

**Memorandum of Decision: 04-20211014**  
**Sales Tax**  
**For The Year 2017**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. 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. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision.

**HOLDING**

Business' purchases of dyed diesel fuel and lubricants were exempt from sales tax.

**ISSUE**

**I. Sales Tax - Refund.**

**Authority:** IC § 6-8.1-9-1; IC § 6-2.5-2-1; IC § 6-2.5-5-3; IC § 6-2.5-5-5.1; IC § 6-6-2.5-22; IC § 6-2.5-5-51; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dept. of State Rev. v. Kimball Int'l Inc.*, 520 N.E.2d 454 (Ind. Ct. App. 1988); *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); *Rotation Products Corp. v. Department of State Revenue*, 690 N.E.2d 795 (Ind. Tax Ct. 1998); *Harlan Sprague Dawley, Inc. v. Department of State Revenue*, 605 N.E.2d 1222 (Ind. Tax Ct. 1992); [45 IAC 2.2-2-1](#); [45 IAC 2.2-5-12](#).

Taxpayer protests the denial of sales tax refund.

**STATEMENT OF FACTS**

Taxpayer is an Indiana-based company that manufactures stone aggregate. In 2017, Taxpayer purchased tangible personal property and paid sales tax at the time of purchase. In 2020, Taxpayer filed a claim for refund of sales tax paid on some of those purchases. The Indiana Department of Revenue ("Department") partially approved and partially denied the claim for refund. The Department's reason for denying a portion of the claim was that Taxpayer did not have a utility exemption in 2017 and for the remainder provided either no receipts or incorrect receipts in support of the claim. Taxpayer disagreed with the partial denial and filed a protest. With that protest, Taxpayer provided documentation and analysis regarding sales tax paid on lubricants and dyed fuel used in production machinery. Taxpayer did not protest the entire amount of refund denied, nor did Taxpayer protest the denial regarding utility purchases. An administrative phone hearing was held. This Memorandum of Decision results. Additional facts will be provided as necessary.

**I. Sales Tax - Refund.**

**DISCUSSION**

Taxpayer filed a claim for refund of sales tax it paid in tax year 2017 on its purchase of tangible personal property including, but not limited to: dyed fuel, lubricants, and utilities it believed were exempt. The Department determined Taxpayer was not entitled to a full refund. In its partial denial letter, the Department stated:

Per auditor review: The taxpayer does not have a utility tax exemption at this time, thus the utility taxes of [amount] is [sic] declined, the balance \$7,776.96 of purchased are declined because no invoices or incorrect invoices were submitted to support the transaction.

In response to that denial, Taxpayer protests the denial of a refund for sales tax paid on lubricants and dyed diesel fuel purchases. The sales tax paid on these items is the sole issue protested. The total amount of refund at issue in this protest is \$1,021.03.

A taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with

enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party." *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

IC § 6-8.1-9-1(a) affords a taxpayer a statutory right to file a claim for refund. This statute provides, in part:

If a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for a refund with the department.

Indiana imposes an excise tax called "the state gross retail tax" or "sales tax" on retail transactions made in Indiana. IC § 6-2.5-2-1(a); [45 IAC 2.2-2-1](#). A person who acquires property in a retail transaction is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b).

Under Indiana law, certain items or transactions may be exempt from tax if certain conditions are met. In applying any tax exemption, the general rule is that "tax exemptions are strictly construed in favor of taxation and against the exemption." *Indiana Dept. of State Rev. v. Kimball Int'l Inc.*, 520 N.E.2d 454, 456 (Ind. Ct. App. 1988). The party seeking the exemption must present sufficient evidence showing the exemption is 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).

IC § 6-2.5-5-3(b) provides an exemption from sales tax for transactions involving manufacturing machinery, tools, and equipment if the property is acquired for direct use in the direct manufacturing of other tangible personal property. IC § 6-2.5-5-5.1 provides an exemption from sales tax on transactions involving tangible personal property that is consumed in the direct production of other tangible personal property during the manufacturing process. The purpose of exempting the purchase of equipment used and materials consumed in the manufacturing process is to "encourage industrial growth by allowing an exemption for items closely connected with the production of goods" and to limit the effect of tax pyramiding. *Rotation Products Corp. v. Department of State Revenue*, 690 N.E.2d 795, 798 (Ind. Tax Ct. 1998) (quoting *Harlan Sprague Dawley, Inc. v. Department of State Revenue*, 605 N.E.2d 1222, 1228 (Ind. Tax Ct. 1992)) (emphasis in original).

Further information for the "consumable exemption" is provided in [45 IAC 2.2-5-12](#). As previously mentioned, sales tax does not apply to sales of tangible personal property "consumed in direct production by the purchaser in the business of producing tangible personal property by manufacturing, processing, refining, or mining." [45 IAC 2.2-5-12](#)(a). "Direct consumption" begins at the point of the first operation or activity constituting part of the integrated production process and ends at the point the production process has altered the item to its completed form. [45 IAC 2.2-5-12](#)(d)(1). "Consumed" means the "dissipation or expenditure by combustion, use, or application and does not mean or include the obsolescence, discarding, disuse, depreciation, damage, wear or breakage or tools, dies, equipment, machinery, or furnishings." [45 IAC 2.2-5-12](#)(g).

Taxpayer is engaged in the business of aggregates manufacturing or "rock crushing." Taxpayer receives raw aggregate material (rocks) via barge or railroad. The raw materials are then crushed to various diameters and sizes. For example, some aggregates are crushed into a powder while others may be crushed into six-inch chunks. The final product size is determined by the intended use and customer's need.

Taxpayer's refund request relates to lubricant and dyed diesel fuel used during the manufacturing process. Taxpayer stated the lubricant is used to maintain the crusher and prevent damage to the machine. After reviewing the manufacturing process, it is clear the crusher is exempt equipment. The crusher's purpose is for direct use in the manufacturing of stone aggregate. Because the crusher qualifies as exempt equipment, the lubricants used to maintain the crusher and prevent damage to the machine are also exempt under [45 IAC 2.2-5-12](#)(d)(1). Taxpayer is entitled to a refund of sales tax on the purchases of lubricants.

Taxpayer also argues that dyed diesel fuel used in the wheel loader is "consumed" during the manufacturing process because it powers the wheel loader as it moves the stone from the primary crushing stage to either a second or third crushing stage or to the next stage for screening or drying. A review of the manufacturing process at this stage shows the wheel loader is directly involved in the manufacturing process as it moves stone between various production stages. The wheel loader is exempt equipment. Since the dyed diesel fuel is used to power the wheel loader and is "consumed" during the manufacturing process, the fuel is also exempt. Taxpayer is entitled to a refund of sales tax on the purchases of dyed diesel fuel.

It should also be noted that IC § 6-6-2.5-22(1) defines "special fuel" as all combustible gases and liquids that are suitable for the generation of power in an internal combustion engine or motor. Also, effective as of July 1, 2017,

special fuels are specifically exempt from sales tax pursuant to IC § 6-2.5-5-51. Dyed diesel fuel is a special fuel under Indiana law and exempt from sales tax regardless of whether it is "consumed" in the manufacturing process. Since all of the diesel fuel purchases at issue happened in September of 2017, Taxpayer should not have been charged sales tax when it purchased the dyed diesel fuel from the seller.

During the protest process, Taxpayer provided invoices, receipts, and cancelled checks for the purchases of lubricant and dyed diesel fuel showing sales tax was paid. Because the lubricant is exempt from sales tax under [45 IAC 2.2-5-12\(g\)](#) and fuel is exempt from sales tax under IC § 6-2.5-5-51, Taxpayer is entitled to a refund. However, after reviewing notes from the Department's audit, it should be mentioned that sales tax for the December 4, 2017, transaction for the sale of lubricant was already refunded based on documentation previously provided during the initial refund review. Taxpayer's protest is sustained, and sales tax paid on claimed purchases of lubricants and fuel (other than the December 4, 2017 transaction) will be refunded.

### FINDING

Taxpayer's protest is sustained.

January 14, 2022

*Posted: 03/30/2022 by Legislative Services Agency*  
An [html](#) version of this document.