

INFORMATION BULLETIN #55

SALES TAX

MAY 2012

(Replaces Bulletin #55 dated August 2011)

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 its subject matter.

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

DIGEST OF CHANGES: Provides exclusion from sales tax for utilities predominately used for recycling, processing, repairing, floriculture, or arboriculture.

REFERENCE: IC 6-2.5-4-5; IC 6-2.5-5-1

EFFECTIVE DATE: January 1, 2012 and January 1, 2013

IC 6-2.5-4-5 provides that a power subsidiary or person engaged as a public utility is not 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 use in manufacturing, mining, production, refining, oil extraction, mineral extraction, irrigation, agriculture, or horticulture. This provision applies to those engaged in recycling after Dec. 31, 2011, and those engaged in processing, repairing, floriculture, and arboriculture after Dec. 31, 2012.

Sales and use tax is imposed when property is acquired from a retail merchant in a retail transaction. Because this law excludes certain utility sales from being retail transactions, they cannot be subject to sales or use tax. This exclusion applies when the sales of the utility are (1)

by public utilities or power subsidiaries; (2) used in manufacturing, production, etc.; and (3) either separately metered or predominately used in an excluded manner.

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 the sales tax.

PUBLIC UTILITIES

A public utility is defined as any organization engaged in furnishing electrical energy, natural or artificial gas, water, steam, or steam heating and having the right of eminent domain or subject to government regulation in connection with the furnishing of public utility services. Only electricity, natural or artificial gas, water, steam, and steam heat are included. Fuel, fuel oil, gasoline, coal, liquid propane, and any other utility not listed are not included in this exclusion.

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, utilities 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.

EXAMPLE:

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:

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, utilities consumed in conjunction with such equipment are nontaxable.

EXAMPLE:

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 under IC 6-2.5-5-5.1.

Manufacturing or production does not include maintenance, servicing, or repairing of equipment or testing, handling, shipping, receiving, or storing the finished product. (Utilities used for testing during the production process are exempt.) Utilities 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.

Utilities for restaurant food heating or cooling equipment are taxable unless they are used in the actual production and creation of the food. Utilities 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 utilities.

EXAMPLE:

Utilities serving a freezer used only in making ice cream or a fryer used for cooking would be exempt. Utilities serving 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 exclusion from sales tax applies only if nontaxable utilities are separately metered and are predominately used by the purchaser for the excepted 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 exclusion, the taxpayer must complete Form ST-200. The form will be reviewed by the Department and, if the meter qualifies for the exemption, a validated 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 the Indiana sales tax. Applications for exemptions (ST-200) are available from the Department of Revenue's website at www.in.gov/dor/3504.htm.

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 utilities 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 utility, and a claim for refund with documentation must be submitted to the Department using Form GA-110L within 36 months after the date of payment for the utility service.



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Commissioner