998); *Indianapolis Fruit Co. v. Indiana Dep't of State Revenue*, 691 N.E.2d 1379 (Ind. Tax Ct. 1998); *Mechanics Laundry & Supply, Inc. v. Indiana Dep't of State Revenue*, 650 N.E.2d 1223 (Ind. Tax Ct. 1995); *Mumma Bros. Drilling Co. v. Indiana Dep't. of State Revenue*, 411 N.E.2d 676, 678 (Ind. Ct. App. 1980); *Merch. Warehouse Co. v. Indiana Dep't of State Revenue*, 87 N.E.3d 12 (Ind. 2017); [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 2.2-3-4](#); [45 IAC 2.2-3-14](#); *Black's Law Dictionary* (8th ed. 2004); United States Environmental Protection Agency, Basic Information about Landfill Gas, available at <https://www.epa.gov/lmop/basic-information-about-landfill-gas>; Indiana Department of Environmental Management, Landfills, available at <https://www.in.gov/idem/waste/2398.htm>.

Taxpayer protests a partial refund denial, claiming that it was entitled to additional refund.

**STATEMENT OF FACTS**

Taxpayer operates a solid waste landfill in Indiana to collect waste from the community in Indiana. In addition to waste management, Taxpayer collects landfill gas - a natural byproduct of the decomposition of organic material in landfills - and turns a small portion of it into usable energy.

Taxpayer timely filed a claim for refund for 2013, 2014, 2015, and 2016 ("Tax Years at Issue"), requesting that the Indiana Department of Revenue ("Department") refund sales and use tax paid on the purchase of certain tangible personal property. The Department reviewed and granted a partial refund claim.

Taxpayer protested the partial refund denial. This final determination results. Further facts will be provided, as necessary.

**I. Sales and Use Tax - Refund - Exemptions.**

**DISCUSSION**

In granting the partial refund, the Department's audit noted the following:

[T]he taxpayer was engaged in production limited solely to the activity associated within the CPL building.

[L]andfill gas is actually the taxpayer's raw material. . . . The taxpayer's operation with respect to landfill gas is essentially passive in nature. . . . Landfill gas occurs naturally in the normal course of its business as the taxpayer accepts waste from others and disposes of it in the landfill. . . .

[T]he taxpayer is involved in two very distinct lines of business. First and foremost, the taxpayer operates a solid waste landfill. Secondly, as a by-product related to its landfill activities, the taxpayer engages in the manufacture of de-moisturized landfill gas for resale where the composition of the landfill gas is changed slightly by removing excess moisture in its Landfill Gas-to-Energy Project.

Taxpayer disagreed with the partial denial. Taxpayer claimed that it "provides landfill services as well as produces methane gas for sale." Taxpayer argued that, through its landfill operation, it "works to collect methane gas from its landfill and transport it for processing at its CPL building." As such, Taxpayer claimed that it was entitled to statutory exemptions, including exemption of environmental quality compliance, on the following tangible personal property it purchased and used in its landfill operation.

- Equipment, including Bulldozers, compactors, and crawler tractors.
- The leachate collection system, which "contains various layers of clay, sand, gravel, and geosynthetic liners, pipes, pumps, meters and valves.
- A Gas Collection System consisting of piping, pumps, valves, meters, wellheads, and condensate knockouts.
- Landfill Roads.
- Daily Cover/Tarpping system.
- Erosion Control and Surface Water/Run-off Control Systems.
- Leachate Collection System.
- Liners, Geomembranes, and Geotextiles.
- Flares.
- Fugitive Dust.
- Rock for Drainage Layer of Cell.

Accordingly, the issue is whether Taxpayer demonstrated that its purchases used for its landfill operation qualified for the statutory exemptions under [IC 6-2.5-5](#).

IC § 6-2.5-2-1(a) imposes a sales tax on retail transactions made in Indiana. IC § 6-2.5-4-1 provides that a retail transaction occurs when a seller "acquires tangible personal property for the purpose of resale; and . . . transfers that property to another for consideration." IC § 6-2.5-4-1(b). In addition, the Indiana 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." IC § 6-2.5-3-2(a). "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](#). 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 in its claim for a refund of sales or use 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).

#### A. Manufacturing exemption.

IC § 6-2.5-5-3(b), in relevant part, states:

[T]ransactions 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, extraction, mining, processing, refining, or finishing **of other tangible personal property**. **(Emphasis added)**.

IC § 6-2.5-5-5.1(b) provides:

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. **(Emphasis added)**.

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." 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 its manufacturing facility. "Exemption six, fairly read, is meant to exempt 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). 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\(g\)](#) 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)**.

[45 IAC 2.2-5-8\(k\)](#) describes direct production as the performance of an "integrated series of operations which places tangible personal property in a form, composition, or character different from that in which it was acquired. **The change in form, composition, or character must be a substantial change, and it must result in a transformation of property into a different product having a distinctive name, character, and use.** Operations such as compounding, fabricating, or assembling are illustrative of the types of operations which may qualify under this definition." **(Emphasis added)**.

## **B. Environmental quality compliance Exemption.**

A separate exemption is provided under IC § 6-2.5-5-30(a), which states:

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Sales of tangible personal property are exempt from the state gross retail tax if:

- (1) the property constitutes, is incorporated into, or is consumed in the operation of, a device, facility, or structure predominantly used and acquired for the purpose of complying with any state, local, or federal environmental quality statutes, regulations, or standards; and
- (2) the person acquiring the property is engaged in the business of manufacturing, processing, refining, mining, recycling (as defined in section 45.8 of this chapter), or agriculture.

To claim exemption of environmental quality compliance, the claimant must meet (1) the production requirement and (2) the environmental compliance requirement. Specifically, in *Mechanics Laundry & Supply, Inc. v. Indiana Dep't of State Revenue*, 650 N.E.2d 1223, 1232 (Ind. Tax Ct. 1995), the Indiana Tax Court explained that the environmental compliance requirement must be "in connection with" with the production requirement.

### C. Protest Analysis.

Taxpayer, in this instance, cited to specific portions of the Indiana Administrative Code (e.g., [329 IAC 10](#)), which govern the installation, maintenance, and regulation of landfills, to support its protest. While the manufacturing exemption from sales tax requires that Taxpayer demonstrate that it directly used the items in question in its direct production (a "double direct" test), the environmental quality compliance exemption requires that Taxpayer demonstrate that its use of the items for its production is in connection with the environmental compliance requirement. Therefore, the issue becomes whether Taxpayer's landfill operation met the production requirement. In other words, Taxpayer must first demonstrate that (1) it is engaged in the "production of other tangible personal property" in its landfill operation; and (2) its landfill operation is the business of "manufacturing, processing, refining, repairing, mining . . ." *Indiana Dep't. of Revenue v. Interstate Warehousing, Inc.*, 783 N.E.2d 248, 250 (Ind. 2003).

"Manufacture" is defined as "[a] thing that is made or built by human being, as distinguished from something that is a product of nature; esp. any material form produced by a machine from an unshaped composition of matter." *Black's Law Dictionary* 984 (8th ed. 2004). While statutes are silent on what constitutes "manufacture," courts, on several occasions, have attempted to answer this question through statutory construction.

In *Mechanics Laundry & Supply, Inc. v. Indiana Dep't of State Revenue*, 650 N.E.2d 1223 (Ind. Tax Ct. 1995), the taxpayer, who operated a commercial laundry, claimed it was entitled to the statutory exemptions, such as exemption of environmental quality compliance, under IC § 6-2.5-5 for sales/use taxes concerning cleaning supplies, water, gas, electricity, and other products consumed during the laundering of soiled textiles. *Id.* 1226-27. Referring to the statutory and regulatory requirements, the Tax Court stated that the taxpayer failed to demonstrate that its "end product" was "substantially different from the component materials used." The Tax Court found that the taxpayer did not "place tangible personal property in a form, composition, or character substantially different from that in which it was acquired." *Id.* at 1229. The Tax Court thus concluded that the laundering of soiled textiles did not constitute "production," and, therefore, the taxpayer was not engaged "in an overall process directed to the production of textiles;" rather, the taxpayer was "perpetuat[ing] textiles that were produced by others." *Id.* at 1229-30. The Tax Court thus determined that the taxpayer was not entitled to the statutory exemptions, including "Environmental Quality Exemption," outlined in IC § 6-2.5-5.

In *Indianapolis Fruit Co. v. Indiana Dep't of State Revenue*, 691 N.E.2d 1379 (Ind. Tax Ct. 1998), the taxpayer, Indianapolis Fruit Co., claimed that it was entitled to agricultural and manufacturing exemptions for the tangible personal property it had purchased for ripening bananas and tomatoes. The Tax Court stated that:

In the context of the exemption provisions at issue, production is "defined broadly" and "focuses on the creation of a marketable good." The exemption provisions were enacted to deal with a host of different activities and factual situations. As a result, mathematical precision in the application of these exemptions cannot be expected, and any evaluation of whether production is occurring depends on the factual circumstances of the case. However, there is one iron-clad rule: without production there can be no exemption. *Id.* at 1383-84 (internal citation and quotation marks omitted).

The court, in *Indianapolis Fruit*, found that the bananas had undergone substantial change and had transformed from "green, hard, inedible, and unmarketable bananas" to yellow, edible, and sellable bananas after the bananas were placed in air and temperature controlled banana ripening booths and the taxpayer applied ethylene gas to the bananas. *Id.* at 1385. The court, however, declined to find the same result for the taxpayer's tomatoes. The court determined that "production" occurred as the taxpayer created the sellable bananas, but the taxpayer did not actively perform the same or similar activities to produce the sellable tomatoes. As a result, the court, in

*Indiana Fruit*, concluded that the taxpayer was entitled to the exemptions for its purchases of tangible personal property to be used or consumed in the bananas' production process, but not the tomatoes' production process.

Similarly, in *White River Env'tl. P'ship v. Indiana Dep't of State Revenue*, 694 N.E.2d 1248 (Ind. Tax Ct. 1998), the taxpayer, White River Environmental Partnership (WREP), which operated a wastewater treatment facility, claimed that it was entitled to statutory exemptions for the equipment which it purchased to be used in its wastewater treatment process. The Indiana Tax Court first followed the well-established case law stating that a taxpayer must "engage in production before receiving an exemption." *Id.* at 1250.

The Tax Court in *White River* explains:

In [*Mechanics Laundry & Supply, Inc. v. Indiana Dep't of State Revenue*, 650 N.E.2d 1223 (Ind. Tax Ct. 1995)], **the terms listed in the exemption provisions, i.e., processing, manufacturing, etc., have meaning only to the extent that there is production. If there is no production of goods, the exemption provisions at issue do not apply.** Therefore, WREP's entitlement to a sales and use tax exemption rests not on whether wastewater treatment can be called processing, but rather whether WREP is engaged in the production of goods.

...

[T]he fact that WREP substantially changes the wastewater does not *ipso facto* lead to the conclusion that production for purposes of the exemption provisions is taking place. **Production, within the context of the exemption provisions at issue, is "defined broadly" and "focuses on the creation of a marketable good." In this case, the "products" of the wastewater treatment process (clean water, ash, and sludge) are not sold to others.** The clean water is discharged into the White River, and the ash and sludge are disposed of in a landfill. *Id.* at 1250-51 (internal citation and quotation marks omitted) (**emphasis added**).

The Tax Court, in *White River*, further referred to *Mumma Bros.*, where the Indiana Court of Appeals determined that the taxpayer, who drilled water wells and installed pumps and plumbing for residences, farms, and commercial entities in order to provide water for animal and human consumption, was not entitled to exemptions because the taxpayer did not produce a marketable good. Following the same analysis in *Mumma Bros.*, the Tax Court in *White River* illustrated:

The legislature enacted the sales and use tax exemption in order to prevent tax pyramiding, i.e., a situation where a tax is levied upon a tax. In *Mumma Bros.*, a situation where the "**product**," i.e., the extracted water, **was not resold, there was no tax pyramiding to prevent.** Accordingly, the purposes of the exemption were not served. In light of this and the fact that a tax exemption is strictly construed, the court found that the exemption was not meant to apply to the extraction of water for personal use. *Id.* at 1252. (internal citation and quotation marks omitted). (**Emphasis added**).

Thus, the Tax Court in *White River* determined that WREP, like the taxpayer in *Mumma Bros.*, was not entitled to statutory exemptions because WREP failed to demonstrate that it produced a marketable good. The Tax Court concluded that "[w]here something is made, but not sold, the danger of tax pyramiding does not exist." *Id.*

Furthermore, in *Interstate Warehousing*, the taxpayer, Interstate Warehousing, Inc. ("Interstate"), claimed that it was entitled to an exemption under IC § 6-2.5-5-5.1 on its consumption of the electricity used to convert the ammonia from gas form to a liquid. *Indiana Dep't of Revenue v. Interstate Warehousing, Inc.*, 783 N.E.2d at 249. The Tax Court ruled in favor of the taxpayer. The Indiana Supreme Court, in reversing the Tax Court's determination, found that the taxpayer, Interstate Warehousing, Inc., was not qualified for the exemption in two respects: the court found that (1) the taxpayer was not engaged in the "production of other tangible personal property" (namely, the "distinct marketable good" requirement); and (2) the taxpayer was not in the business of "manufacturing, processing, refining, repairing, mining, agriculture, horticulture, floriculture, or arboriculture" (namely, the "transformation" requirement). *Id.* at 250. The court, in pertinent part, explained that:

Interstate uses electricity to cool gaseous ammonia to liquid form and then circulates the liquid through its warehouse facilities to cool the air. When the temperature of the ammonia begins to rise, it is again chilled. The ammonia stays in the refrigeration system, which was referred to as "closed loop." While it is certainly true that there is some transformation of the ammonia from gas to liquid form as a consequence of the consumption of electricity, such transformation alone is not sufficient to constitute "production of other tangible personal property" under the statute. **By "production of other tangible personal property," the Legislature meant that the taxpayer must use the electricity to transform the ammonia into a distinct marketable good. That does not occur here; the liquid ammonia is never marketed.**

...



Interstate [does not] perform an integrated series of operations' resulting in a transformed end product to Interstate's customer. . . . The cool air merely maintains the customer's previously manufactured goods. There is no substantial change in 'form, composition, or character' to those goods. **The cold air is only incidental to the service of storing previously manufactured goods. (Emphasis added).**

*Id.* at 250-52.

Accordingly, to meet the production requirement, a taxpayer must engage in the business of production and its production must result in a marketable good.

Throughout the protest process, Taxpayer, referring to *Cave Stone* and *Rotation Products Corp. v. Indiana Dep't of State Revenue*, 690 N.E. 2d 795 (Ind. Tax Ct. 1998), and *Merch. Warehouse Co. v. Indiana Dep't of State Revenue*, 87 N.E.3d 12 (Ind. 2017), asserted that:

Under Indiana law, production is broadly defined to include all operation by which the marketable good is derived. . . . and production "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 . . . ." (citation omitted).

While there is no question that what take place in the CPL building is a required step in the integrated production process, that process begins prior to the CPL building with the collection and transportation of the gas to the CPL building, because there is no gas to further process in the CPL building without it first being produced in the landfill cell.

Taxpayer also relied on *Brandenburg Indus. Serv. Co. v. Indiana Dep't of State Revenue*, 60 N.E.3d 300 (Ind. Tax Ct. 2016) to support its position that its landfill operation has been "the integrated process yielded a marketable product that can be sold, and thus a manufacturing process . . . **While methane gas does naturally occur within the cell in some capacity**, without the collection and processing of such methane gas via the process described above, the gas would not be marketable for sale. . . ." (**Emphasis added**). Taxpayer thus asserted that it was entitled to additional refund of tax paid on various categories of equipment, materials, and supplies acquired and incorporated into Taxpayer's landfill. Taxpayer essentially argued that its production of gas for sale began in its landfill cells. As such, Taxpayer contended that "the roads within the landfill, the daily tarping system, erosion control, the leachate collection system, the pug mill, the gas flare, and the machinery" used for its landfill operation were exempt. Taxpayer further offered several photos and a video to support its protest.

Upon review, however, the Department is not able to agree that Taxpayer's landfills met the production requirement. Specifically, first, the taxpayer in *Brandenburg Indus.*, "acquires the metal that it processes either by directly purchasing retired assets (e.g., boats, machinery, or railroad scrap) or by performing services in its related businesses, such as building demolition or environmental remediation, in exchange for the metal." *Id.* at 301. Taxpayer here, as a landfill operator, did not do so. Rather, the publicly verifiable information showed that Taxpayer has been operating the landfills since 1995 to collect solid waste from the community in Indiana. As such, the business purpose of Taxpayer's landfills is to serve as waste disposal facility. Thus, Taxpayer's reliance on *Brandenburg Indus.* is misplaced.

Additionally, landfill gas "is a natural byproduct of the decomposition of organic material in landfills." United States Environmental Protection Agency, *Basic Information about Landfill Gas*, available at <https://www.epa.gov/lmop/basic-information-about-landfill-gas> (last visited February 25, 2021). The Indiana Department of Environmental Management ("IDEM") further explains:

**A landfill is a disposal facility where waste is placed in or on the land and is considered to be the final disposal site. Waste disposal in Indiana must occur at a land disposal facility permitted to accept that waste.** The purpose is to **contain the waste** and liquids contacting or passing through the waste (leachate) from leaving the landfill. Liquid waste must not be disposed in landfills. **Landfills must be constructed and operated according to specified standards to prevent contaminants from being released to the environment, manage storm water, control erosion, and control dust and litter from blowing off site.**

Depending on the type and age of a landfill, **the landfill will have some type of liner or barrier to prevent leakage.** Most landfills also have **leachate collection systems** and **ground water monitoring wells** which can detect if a landfill is leaking . . . .

At the end of the operation, **the landfills must close with soil and/or plastic cover, drainage, and**

**vegetation on top. Closed landfills must monitor and maintain the cover, leachate collection, gas extraction, sedimentation and erosion controls, and monitor ground water for any contamination for at least 30 years after completing closure** (called post-closure maintenance). All permittees are required to provide financial assurance to cover the cost of closure and post-closure maintenance.

Indiana Department of Environmental Management, *Landfills*, available at <https://www.in.gov/idem/waste/2398.htm> (last visited February 25, 2021).

Since landfill gas naturally occurs when operating landfills, in order to become a certified Indiana landfill operator, Taxpayer must first comply with the state environmental regulations to *properly construct, maintain, monitor, manage, and close* the landfills - every step along the way throughout the landfill operation - including 30 years after completing closure of landfills. As such, "[g]as extraction" is one of the statutorily required responsibilities of waste management when Taxpayer began to operate landfills in Indiana since 1995. Without IDEM's approval, there would be no landfill operation. Regardless of whether the gas is sold, the collection of the gas is required by IDEM.

Finally, like the taxpayer in *Indianapolis Fruit*, in this instance, the audit noted that Taxpayer actively performed activities within the CPL building but Taxpayer did not actively perform the same or similar activities to create "a marketable good" - namely "landfill gas" - in its landfill cells. As Taxpayer admitted earlier, "methane gas does naturally occur within the cell in some capacity" because landfill gas "is a natural byproduct of the decomposition of organic material in landfills."

As mentioned earlier, to claim exemption of environmental quality compliance, the claimant must meet (1) the production requirement and (2) the environmental compliance requirement. Specifically, the Indiana Tax Court, in *Mechanics Laundry & Supply, Inc. v. Indiana Dep't of State Revenue*, 650 N.E.2d 1223, 1232 (Ind. Tax Ct. 1995), explained that the environmental compliance requirement must be "in connection with" the production requirement. As such, this final determination first addresses the production requirement. Like the taxpayer in *Mechanics Laundry*, in this instance, Taxpayer's documentation failed to demonstrate that its landfill operation was "in connection with" its production. As such, Taxpayer's purchases and use of the items for its landfill operation did not qualify the above-mentioned exemptions.

As explained above, IC § 6-2.5-5-3(b) provides an exemption for equipment used in a production process. The Department has already agreed that Taxpayer's gas processing constitutes a production process. Also, the Department had previously decided and has now confirmed that Taxpayer's landfill operations do not constitute any part of a production process. Therefore, tangible personal property ("TPP") associated with the gas processing is exempt under IC § 6-2.5-5-3(b), while TPP associated with landfill operations is not exempt in any manner.

In the instant case, there is some TPP that is used for both landfill operations and for gas processing. Specifically, the Gas Collection System consisting of piping, pumps, valves, meters, wellheads, and condensate knockouts is used in landfill operations for natural gas control purposes and is also used in gas processing by gathering and transporting the natural gas to Taxpayer's processing building. This situation is not uncommon, and the Department has a regulation explaining how such TPP is treated for sales and use tax purposes. [45 IAC 2.2-5-8\(c\)](#), Example 3 provides:

(3) The following types of equipment constitute essential and integral parts of the integrated production process and are, therefore, exempt. The fact that such equipment is built in a manner to service various pieces of exempt equipment, as an alternative to building the equipment into each of the pieces of exempt machinery, is not determinative.

(A) Pumping and filtering equipment and related tanks and tubing used to supply lubricating and coolant fluids to exempt drilling and cutting machinery.

(B) Cooling towers and related pumps and piping used to cool, circulate, and supply water employed to control the temperature of exempt furnaces and exempt machines used in the foundry and machining areas.

(C) *Pumping and filtering equipment, including related tanks and tubing, is used to supply lubricating and coolant fluids to both exempt and nonexempt equipment. On the average, 90[percent] of the fluid is used for the exempt equipment employed in direct production and 10[percent] is used for the nonexempt equipment. The taxpayer is entitled to an exemption equal to 90[percent] of the gross retail income attributable to the transaction or transactions in which the equipment comprising the production process was purchased.*

*(Emphasis added).*

Therefore, the Gas Collection System consisting of piping, pumps, valves, meters, wellheads, and condensate knockouts are partially used in an exempt manner and partially used in a taxable manner and Taxpayer's refund claim will be granted with respect to this equipment in the same percentage that Taxpayer uses the collected gas in its gas processing. The refund will be denied in the same percentage that Taxpayer uses the collected gas in its landfill gas control operations. These percentages will be determined in a supplemental refund review by the Department. Taxpayer's protest is denied in all other respects.

#### **FINDING**

Taxpayer's protest is partially sustained and partially denied, as explained above.

March 23, 2021

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