

Letter of Findings: 04-20120680
Sales Tax
For the Tax Years 2009, 2010, 2011

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ISSUE

I. Sales and Use Tax – Industrial Production Exemptions – Gloves.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-1; IC § 6-2.5-3-2; IC § 6-2.5-5-3; IC § 6-2.5-3-4; IC § 6-8.1-5-1; [45 IAC 2.2-5-8](#); Dep't of Revenue v. U.S. Steel Corp., 425 N.E.2d 659 (Ind. Ct. App. 1981); Indiana Dep't. of Revenue v. Interstate Warehousing, 783 N.E.2d 248 (Ind. 2003).

Taxpayer protests the assessment of use tax on gloves it claimed it used in its production process.

STATEMENT OF FACTS

Taxpayer is an Indiana corporation that specializes in fibercoating (flocking and coating) plastic, metal, paper and rubber substrates for various industries, including glove boxes and window trim for the automotive industry.

The Indiana Department of State Revenue ("Department") conducted a sales and use tax audit of Taxpayer for the years 2009 through 2011. As a result of the audit, Taxpayer was assessed additional use tax and interest on several items. Taxpayer protested one category of items – gloves – it claims are used in its production process. A hearing was held on Taxpayer's protest and this Letter of Findings ensues. Additional facts will be provided as necessary.

I. Sales and Use Tax – Industrial Production Exemptions – Gloves.

DISCUSSION

The Department's audit assessed use tax on gloves Taxpayer had purchased without paying sales tax on the presumption that these gloves qualified for the industrial production exemption. The Department's audit summary describes that "most employees did not wear these items all the time," which led to the conclusion that "whether or not the items were worn did not appear to have an effect on the product or the employees' safety." Various types of gloves were included in the assessment of use tax: nitrile medical gloves, brown jersey gloves, and gripped cotton gloves. Taxpayer protested that these gloves were used by employees to protect their hands from chemical adhesives and heat, and to protect the parts being produced from being marred and that the gloves therefore qualified for the industrial production exemptions.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made."

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). A person who acquires property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b).

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).

An exemption from use tax is granted for transactions where the sales tax was paid at the time of purchase pursuant to IC § 6-2.5-3-4. There are also additional exemptions from sales tax and use tax. IC § 6-2.5-5 et seq.

When a taxpayer claims it is entitled to a tax exemption, it bears the burden of proving that the terms of the exemption have been met. Indiana Dep't. of Revenue v. Interstate Warehousing, 783 N.E.2d 248, 250 (Ind. 2003). The Department will strictly construe the exemption statutes against the taxpayer claiming the exemption. *Id.*

However, the general rule is that all purchases of tangible personal property by persons engaged in the direct production, manufacture, fabrication, assembly or finishing of tangible personal property are taxable. [45 IAC 2.2-5-8\(a\)](#). The exemption only applies to machinery, tools, and equipment directly used by the purchaser in direct production.

IC § 6-2.5-5-3 provides an exemption for equipment directly used in the direct production of tangible personal property. Further, in *Dep't of Revenue v. U.S. Steel Corp.*, 425 N.E.2d 659 (Ind. Ct. App. 1981), the court found that certain items of safety clothing qualified as "equipment" when directly used in the direct production of steel to protect the employees hands from extreme heat.

Also, [45 IAC 2.2-5-8\(c\)](#), example (2), states in relevant part:

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.

...

(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.

Taxpayer protested that its employees were required to wear the gloves for several reasons directly related to its direct integrated production process. The nitrile gloves protected its employees' hands from the adhesive used in its flocking process which if unprotected over time causes skin irritations. The brown jersey gloves are worn by certain employees to also protect their hands from 180 degree to 220 degree part temperatures and also because they do not mar the surfaces of the finished product. The gripped cotton gloves are worn by employees when handling tooling or materials with metal inners, fixtures, tooling and bands where the temperatures again vary between 180 and 220 degrees.

Taxpayer provided documentation including its company manual, material safety data and requirements, and visuals of its production process demonstrating the use of the gloves.

Taxpayer has presented sufficient documentation to show that the gloves are used in an exempt manner, and therefore the Department's audit incorrectly assessed use tax on the use of the gloves in Taxpayer's industrial production process.

FINDING

Taxpayer's protest is sustained.

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