



Indiana Department of Revenue

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Sales Tax Information Bulletin #55

Subject: Application of Sales Tax to Sales of Utilities Used in Manufacturing, Production, Recycling, Floriculture, and Arboriculture

Publication Date: April 2023

Effective Date: July 1, 2022

References: IC 6-2.5-1-22.5; IC 6-2.5-1-25.5; IC 6-2.5-4-5; IC 6-2.5-5-5.1; IC 6-2.5-5-8.5

Replaces Bulletin #55, dated May 2022

Disclaimer: Information bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is not consistent with the law, regulations, or court decisions is not binding on either the department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

Summary of Changes

Only nonsubstantive, technical changes have been made to this bulletin. It has been primarily changed to reflect updated formatting.

Introduction

A power subsidiary or person engaged as a public utility is a retail merchant making a retail transaction when it sells electrical energy, natural or artificial gas, water, steam, or steam heat to a person for commercial or domestic consumption. However, such utilities may be sold exempt by the public utility or power subsidiary for direct consumption in the direct production of other tangible personal property in the customer's business of manufacturing, mining, production, processing, repairing, recycling, refining, oil extraction, mineral extraction, irrigation, agriculture, floriculture, arboriculture, or horticulture. The purpose of this bulletin is to explain the nature of the exemption and how the application process works.

Utilities purchased by a landlord, when they are used by a tenant engaged in manufacturing on leased premises and when the tenant makes a monthly payment to the landlord for utilities consumed, are not exempt from Indiana sales tax.

Public Utilities

A “public utility” is defined as any organization engaged in furnishing electricity, gas, or water for consumption and having the right of eminent domain or is otherwise subject to government regulation in any phase of its operation.

A “power subsidiary” means a corporation which is owned or controlled by one or more public utilities that furnish or sell electrical energy, natural or artificial gas, water, steam, or steam heat and which produces power exclusively for the use of those public utilities.

Used in Manufacturing, Production, Etc.

Use in manufacturing or one of the other listed production processes begins at the point of the first operation or activity constituting part of an integrated production process and ends at the point that the production process has altered the item to its completed form, including packaging, if required. To qualify for the exemption, the listed utility must be consumed as an essential and integral part of an integrated process that produces tangible personal property.

In general, the purchase and consumption of utility services will meet the test to the extent that they power equipment used as an essential and integral part of an integrated production process. In addition, utility service used to operate equipment that controls the environment so production can occur is exempt, excluding the ambient temperature required for employees.

Manufacturing or production does not include maintenance, servicing, or repairing of equipment or testing, handling, shipping, receiving, or storing the finished product. (Utility services used for testing during the production process are exempt.) Utility services used for general space heating or air conditioning, general lighting (including security lighting), movement of goods outside the production process, in offices, or in providing for employee health or comfort are taxable.

Utility services purchased and consumed for restaurant food heating or cooling equipment are taxable unless they are used in the actual production and creation of the food. Utility services used for warming tables and refrigeration areas are taxable unless the food is undergoing a change due to this process. Refrigeration for storage or preservation of food is a taxable use of the utility services.

Example #1: Adhesives used in attaching material to a truck require the temperature to be above 50 degrees and below 90 degrees. Heating and air conditioner costs to maintain the facility at 72 degrees are not exempt, even if the temperature is within the parameters for the adhesive to be applied.

Example #2: The taxpayer produces computer chips in a “clean room” environment. Specially designed air-handling equipment controls the temperature, humidity, and air particulate levels in the clean room. Production of the computer chips cannot occur unless these conditions are carefully controlled. Therefore, because the air-handling equipment is an essential and integral part of the production process, utility services consumed in conjunction with such equipment are nontaxable.

Example #3: The taxpayer is a restaurant that purchases electricity used to power air conditioning and ventilating equipment. The equipment environmentally conditions the kitchen area of the restaurant. The equipment is not exempt because it does not operate in an integrated fashion with the food production process and is not essential to making that process possible. Consequently, the electricity used in conjunction with that equipment is not exempt.

Example #4: Utility services purchased and used for a freezer used only in making ice cream or a fryer used for cooking would be exempt. Utility services purchased and consumed for a refrigerator or heat lamp used to keep the products or the raw materials in the same condition are taxable.

Separately Metered or Predominately Used

The 100% exemption from Indiana sales tax applies only if nontaxable utilities are separately metered and are predominately used by the purchaser for the exempted uses. "Predominately used" means more than 50% of the utilities are consumed for the exempted use. Each meter is considered separately to determine whether the utility measured is exempt. If a user has multiple meters, they will not be aggregated together for a determination of predominate use, but each will be considered separately.

Forms

To receive an exemption, the taxpayer must complete the Utility Sales Tax Exemption Application (Form ST-200). The form will be reviewed by the department and, if the meter qualifies for the exemption, a validated Indiana Utility Exemption Certificate (ST-109) will be sent to the taxpayer to be forwarded to the utility company. The ST-109 is the only exemption form that can be accepted by a utility to exempt the utility from collecting Indiana sales tax. The ST-200 is available from the department's website at in.gov/dor/tax-forms/sales-tax-forms/.

Partial Exemptions

Any user who does not meet the predominate use test may still qualify for partial exemption under IC 6-2.5-5.1 for utility services that are directly consumed by the purchaser in the direct production of tangible personal property in the purchaser's business of manufacturing, processing, refining, repairing, mining, recycling, agriculture, horticulture, floriculture, or arboriculture. Fuel oil, gasoline, coal, and other types of fuel may also be exempt to the extent that they are directly consumed by the purchaser in direct production. All sales tax must first be paid to the public utility, and a claim for refund with documentation must be submitted to the department using Form GA-110L within the normal sales tax statute of limitation period for such payments.

Other Exemptions

Transactions involving electrical energy, natural or artificial gas, water, steam, or steam heating service sold or furnished by a power subsidiary or a person engaged as a public utility are exempt from the sales tax in circumstances other than production processes described above. The following transactions are also exempt from Indiana sales tax:

- A power subsidiary or person engaged as a public utility providing, installing, constructing, servicing, or removing tangible personal property which is used in connection with furnishing electrical energy, natural or artificial gas, water, steam, or steam heating service.
- A power subsidiary or person engaged as a public utility selling electrical energy, natural or artificial gas, water, steam, or steam heating service to another public utility or power subsidiary, or a person who furnishes or sells an intrastate telecommunication service and receives gross retail income from billings or statements rendered to customers.
- A power subsidiary or person engaged as a public utility selling electrical energy, natural or artificial gas, water, steam, or steam heating service and all of the following conditions are satisfied:
 - The services or commodities are sold to a business that:
 - relocates all or part of its operations to a facility; or
 - expands all or part of its operations in a facility;
 - located in a military base (as defined in IC 36-7-30-1(c)), a military base reuse area established under IC 36-7-14.5-12.5 that is or formerly was a military base (as defined in IC 36-7-30-1(c)), or a qualified military base enhancement area established under IC 36-7-34.
 - The business uses the services or commodities in the facility described above not later than 5 years after the operation that relocated to the facility, or expanded in the facility, commence.
 - The sales of the services or commodities are separately metered for use by the relocated or expanded operations.
 - In the case of a business that uses the services or commodities in a qualified military base enhancement area established under IC 36-7-34-4(1), the business must satisfy at least one of the following criteria:
 - The business is a participant in the technology transfer program conducted by the qualified military base (as defined in IC 36-7-34-3).
 - The business is a United States Department of Defense contractor.
 - The business and the qualified military base have a mutually beneficial relationship evidenced by a memorandum of understanding between the business and the United States Department of Defense.
- In the case of a business that uses the services and commodities in a qualified military base enhancement area established under IC 36-7-34-4(2), the business must satisfy at least one of the following criteria:
 - The business is a participant in the technology transfer program conducted by the qualified military base (as defined in IC 36-7-34-3).

- The business and the qualified military base have a mutually beneficial relationship evidenced by a memorandum of understanding between the business and the qualified military base (as defined in IC 36-7-34-3).

However, this does not apply to a business that substantially reduces or ceases its operations at another location in Indiana in order to relocate its operations in an area described in this subdivision, unless the department determines that the business had existing operations in the area described in this subdivision and that the operations relocated to the area are an expansion of the business's operations in the area.

If you have any questions concerning this bulletin, please contact the Tax Policy Division at taxpolicy@dor.in.gov.



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