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DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 96-0646 RST
Sales and Use Tax
For The Periods: 1993 Through 1995

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ISSUES

I. Sales and Use Tax - Loaders

Authority: IC 6-2.5-3-2; 6-2.5-5-3; 45 IAC 2.2-5-8

The taxpayer asserts that two loaders used in the its cement mixing operation are exempt from sales/use tax.

STATEMENT OF FACTS

The taxpayer owns and operates a ready-mix cement operation. The taxpayer also sells sand, gravel, aggregates and other items related to the cement trade as well.

I. Sales and Use Tax Loaders

DISCUSSION

The auditor based a use tax assessment on two loaders used in the taxpayer's cement mixing operation upon a determination that they were used in a non-exempt manner as a pre-production activity. The taxpayer counters that production can include transportation when that transportation of is an integral part of a transformation process. The taxpayer states that since the mixing equipment is elevated, it is physically impossible for concrete production to occur without the use of the loaders in question. (Taxpayer letter of Jan. 23, 1997).

The Department's regulations in 45 IAC 2.2-5-8 (c)(4) state in part:

> Because of the lack of an essential and integral relationship with the integrated production system in Example (1), the following types of equipment are not exempt:
>
> > (G) Equipment used to remove raw materials from storage prior to the introduction into the production process or to move finished products from the last step of production.

The loading activity performed by the taxpayer is characterized by the Department as a pre-production activity. As such, the loaders would not qualify for the manufacturing exemption. In 45 IAC 2.2-5-8(d), pre-production and post-production is explained: "Direct use in the production process begins at the point of the first operation or activity constituting part of the integrated process and ends at the point that the production has altered the item to its completed form…" In the taxpayer's situation, the loading activity is a pre-production activity because the integrated process begins after the raw materials are added to the liquid cement mix.

The taxpayer argues that the loaders are a necessary and integral part of the production process because it is physically impossible for concrete production to occur without the use of the loaders in question. 45 IAC 2.2-5-8(g) states in part:

> The fact that particular property may be considered essential to the conduct of the business of manufacturing because its use is required by either law or necessity does not mean 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.

The Indiana Supreme Court set forth this necessary, integral part of an integrated process test in Indiana Department of Revenue v. Cave Stone, Inc., 457 N.E.2d 520 (1983). In the process at hand, the taxpayer's loaders add raw materials to the liquid cement mix, the Department recognizes that this process is necessary but not an integral part of the integrated cement mixing process. The Department finds that the loaders do not qualify for the use tax exemption.

FINDING

The taxpayer's protest is denied.