

**Letter of Findings Number: 04-20120447**  
**Sales/Use Tax**  
**For Tax Years 2010 and 2011**

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**ISSUE**

**I. Sales/Use Tax—Manufacturing Exemptions.**

**Authority:** IC § 6-2.5-2-1; IC § 6-2.5-5-1 et seq.; IC § 6-2.5-3-2; IC § 6-8.1-5-1; [45 IAC 2.2-5-8](#); [45 IAC 2.2-3-4](#).

Taxpayer protests the proposed assessment of sales/use tax.

**STATEMENT OF FACTS**

Taxpayer is a company that manufactures trailers. The Indiana Department of Revenue ("Department") conducted a sales and use tax audit for the tax years 2010 and 2011. As a result of the audit, the Department issued proposed assessments for sales/use tax and interest. Taxpayer filed a protest with the Department. An administrative hearing was conducted and this Letter of Findings ("LOF") results. Further facts will be supplied as required.

**I. Sales/Use Tax—Manufacturing Exemptions.**

**DISCUSSION**

At the outset, the Department notes that under IC § 6-8.1-5-1(c): "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made."

Pursuant to the Indiana Code, a sales tax ("gross retail tax") is imposed on retail transactions made in Indiana unless a valid exemption is applicable. IC § 6-2.5-2-1; IC § 6-2.5-5-1 et seq. Also, a complementary excise tax "known as the use tax, is imposed 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).

Taxpayer's protest involves three issues—advertising, scissor lift, and scales. Each item will be dealt with below.

**Advertising**

Taxpayer's protest letter states the following:

These were advertising brochures that were purchased for two trailer shows—the [] show in [another state] and the [] show in [another state]. In both cases, the literature was taken directly to the sales show and distributed. The auditor specifically told us that these were exempt, but then left them in the audit report.

[45 IAC 2.2-5-8](#) states in part:

(a) In general, all purchases of tangible personal property by persons engaged in the direct production, manufacture, fabrication, assembly, or finishing of tangible personal property are taxable. The exemption provided in this regulation [[45 IAC 2.2](#)] extends only to manufacturing machinery, tools, and equipment directly used by the purchaser in direct production. It does not apply to material consumed in production or to materials incorporated into tangible personal property produced.

(b) The state gross retail tax does not apply to sales of manufacturing machinery, tools, and equipment to be directly used by the purchaser in the direct production, manufacture, fabrication, assembly, or finishing of tangible personal property.

(c) The state gross retail tax does not apply to purchases of manufacturing machinery, tools, and equipment to be directly used by the purchaser in the production process provided that such machinery, tools, and equipment are directly used in the production process; i.e., they have an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces tangible personal property. [...]

And [45 IAC 2.2-3-4](#) states:

Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana state gross retail tax has been collected at the point of purchase.

Taxpayer, after the hearing, provided the Department with a copy of one invoice, which shows that the catalogs and booklets were purchased from a company in another state and shipped to another state. Taxpayer has established that that specific invoice should not have been assessed Indiana use tax, since the invoice shows that the items were not in Indiana. Also, Taxpayer made food purchases while in another state, using a credit card. To the extent that the copies of the receipts provided by Taxpayer were assessed use tax in the Audit, Taxpayer is sustained.

Scissor Lift

The protest letter states in part:

The scissor lift is used in the production process to hang sidewall and roof metal on the outsides of the larger stacker trailers. Large ladders were used previously (and were sales tax exempt), but an increase in frequency of larger trailers and for safety, they purchased and began using a scissor lift. They [ sic] auditor agreed that that should be exempt (or at least pro-rated), but then left the full amount of the lift on the summary.

As noted, [45 IAC 2.2-5-8](#)(c) states:

(c) The state gross retail tax does not apply to purchases of manufacturing machinery, tools, and equipment to be directly used by the purchaser in the production process provided that such machinery, tools, and equipment are directly used in the production process; i.e., they have an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces tangible personal property. (Emphasis added).

Taxpayer provided photographs of the scissor lift. From the photographs, it appears that the scissor lift has the same function as a ladder, and thus is not directly used in the direct production process—that is, the scissor lift does not have an immediate effect on the article being produced (i.e., trailers). Furthermore, the Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c). Taxpayer has not met its burden of proof; Taxpayer's protest of the scissor lift is denied.

Scales

Lastly, Taxpayer argues in pertinent part that the scales should be exempt too:

The scales are used in the production process to weigh the units before they can be completed. A unit is not complete and can't be considered complete in production until it is weighed. It is the final step in the production process and is 100 [percent] necessary to complete the trailer and do the required paperwork. [Taxpayer] cannot sell nor do anything to a trailer that does not have a VIN tag or title and those documents cannot be generated until the weight of the unit is determined.

The scales, as described above, are post-production and thus taxable. [45 IAC 2.2-5-8](#)(d) states:

Pre-production and post-production activities. "Direct use in the production process" begins at the point of the first operation or activity constituting part of the integrated production process and ends at the point that the production has altered the item to its completed form, including packaging, if required. (Emphasis added).

The weighing of the trailers and the attendant paperwork for titling are post-production. The trailer has already been "altered... to its completed form...." Taxpayer's protest on this issue is denied.

#### **FINDING**

Taxpayer's protest of advertising is sustained regarding the specific invoice Taxpayer provided. Also, Taxpayer is sustained regarding food purchases Taxpayer made while in another state. Taxpayer's protest regarding the scissor lift and scales is denied.

*Posted: 06/26/2013 by Legislative Services Agency*

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