

Letter of Findings Number: 04-20120532
Use Tax
For the Year 2009

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ISSUE

I. Use Tax—Manufacturing Exemption.

Authority: IC § 6-2.5-5-3; [45 IAC 2.2-5-8](#).

Taxpayer protests the Department's assessment of use tax on steel and fiberglass tanks claimed to be used in manufacturing.

STATEMENT OF FACTS

Taxpayer is a corporation doing business in Indiana. The Indiana Department of Revenue ("Department") audited Taxpayer and determined that Taxpayer did not self-assess use tax on various items. The Department assessed use tax on these items. Taxpayer protested a portion of the assessment, the Department conducted an administrative hearing, and this Letter of Findings results. Additional facts will be supplied as necessary.

I. Use Tax—Manufacturing Exemption.

DISCUSSION

Taxpayer protests the assessment of use tax on steel tanks and fiberglass tanks. Taxpayer claims that the tanks were used in its bleach manufacturing business. The issue is whether the tanks were directly used in the direct production.

Under IC § 6-2.5-5-3(b):

Except as provided in subsection (c) [relating to electrical distribution and transmission equipment purchased by a public electric utility], transactions involving manufacturing machinery, tools, and equipment 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.

Department regulation [45 IAC 2.2-5-8\(c\)](#) provides that materials are directly used in the production process if "they have an immediate effect on the article being produced." Property has an immediate effect "if it is an essential and integral part of an integrated process which produces tangible personal property." However, [45 IAC 2.2-5-8\(g\)](#) provides also that:

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."

With regard to the steel tanks, the tanks are used to continuously circulate sodium hydroxide. The continuous circulation of sodium hydroxide is a necessary step in Taxpayer's integrated bleach production process. The circulation of sodium hydroxide occurs after the production process begins and continues during the integrated process of producing bleach. Taxpayer has provided sufficient information to conclude that the steel tank is directly used in Taxpayer's direct production of bleach and therefore is exempt under IC § 6-2.5-5-3.

With regard to the fiberglass tanks, the unfinished bleach is required to settle for several hours in order to allow particles to be separated from the remaining bleach. This settling process occurs during Taxpayer's integrated production process. The settling process has an immediate effect on the bleach and occurs prior to the completion of the bleach production process. Taxpayer has provided sufficient information to conclude that the fiberglass tanks are directly used in Taxpayer's direct production of bleach and therefore are exempt under IC § 6-2.5-5-3.

FINDING

Taxpayer's protest is sustained.

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