

## SOLID REFRIGERATION, LLC (TRU) (2016)

Topic Code: C346 Construction Contractor

Document Reference: 16300082

October 11, 2016

Steve Rolf  
Solid Refrigeration, LLC  
1125 American Blvd E  
Bloomington, MN 55420

RE: Solid Refrigeration, LLC  
Docket No. 2015-310-1-0208  
Retail Use Tax Protest  
Department Number 2015128700482

Dear Mr. Rolf:

The Review Unit of the Iowa Department of Revenue (Department) has considered your protest. After reviewing the facts and evidence presented and the laws which apply to your protest, the Review Unit denies your protest for the following reasons.

Solid Refrigeration is a contractor located in Minnesota that was hired to perform a store remodeling project in Davenport, Iowa. You state that during the first phase of the project, you erroneously paid Iowa sales tax on purchases of building materials, refrigeration equipment, and other tangible personal property used in the project. You state that you also charged sales tax to your customer (through progress billings) on the labor and materials you provided in the remodeling project. Your position is that all of the tangible personal property used in the remodeling project was resold to your customer. Therefore, once the remodeling job was complete, you submitted a claim for refund to the Department because you believe Solid Refrigeration's purchases of the building materials, refrigeration equipment, and other tangible personal property were exempt as purchases for resale.

In support of your position, you cite Iowa Code § 423.2(1)“b” which states:

1. There is imposed a tax of six percent upon the sales price of all sales of tangible personal property, consisting of goods, wares, or merchandise, sold at retail in the state to consumers or users except as otherwise provided in this subchapter.

- b.* Sales of building materials, supplies, and equipment to owners, contractors, subcontractors, or builders for the erection of buildings or the alteration, repair, or improvement of real property are retail sales of tangible personal property in whatever quantity sold. Where the owner, contractor, subcontractor, or builder is also a retailer holding a retail sales tax permit and transacting retail

sales of building materials, supplies, and equipment, the person shall purchase such items of tangible personal property without liability for the tax if such property will be subject to the tax at the time of resale or at the time it is withdrawn from inventory for construction purpose.

The Department denied the refund claim maintaining that, as a contractor, Solid Refrigeration is liable for tax paid on the purchase of materials and supplies used in the performance of the remodeling project. You assert that the end user is responsible for tax on materials under Iowa Code § 423.2(1)“b”. Your position is that the Department’s refund denial was in error because Solid Refrigeration was acting as a retailer and purchased the materials and supplies for resale.

The Department does not agree with your position. Iowa Code § 423.2(1)“b”, which you cited above, references *retail* sales of building materials, supplies, and equipment made by owners, contractors, subcontractors, or builders. The Department’s position is that Solid Refrigeration was operating as a contractor during the remodeling project and did not make retail sales of materials and supplies to its customers. As a contractor, Solid Refrigeration is responsible for sales tax on building materials and supplies used in the performance of a remodeling project as discussed in the first sentence of Iowa Code § 423.2(1)“b”. This is supported by rule IAC 701—219.5(3) which states that “[a] contractor is a consumer by statute. A contractor’s purchase of materials for use in a construction contract is subject to tax whether the materials are purchased for use in construction contracts performed in Iowa or outside this state.” As a contractor, Solid Refrigeration is the consumer of building materials and supplies and the Department believes that Solid Refrigeration correctly paid sales tax on its purchases of these items.

In addition, the Department does not believe that Solid Refrigeration was “double taxed” on its purchases of building materials, refrigeration equipment, and supplies. Although Solid Refrigeration collected and remitted the sales tax charged on its progress billings to its customers, it is the *customers*, not Solid Refrigeration, which actually paid the tax. Therefore, the tax was not paid twice “at the expense of Solid Refrigeration” as asserted in the protest.

In the performance of a construction contract, Solid Refrigeration should not be separately charging tax on materials and labor that is related to new construction, reconstruction, alteration, expansion or remodeling of a building or structure. A contractor is responsible for paying tax on the purchase of building materials, supplies, and equipment. The Department cites rule IAC 701—219.2, which reads:

2005 Iowa Code subsection 423.2(1)“b” provides that sales of building materials, supplies and equipment to owners, contractors, subcontractors or builders for the erection of buildings or the alteration, repair or improvement of real property are retail sales in whatever quantity sold. This means that a contractor, subcontractor, or builder cannot claim an exemption for resale when purchasing building materials or supplies even if the contractor, subcontractor, or builder later separately itemizes material and labor charges for construction contracts. Building materials and supplies would generally consist of items which are incorporated into real property, lose their identity as tangible personal property and cannot be removed without altering the realty, or which are consumed by the contractor during the performance of the construction contract. See subrules 219.3(1), 219.3(2) and 219.3(3). Building equipment would ordinarily consist of machinery and tools. See subrule 219.3(4). The fact that a contractor, subcontractor or builder holds an Iowa retail sales tax permit and has a tax number does not entitle that person to purchase building materials,

supplies and equipment without paying sales tax to the vendor. See rules 701—219.3(423) and 701—219.4(423).

When bidding on a contract, a contractor (general, special or subcontractor) should anticipate that sales or use taxes will increase the cost of materials by the tax unless the sponsor is a designated exempt entity; reference 701—subrule 19.12(5). The necessary allowance should be made in figuring the bid inasmuch as the contractor will be held responsible for paying the tax on building supplies, materials and equipment. The tax should not be identified as a separate item in the formal bid since the contractor cannot charge sales tax. (Emphasis added)

Regardless of whether Solid Refrigeration was correctly charging tax to its customer, Solid Refrigeration was not being double taxed on the purchases of any materials or supplies included with the refund claim. The Department's position is that Solid Refrigeration is the consumer of building materials and supplies and is liable for all taxes paid on the purchases of these items. Therefore, the protest of this issue must be denied.

Please respond in writing by November 10, 2016 whether you agree with the Review Unit's position. If you agree, or choose not to pursue the protest, then your letter will serve as authority for the Review Unit to request the Director to close the protest.

If you disagree with the Review Unit's position in this matter, then the Review Unit requests that you identify those areas of disagreement and provide documentation to support your position. Upon receipt of your letter, the Review Unit may file an Answer, which will initiate the process for an administrative hearing on your protest. A department attorney will be assigned to your protest at that time.

If no response is received by November 10, 2016, then the Review Unit will construe this inaction as failure to pursue the protest and may request dismissal of the protest pursuant to department rule 701 IAC 7.11(2).

If you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

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Audit Services Section  
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