

**Final Order Denying Refund: 04-20231272**  
**Sales Tax**  
**For the Years 2019 to 2021**

**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**

While acknowledging that the Department was not permitted to ignore the legislative intent underlying the various sales tax exemptions on which Indiana Manufacturer based its refund claims, the Manufacturer failed to establish that it was entitled to an additional refund of sales tax paid on the Manufacturer's purchases. Manufacturer's claims were incomplete and ambiguous.

**ISSUES**

**I. Gross Retail Tax - Supplies Incorporated into Watercraft for Resale.**

**Authority:** [IC 6-2.5-1-27](#); [IC 6-2.5-2-1](#); [IC 6-2.5-3-1](#); [IC 6-2.5-3-2](#); [IC 6-2.5-5-4](#); *Conklin v. Town of Cambridge City*, 58 Ind. 130 (1877); *Rhoades v. Ind. Dep't of State Revenue*, 774 N.E.2d 1044 (Ind. Tax Ct. 2002); *Mynsberge v. Dep't of State Revenue*, 716 N.E.2d 629 (Ind. Tax Ct. 1999); *Tri-States Double Cola Bottling Co. v. Dep't of State Revenue*, 706 N.E.2d 282 (Ind. Tax Ct. 1999); *General Motors Corp. v. Indiana Dept. of State Revenue*, 578 N.E.2d 399 (Ind. Tax Ct. 1991); *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); [45 IAC 2.2-5-10](#); [45 IAC 2.2-5-14](#).

Taxpayer argues that it is entitled to a refund of sales tax paid on the purchase of materials incorporated into the watercraft intended for resale.

**II. Gross Retail Tax - Equipment and Tools Used in Direct Production.**

**Authority:** [IC 6-2.5-5-4](#); [45 IAC 2.2-5-8](#); [45 IAC 2.2-5-10](#).

Taxpayer maintains that it is entitled to a refund of sales tax paid on the purchase of tools and equipment directly used to manufacture Taxpayer's watercraft.

**III. Gross Retail Tax - Non-Returnable Packaging.**

**Authority:** [IC 6-2.5-5-9](#).

Taxpayer claims that the Department erred in denying it a refund of sales tax paid on its purchase of non-returnable packaging.

**IV. Gross Retail Tax - Research and Development Equipment.**

**Authority:** [IC 6-2.5-5-40](#); Sales Tax Information Bulletin 75 (January 2023); Sales Tax Information Bulletin 75 (April 2017).

Taxpayer argues that it is entitled to a refund of sales tax paid on purchases of equipment, computers, and software used in the research and development of new or improved watercraft.

**V. Gross Retail Tax - Administrative Error.**

**Authority:** *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974).

Taxpayer maintains that the Department's audit made a mistake when it failed to authorize a refund of sales tax paid on purchases which the audit previously found were exempt.

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## VI. Gross Retail Tax - Safety Equipment.

**Authority:** [45 IAC 2.2-5-8](#).

Taxpayer claims that it is entitled to a refund of sales tax paid on the purchase of safety equipment necessary for its employees to participate in the production of its watercraft.

### STATEMENT OF FACTS

Taxpayer is an Indiana company in the business of manufacturing and selling watercraft. Taxpayer submitted a (GA-110L) claim for a refund of approximately \$127,000 in sales tax paid on its purchases of certain equipment, supplies, and other materials.

The Indiana Department of Revenue ("Department") reviewed the request and, in a letter dated August 2022, agreed that Taxpayer had established that it was entitled to a refund of approximately \$64,000 but denied the remaining \$63,000.

Taxpayer disagreed with the Department's decision denying the \$63,000 refund amount. Taxpayer submitted a protest to that effect. An administrative hearing was conducted by telephone during which Taxpayer's representative explained the basis for the protest. This Final Order Denying Refund results.

### I. Gross Retail Tax - Supplies Incorporated into Watercraft for Resale.

#### DISCUSSION

Taxpayer explains that it purchases "hangsheets" which are "placed inside the boats and are resold with the boats." Taxpayer continues: the hangsheets provide "valuable information to the customer" and qualify for an exemption as "[m]aterial incorporated into tangible personal property produced for resale."

#### A. The Department's Original Conclusion and Denial.

In its initial review of Taxpayer's claim, the Department disagreed as follows:

These printed materials are used by the [T]axpayer for recording warranty information and documents which stay with the dealer files [and] are not product documentation. Since these items are not separately bargained for and are not a material part of the product sold, these items do not fall under the exemption in [45 IAC 2.2-5-15](#) (resale exemption) and are subject to tax.

#### B. Indiana's Sales and Use Tax.

As in other tax issues addressed in this decision, Taxpayer seeks a refund of the sales tax it paid when it purchased these papers. That tax is an excise tax called "the state gross retail tax" (or "sales tax") imposed on retail transactions made in Indiana. [IC 6-2.5-2-1\(a\)](#). A person who acquires property in a retail transaction (a "retail purchaser") is liable for the tax on the transaction. [IC 6-2.5-2-1\(b\)](#).

In general, purchases of tangible personal property - such as paper - are subject to sales tax. [45 IAC 2.2-5-10\(a\)](#). Tangible personal property means personal property that: (1) can be seen, weighed, measured, felt, or touched; or (2) is in any other manner perceptible to the senses. [IC 6-2.5-1-27](#). Tangible personal property also includes electricity, water, gas, steam, and prewritten computer software. *Id.*

Indiana also imposes a complementary excise tax called "the 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\(a\)](#). Use means the "exercise of any right or power of ownership over tangible personal property." [IC 6-2.5-3-1\(a\)](#).

In effect and practice, the use tax is generally equivalent to the sales tax. *See Rhoades v. Ind. Dep't of State Revenue*, 774 N.E.2d 1044, 1047 (Ind. Tax Ct. 2002).

#### C. An Exemption for Property Incorporated into Taxpayer's Watercraft.

Taxpayer cites to [45 IAC 2.2-5-14](#) as authority for its claim to this refund. The regulation provides as follows.

(a) The state gross retail tax shall not apply to sales of any tangible personal property which is to be incorporated by the purchaser as a material or an integral part into tangible personal property produced for sale by such purchaser in the business of manufacturing, assembling, refining or processing.

(b) The exemption provided by this regulation [\[45 IAC 2.2\]](#) applies only to tangible personal property to be incorporated as a material or an integral part into tangible personal property **produced for sale** by a purchaser engaged in the business of manufacturing, assembling, refining or processing. This regulation [\[45 IAC 2.2\]](#) does not apply to persons engaged in producing tangible personal property for their own use.

(c) This regulation [\[45 IAC 2.2\]](#) does not exempt from tax tangible personal property to be used in production, such as supplies, parts, fuel, machinery, etc., refer to Regs. 6-2.5- 5-5(010) and 6-2.5-5-5(020) (dealing with material consumed in direct production) for the application of those regulations to taxpayers engaged in the production of tangible personal property.

(d) The purchase of tangible personal property which is to be incorporated by the purchaser as a **material or an integral part** is exempt from tax. "Incorporated as a material or an integral part into tangible personal property for sale by such purchaser" means:

- (1) That the material must be **physically incorporated** into and become a component of the finished product;
- (2) The material must constitute a material or an integral part of the finished product; and
- (3) The tangible personal property must be produced for sale by the purchaser.

(e) Application of general rule.

- (1) Incorporation into the finished product. The material must be physically incorporated into and become a component part of the finished product.
- (2) Integral or material part. The material must constitute a material or integral part of the finished product.
- (3) The finished product must be **produced for sale** by the purchaser. (**Emphasis added**).

#### D. Interpreting and Applying the Exemption.

[45 IAC 2.2-5-14](#) like all tax exemption provisions, is strictly construed against exemption from the tax. *Tri-States Double Cola Bottling Co. v. Dep't of State Revenue*, 706 N.E.2d 282, 283 (Ind. Tax Ct. 1999); *Mynsberge v. Dept of State Revenue*, 716 N.E.2d 629, 636 (Ind. Tax Ct. 1999). Indiana law has long held that "[W]here [] 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, 101 (Ind. Ct. App. 1974). (Citing *Conklin v. Town of Cambridge City*, 58 Ind. 130, 133 (1877)).

Nevertheless, the Department is also well aware of the countervailing rule that a "statute must not be construed so narrowly that it does not give effect to legislative intent because the intent of the legislature embodied in a statute constitutes the law." *General Motors Corp. v. Indiana Dept. of State Revenue*, 578 N.E.2d 399, 404 (Ind. Tax Ct. 1991).

#### E. Analysis and Conclusion.

The Department does not agree that Taxpayer has established that the purchases of the hangsheets were exempt from sales tax. While the information provided to the customer on these hangsheets may well be useful and - perhaps - even necessary, but Taxpayer's claim here entirely misses the mark. The hangsheets do not become a "material or integral" part of the watercraft, the hangsheets are not "produced for sale" by Taxpayer, and are in no way "incorporated into and become a component of the finished" watercraft. [45 IAC 2.2-5-14](#).

Taxpayer's refund claim must be denied because Taxpayer has not provided "sufficient evidence which is clearly within the exact letter of the law." *RCA Corp.*, 310 N.E.2d 101.

#### FINDING

Taxpayer's protest is respectfully denied.

#### II. Gross Retail Tax - Equipment and Tools Used in Direct Production.

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**DISCUSSION**

In manufacturing the watercraft, Taxpayer argues that it is entitled to a refund of sales tax paid on purchases of equipment and tools directly used to construct its watercraft. These items include:

**A. Air Compressors:**

Taxpayer explains that it "utilizes different types of pneumatic production equipment powered by compressed air." Because the compressors are power tools directly used in the production of its watercraft, the compressors themselves are exempt.

According to Taxpayer, the Department denied the refund on the grounds that the compressor invoices were "coded to building maintenance" in Taxpayer's records but that "[m]any companies code compressed air lines and related equipment to building maintenance [because] they do not [adequately] consider the taxability of these purchases when coding invoices."

**B. Computers and iPads.**

Taxpayer bought iPads for use by its employees which are "used to pull up engineering prints, PDFs, work instructions to ensure the correct materials are being utilized during the installation and assembly process" of each individual watercraft.

**C. Cranes and Hoists.**

Taxpayer explains that it purchased various cranes and hoists which are directly used to manufacture its watercraft. These include "a new monorail bridge crane used to lift [] boats during processing" and "[l]ifting beams and repair parts used to lift boats during a [] process of applying a coating [] prior to shipment." In addition, Taxpayer seeks a refund of tax paid on the purchase of "new hoist trolleys in the north production building used to lift boats during processing."

**D. Lift Tables.**

Taxpayer concludes that the purchases of these tables were exempt from sales tax. As explained by Taxpayer, "These purchases are for equipment which lifts pontoon tubes during an air check process that tests the tubes for air leaks prior to assembly onto boats during processing."

The Department initially attempted to verify these claims. In arriving at a decision about the cranes and hoists, the auditor "requested documentation" to substantiate the claim but was - according to the written report - told that Taxpayer "didn't have time to gather that information so the refund claims should be processed with denials of all outstanding hoist line items."

In each of the items listed above, Taxpayer cites to the Department's regulation, [45 IAC 2.2-5-10](#), which states:

(a) In general, all purchases of tangible personal property by persons engaged in the processing or refining of tangible personal property are taxable. The exemption provided in this regulation [\[45 IAC 2.2\]](#) extends only to manufacturing machinery, tools, and equipment used in direct production. It does not apply to materials consumed in production or to materials incorporated into the tangible personal property produced. Additionally, the exemption provided in this regulation [\[45 IAC 2.2\]](#) extends to industrial processors. An industrial processor, as defined in [IC 6-2.5-4-2](#), is one who:

- (1) acquires tangible personal property owned by another person;
- (2) provides industrial processing or servicing, including enameling or plating, on the property; and
- (3) transfers the property back to the owner to be sold by that owner either in the same form or as a part of other tangible personal property produced by that owner in his business of manufacturing, assembling, constructing, refining, or processing.

(b) The state gross retail tax will not apply to sales of manufacturing **machinery, tools, and equipment which are to be directly used** by the purchaser in processing or refining tangible personal property.

(c) Purchases of manufacturing machinery, tools, and equipment to be directly used by the purchaser in processing or refining 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 tangible personal property being

processed or refined. The property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which processes or refines tangible personal property. (**Emphasis added**) See [IC 6-2.5-5-4](#).

In particular, [45 IAC 2.2-5-8](#)(c), example 2 provides:

The following types of equipment constitute essential and integral parts of the integrated production process and are, therefore, exempt. The fact that such equipment may not touch the work-in-process or, by itself, cause a change in the product, is not determinative.

- (A) **Air compressors used as a power source** for exempt tools and machinery in the production process.
- (B) An electrical distribution system, including generators, transformers, electrical switchgear, cables inside or outside the plant, and related equipment used to produce and/or supply electricity to exempt manufacturing equipment used in direct production.
- (C) A pulverizer for raw materials to be used in an exempt furnace to produce and/or supply energy to manufacturing equipment used in direct production.
- (D) Boilers, including related equipment such as pumps, piping systems, etc., which draw water, or produce and transmit steam to operate exempt machinery and equipment used in direct production.
- (E) A work bench used in conjunction with a work station or which supports production machinery within the production process.
- (F) Safety clothing or equipment which is required to allow a worker to participate in the production process without injury or to prevent contamination of the product during production.
- (G) An automated scale process which measures quantities of raw aluminum for use in the next production step of the casting process in the foundry. (**Emphasis added**).

Proper application of the manufacturing exemption first requires determining at what point "production" begins and at what point "production" ends. [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.

The Department here emphasizes that property has this immediate effect "if it is an essential and integral part of an integrated process which produces tangible personal property." However, the Department also emphasizes that [45 IAC 2.2-5-8](#)(g) explains that "necessity" alone does not render anything exempt:

The fact that particular property may be considered essential to the conduct of the business of manufacturing because its use is required by law or by practical necessity does not itself mean that the property "has an immediate effect upon the article being produced."

Summarizing, the exemption which Taxpayer claims is found at [IC 6-2.5-5-4](#) and only applies to machinery, tools, and equipment directly used by the purchaser in direct production. *Id.* The regulation provides that the "manufacturing exemptions" apply with equal weight to "industrial processors." Machinery, tools, and equipment are directly used in the production process if they have an immediate effect on the article being produced. [45 IAC 2.2-5-8](#)(c). A machine, tool, or 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. [45 IAC 2.2-5-8](#)(c). 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).

Essentially, machinery, tools, and equipment purchased for direct use in the production of goods are subject to use tax unless the property used has an immediate effect on the goods produced and is essential to an integrated process used to produce marketable goods.

The Department agrees to the extent that tools, compressors, hoists *could* be involved in an integrated manufacturing process and that the items *could* have a direct effect on Taxpayer's watercraft. For example, the compressor *could* be exempt because the compressors *could* be used to power tools and equipment which - in turn - directly touch on and have an effect on Taxpayer's watercraft. However, the compressors could be subject to sales or use tax because the compressors are used exactly as Taxpayer originally classified them as. Compressors used to provide maintenance services are not part of the integral production of watercraft. The only thing which the Department can reasonably conclude is that the compressors are possibly necessary but, as set out in [45 IAC 2.2-5-8](#)(g), sheer necessity is not equivalent to "directly used."

The Department declines to agree that Taxpayer has provided information which establishes that it is entitled to a refund of sales tax paid on the purchases of compressors, computers, iPads, cranes, hoists, or lift tables.

### FINDING

Taxpayer's protest is respectfully denied.

### III. Gross Retail Tax - Non-Returnable Packaging.

#### DISCUSSION

Taxpayer purchased "tie downs" which - as Taxpayer explained - are "utilized to affix boats to trailers for shipment."

Taxpayer necessarily relies on [IC 6-2.5-5-9](#) which states:

- (d) Sales of wrapping material and empty containers are exempt from the state gross retail tax if the person acquiring the material or containers acquires them for use as nonreturnable packages for:
  - (1) selling the contents that the person adds; or
  - (2) shipping or delivering tangible personal property that:
    - (A) is owned by another person;
    - (B) is processed or serviced for the owner; and
    - (C) will be sold by that owner either in the same form or as a part of other tangible personal property produced by that owner in the owner's business of manufacturing, assembling, constructing, refining, or processing.

The information provided by Taxpayer is scanty, but there is nothing which establishes a watercraft customer buys the tiedowns or even that the tiedowns are "non-returnable."

### FINDING

Taxpayer's protest is respectfully denied.

### IV. Gross Retail Tax - Research and Development Equipment.

#### DISCUSSION

The next issue is whether Taxpayer has met its burden of establishing that it is entitled to a refund of sales tax paid on the purchase of computers and software employed to research and develop new and improved watercraft.

Taxpayer provides an explanation why the computers and software are exempt and that it is entitled to a refund of sales tax.

Taxpayer's information technology division purchases computer equipment, attachments and software used throughout their operations.....The engineers extensively use Solidworks and AutoDesk as Computer Aided Design software to prepare the boat designs improvements and specs for the manufacturing process.

Taxpayer correctly relies on [IC 6-2.5-5-40](#) but also points to the Department's Sales Tax Information Bulletin 75 (January 2023).

[I]n order to qualify for the exemption, the property must be acquired by the purchaser for the purpose of research and development activities devoted to experimental or laboratory research and development for new products, new uses of existing products, or improving or testing existing products. This means the property must be devoted to a research and development activity that is considered essential and integral to experimental or laboratory research and development.

See *also* Sales Tax Information Bulletin 75 (April 2017), 20170726 Ind. Reg. 045170335NRA, explains as follows:

[T]he rules applicable to the sales tax exemption for research and development property and the rules applicable to the credit for increasing research expenses under [IC 6-3.1-4](#) are not identical. While some

categories of expenses would qualify for both, the sales tax exemption and income tax credit have somewhat different provisions which may permit qualification for *either the exemption or the credit but not both*. (Emphasis added).

The Department's audit report found that there was insufficient information to support Taxpayer's claim to the exemption. The report provides:

The [T]axpayer did not provide support that these items were acquired for the purpose of R&D activities and were devoted to experimental or laboratory R&D for new products, new uses of existing products or improving or testing existing products before sales have begun.

### (1) Research and Development Sales Tax Exemption.

[IC 6-2.5-5-40](#) (effective January 1, 2016) provides a sales tax exemption for R&D property. The 2016 version of [IC 6-2.5-5-40](#) provides that certain activities are not considered R&D activities and clarifies that certain activities are considered merely incidental to R&D activities. Sales Tax Information Bulletin 75 (April 2017).

Indiana law, [IC 6-2.5-5-40\(g\)](#), explains that a taxpayer is entitled to purchase certain items of tangible personal property without paying the gross retail tax when the property is utilized in qualifying R&D activities. In full, the exemption is set out in [IC 6-2.5-5-40](#) as follows:

(a) As used in this section, "research and development activities" includes design, refinement, and testing of prototypes of new or improved commercial products before sales have begun for the purpose of determining facts, theories, or principles, or for the purpose of increasing scientific knowledge that may lead to new or enhanced products. The term does not include any of the following:

- (1) Efficiency surveys.
- (2) Management studies.
- (3) Consumer surveys.
- (4) Economic surveys.
- (5) Advertising or promotions.
- (6) Research in connection with nontechnical activities, including literary, historical, social sciences, economics, humanities, psychology, or similar projects.
- (7) Testing for purposes of quality control.
- (8) Market and sales research.
- (9) Product market testing, including product testing by product consumers or through consumer surveys for evaluation of consumer product performance or consumer product usability.
- (10) The acquisition, investigation, or evaluation of another's patent, model, process, or product for the purpose of investigating or evaluating the value of a potential investment.
- (11) The providing of sales services or any other service, whether technical or nontechnical in nature.

(b) As used in this section, "research and development **equipment**" means tangible personal property that:

- (1) consists of or is a combination of:
  - (A) laboratory equipment;
  - (B) computers;
  - (C) computer software;
  - (D) telecommunications equipment; or
  - (E) testing equipment;
- (2) has not previously been used in Indiana for any purpose; and
- (3) is acquired by the purchaser for the purpose of research and development activities devoted directly to experimental or laboratory research and development for:
  - (A) new products;
  - (B) new uses of existing products; or
  - (C) improving or testing existing products.

(c) As used in this section, "research and development property" means tangible personal property that:

- (1) has not previously been used in Indiana for any purpose; and
- (2) is acquired by the purchaser for the purpose of research and development activities devoted to experimental or laboratory research and development for:
  - (A) new products;
  - (B) new uses of existing products; or
  - (C) improving or testing existing products.

(d) For purposes of subsection (c)(2), a research and development activity is devoted to experimental or laboratory research and development if the activity is considered **essential and integral** to experimental or

laboratory research and development. The term does not include activities **incidental** to experimental or laboratory research and development.

(e) For purposes of subsection (c)(2), an activity is not considered to be devoted to experimental or laboratory research and development if the activity involves:

- (1) heating, cooling, or illumination of office buildings;
- (2) capital improvements to real property;
- (3) janitorial services;
- (4) personnel services or accommodations;
- (5) inventory control functions;
- (6) management or supervisory functions;
- (7) marketing;
- (8) training;
- (9) accounting or similar administrative functions; or
- (10) any other function that is incidental to experimental or laboratory research and development.

(f) A retail transaction:

- (1) involving research and development equipment; and
- (2) occurring after June 30, 2007, and before July 1, 2013; is exempt from the state gross retail tax.

(g) A retail transaction:

- (1) involving research and development property; and
- (2) occurring after June 30, 2013;

**is exempt from the state gross retail tax.**

(h) The exemption provided by subsection (g) applies regardless of whether the person that acquires the research and development property is a manufacturer or seller of the new or existing products specified in subsection (c)(2).

(i) For purposes of this section, a retail transaction shall be considered as having occurred after June 30, 2013, to the extent that delivery of the property constituting selling at retail is made after that date to the purchaser or to the place of delivery designated by the purchaser. However, a transaction shall be considered as having occurred before July 1, 2013, to the extent that the agreement of the parties to the transaction is entered into before July 1, 2013, and payment for the property furnished in the transaction is made before July 1, 2013, notwithstanding the delivery of the property after June 30, 2013. This subsection expires January 1, 2017. **(Emphasis added).**

The Department here points out that [IC 6-2.5-5-40\(d\)](#) was specifically added in 2015 to exclude items which are "incidental" to otherwise qualified R&D projects. In part, the statutory clarification emphasizes:

[Research and Development] does not include activities incidental to experimental or laboratory research and development [and] . . . any other function that is incidental to experimental or laboratory research and development.

The Department finds itself in the same position as faced when addressing the original refund request. Taxpayer's explanations are ambiguous and incomplete. Whether the equipment is employed to "design, refine[], and test[] prototypes of new or improved [watercraft] before sales have begun....." is unknown. Whether the computers and software are used to "increase[] scientific knowledge" leading to "new or enhanced products....." are questions not addressed by Taxpayer when it explained the basis for its protest. [IC 6-2.5-5-40](#). It is possible that the software and computers are simply incidental to the actual construction of Taxpayer's watercraft, but the Department is not entitled to make speculative guesses concerning that question.

## FINDING

Taxpayer's protest is respectfully denied.

## V. Gross Retail Tax - Administrative Error.

### DISCUSSION

Taxpayer explains that the Department's audit approved refunds on "a handful of invoices that the auditor had noted as approved but did not refund the full amount of tax." Taxpayer believed that the audit's error resulted in the denial of approximately \$70 and that the Department should here correct that error.

Taxpayer could possibly be correct that it is entitled to another \$70 refund but has provided nothing which the Department can consider in making that decision. Presumably these items fall under one of the exemptions cited



to and addressed in this decision, but Taxpayer has not come anywhere near providing "sufficient evidence which is clearly within the exact letter of the law." *RCA Corp.*, 310 N.E.2d 101.

### FINDING

Taxpayer's protest is respectfully denied.

### VI. Gross Retail Tax - Safety Equipment.

### DISCUSSION

Taxpayer purchased steel toe work shoes, face shields, rain suits, and respirators. Taxpayer concludes that these items qualify for the exemption because they "allow a worker to participate in the production process without injury.

The Department's audit report does not address the items listed above and there is nothing to indicate that the Department denied a refund or sustained Taxpayer on this issue.

[45 IAC 2.2-5-8\(c\)\(2\)\(F\)](#), on which Taxpayer relies, provides an exemption for:

Safety clothing or equipment which is required to allow a worker to participate in the production process without injury or to prevent contamination of the product during production.

Absent any information which addresses the substance of Taxpayer's claim in this regard, the Department is not in a position to consider a refund claim which was either denied or sustained.

### FINDING

Taxpayer's protest is respectfully denied.

### SUMMARY

As to each of the purchases which Taxpayer now claims are exempt, the Department must respectfully deny those claims because the claims were unsubstantiated.

August 29, 2023

*Finding Replaces: New*

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