

Policy Letter; Testing of Electrical Transformer Oil; August 8, 2016

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Re: Iowa Sales and use tax question

Dear Ms. Asche:

The Iowa Department of Revenue (“Department”) has received your email regarding the taxability of testing services performed on oil taken from electrical transformers.

Facts and Questions as Provided in Your Email:

Prairie Energy Cooperative sends oil samples from electrical transformers to a South Dakota company to check the oil’s PCB content. If the test results state that the oil’s PCB content is at the correct levels, the transformer is put back into inventory. If the test results states that the PCB content is high, the transformer is sent in for disposal as hazardous material.

You inquired as to whether this service of testing the oil is taxable.

Analysis:

Iowa Code § 423.2(5) imposes a six percent tax on the sales price of enumerated services. Included in the list of enumerated taxable services is “test laboratories, including mobile testing laboratories and field testing by testing laboratories, and excluding tests on humans or animals and excluding environmental testing services.” Iowa Code § 423.2(6)(a).

Iowa Code § 423.3(102) exempts from sales tax

The sales price from the furnishing of environmental testing services performed at a laboratory, in the field, or by a mobile testing service. For purposes of this subsection, “*environmental testing*” means the physical or chemical analysis of soil, water, wastewater, air, or solid waste performed in order to ascertain the presence of environmental contamination or degradation.

The testing performed by the South Dakota company will presumably involve physical or chemical analysis. The purpose of the test is to ascertain the presence of PCB, which is an environmental contaminant. However, to qualify for the exemption, the oil must also be “soil, water, wastewater, air, or solid waste.”

The oil is not soil, water, wastewater, or air. The oil must therefore be “solid waste” to qualify for the exemption. “Solid waste” is not defined in Iowa Code § 423.3(102). When a term is not defined in a statute, the term’s definition in a similar statute can be used to determine its meaning. *State v. Kellog*, 542 N.W.2d 514, 516 (Iowa 1996).

“Solid waste” is defined for the purposes of Iowa Code § 423.2(7) as “garbage, refuse, sludge from a water supply treatment plant or air contaminant treatment facility, and other discarded waste materials and sludges, in solid, semisolid, liquid, or contained gaseous form, resulting from nonresidential commercial operations, but does not include...used oil.” Iowa Code § 423.2(7)(a)(1). The term is defined for purposes of the Iowa Department of Natural Resources (DNR) in Iowa Code § 455B.301(23) as

[G]arbage, refuse, rubbish, and other similar discarded solid or semisolid materials, including but not limited to such materials resulting from industrial, commercial, agricultural, and domestic activities....“*Solid Waste*” does not include...[h]azardous waste regulated under the federal Resource Conservation and Recovery Act...[or] [h]azardous waste as defined in section 455B.411.

The Environmental Protection Agency (EPA) defines “solid waste” in 40 CFR § 243.101(y) as

Garbage, refuse, sludges, and other discarded solid materials, including solid waste materials resulting from industrial, commercial, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial wastewater effluents, dissolved materials in irrigation return flows or other common water pollutants. Unless specifically noted otherwise, the term “solid waste” as used in these guidelines shall not include mining, agricultural, and industrial solid wastes; hazardous wastes; sludges; construction and demolition wastes; and infectious wastes.

The used oil in the process you described does not meet any of the three “solid waste” definitions above. The solid waste definition in Iowa Code § 423.2(7) specifically excludes used oil. Both the DNR and EPA definitions require the waste to be a solid or a semisolid. Oil is a liquid. Because the oil is not solid waste, the process you described does not qualify for the environmental testing exemption.

I hope this information has been helpful to you. Please remember that this letter is an informal opinion based only on the facts you provided and on the current law. In the future, the Department could take a position contrary to that stated in this letter. Any written advice or opinion rendered to members of the public by Department personnel that is not pursuant to a Petition for Declaratory Order under 701 IAC 7.24 is not binding upon the Department. If you have any additional questions regarding this matter please do not hesitate to contact me.

Sincerely,

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