ATTORNEYS FOR PETITIONER:
MATTHEW T. BLACK
BRIAN A. CLAY
BLACK CLAY LLC
Indianapolis, IN

ATTORNEYS FOR RESPONDENT:
THEODORE E. ROKITA
ATTORNEY GENERAL OF INDIANA
LYDIA A. GOLTEN
CARYN NIEMAN-SZYPER
DEPUTY ATTORNEYS GENERAL
Indianapolis, IN

IN THE INDIANA TAX COURT

COVANCE CENTRAL LABORATORY SERVICES LP,	)	
Petitioner,	)	
v.	)	Case No. 20T-TA-00013
INDIANA DEPARTMENT OF STATE REVENUE,	)	
Respondent.	)	

ORDER ON THE PARTIES' COUNTER-MOTIONS FOR SUMMARY JUDGMENT

FOR PUBLICATION
January 5, 2023

WENTWORTH, J.

Covance Central Laboratory Services LP has challenged the final orders of the Indiana Department of State Revenue that either wholly or partially denied its claims for refund of sales tax paid on utility purchases that it made between January 1, 2011, and

December 31, 2018.[1] The matter is currently before the Court on the parties' competing motions for summary judgment, which each present the following two issues:

> 1) whether Covance's 2011-2013 utility purchases qualified for Indiana's research and development equipment sales tax exemption, codified at Indiana Code § 6-2.5-5-40; and
>
> 2) whether the Department erred when it granted an exemption to Covance's 2013-2018 utility purchases related to its research and development property under Indiana Code § 6-2.5-5-40 on a proportional basis.

(See Pet'rs' Mem. Supp. Mot. Summ. J. ("Pet'rs' Br.") at 9-14; Resp't Mem. Law Supp. Mot. Summ. J. ("Resp't Br.") at 10-19.) In addition, the Department's motion presents two other issues:

> 3) whether the Court has subject matter jurisdiction to determine whether Covance's utility purchases qualified for Indiana's manufacturing exemptions, codified at Indiana Code § 6-2.5-5-3 and Indiana Code § 6-2.5-5-6, because there is no final determination concerning these issues; and
>
> 4) whether Covance waived its claims that the Department violated its constitutional rights to due process and equal protection because they were not adequately pled.

(See Resp't Br. at 8-10, 19-23.) Upon review, the Court: 1) grants summary judgment to the Department and against Covance on the first two issues, 2) denies summary judgment to both parties on the third issue, and 3) grants summary judgment to the Department and against Covance on the fourth issue.

FACTS AND PROCEDURAL HISTORY

The following facts are not in dispute. Covance operates multiple pharmaceutical

[1] Covance Central Laboratory Services LP initiated two original tax appeals, Cause Nos. 20T-TA-00013 and 20T-TA-00015. A sister company, Covance Laboratories Incorporated, also initiated two original tax appeals, Cause Nos. 20T-TA-00014 and 20T-TA-00016. By order dated December 2, 2020, the Court consolidated all four cases under Cause No. 20T-TA-00013.

research and development facilities in central Indiana. (See Pet'rs' Des'g Evid., Ex. 1 ¶¶ 1-2, 4-5; Resp't Summ. J. Evid., Ex. 8 at 3.) In the course of conducting its research and development activities, Covance purchases and consumes natural gas, water, and electricity ("utilities"). (Pet'rs' Des'g Evid., Ex. 1 ¶¶ 3, 6.)

Between December 2014 and October 2019, Covance filed multiple claims for refund with the Department for sales tax it paid on purchases of utilities made during the years at issue. (See Pet'rs' Des'g Evid., Ex. 1 ¶¶ 8-16, Ex. 2 ¶¶ 1-2; Resp't Summ. J. Evid., Ex. 5.) Covance's documentation stated that it sought sales tax refunds for purchases of utilities it consumed in its "research and development functions." (See Resp't Summ. J. Evid., Ex. 5.)

The Department denied Covance's refund claims that were related to its utility purchases made between January 1, 2011, and June 30, 2013 (the "Older Utilities") in their entirety. (See Pet'rs' Des'g Evid., Ex. 1 ¶¶ 8-13; Resp't Summ. J. Evid., Ex. 5 at 1, 3-4, Ex. 6 at 1-3.) The Department explained that it denied these claims because "[b]efore July 1, 2013[,] utilities [consumed] in Research and Development were not exempt." (Resp't Summ. J. Evid., Ex. 6 at 1-3.)

The Department, however, granted partial refunds of sales tax Covance paid on its utility purchases made between July 1, 2013, and December 31, 2018 (the "Newer Utilities"). (See Pet'rs' Des'g Evid., Ex. 1 ¶¶ 8-16, Ex. 2 at ¶¶ 1-2; Resp't Summ. J. Evid., Ex. 5 at 1, 3-4, Ex. 6 at 4-8.) More specifically, the Department granted partial refunds, ranging from 58% to 86% of the initial refund claims, explaining that these percentages aligned with the amount of the Newer Utilities actually consumed in Covance's research

and development activities.[2,3] (See, e.g., Pet'rs' Des'g Evid., Ex. 1 at ¶¶ 8-16, Ex. 2 ¶¶ 1-2, Ex. 3, Ex. 5; Resp't Summ. J. Evid., Ex. 6 at 4-8.)

Covance protested the Department's full and partial refund denials. (See Pet'rs' Des'g Evid., Ex. 1 at ¶ 17; Resp't Summ. J. Evid., Ex. 7.) During the administrative hearings on its protests, Covance first argued that the Department should have granted full refunds of sales tax paid on its purchases of the Older Utilities that it used for its research and development equipment. (See, e.g., Pet'rs' Des'g Evid., Stip. Ex. A at 3-4, 7.) Additionally, Covance argued that the Department should have granted full, not partial, refunds of sales tax paid on its Newer Utilities purchases because the Department already found that the utilities were predominately consumed in relation to its research and development property and Indiana Code § 6-2.5-5-40 does not authorize a proportional exemption. (See, e.g., Pet'rs' Des'g Evid., Stip. Ex. C at 2, 4, 8.) In two separate final orders dated March 6, 2020, and June 26, 2020, the Department denied Covance's protests. (See Pet'rs' Des'g Evid., Stip. Exs. A, C.)

Covance timely initiated this original tax appeal. On May 28, 2021, Covance and the Department each filed motions for summary judgment. The Court conducted a hearing on their motions on August 20, 2021. Additional facts will be provided when

---

[2] For example, one of the Department's letters of finding states that "[t]he R&D exempt percentage found is the percentage to be refunded. [If t]he auditor determined an electric exempt percentage of 74%[,] . . . the auditor denied 26% of [Covance's] refund request." (Resp't Summ. J. Evid., Ex. 6 at 5.)

[3] The Court notes that the parties stipulated that "[u]tility studies were commissioned[.]" (See Pet'rs' Des'g Evid., Ex. 1 at ¶ 16, Ex. 2 at ¶¶ 1-2.) Presumably, the Department relied on the findings of those studies in determining what percentage of Covance's utility consumption was exempt. Although neither party designated the utility studies as evidence for purposes of its summary judgment motion, Covance has not challenged the Department's specific exemption percentages. (See, e.g., Pet'rs' Des'g Evid.; Resp't Mot. Summ. J.; Pet'r Mem. Supp. Mot. Summ. J. ("Pet'rs' Br.").)

necessary.

STANDARD OF REVIEW

The Court properly grants summary judgment only when the designated evidence demonstrates that no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C). A genuine issue of material fact exists when a fact concerning an issue that would dispose of the case is in dispute or when the undisputed material facts support conflicting inferences regarding the resolution of an issue. Miller Pipeline Corp. v. Indiana Dep't of State Revenue, 995 N.E.2d 733, 734 n.1 (Ind. Tax Ct. 2013).

LAW

Indiana imposes an excise tax, known as the state sales tax, on retail transactions made within the state. IND. CODE § 6-2.5-2-1(a) (2011) (amended 2020). "The person who acquires [tangible personal] property in a retail transaction is liable for the tax on the transaction[.]" I.C. § 6-2.5-2-1(b) (emphasis added). "[E]lectricity, water, gas, [and] steam" are deemed to be "tangible personal property" for purposes of Indiana's sales tax. IND. CODE § 6-2.5-1-27 (2011).

In 2005, the Legislature enacted Indiana Code § 6-2.5-5-40, which exempts from sales tax certain tangible personal property used for research and development activities. See Pub. Law No. 193-2005, § 10 (eff. July 1, 2005) (enacting IND. CODE § 6-2.5-5-40 (2005) ("the R&D Exemption Statute")). The R&D Exemption Statute expressly exempted retail transactions "involving research and development equipment" ("R&D Equipment") occurring after June 30, 2007, but before July 1, 2013. I.C. § 6-2.5-5-40(f) (emphasis added). In 2013, however, the Legislature amended the R&D Exemption Statute to

exempt retail transactions occurring after June 30, 2013, that "involve[d] research and development property" ("R&D Property") as distinct from research and development equipment. See Pub. L. No 288-2013, § 29 (eff. July 1, 2013) (enacting I.C. § 6-2.5-5-40(g) (2013)) (emphasis added). Accordingly, the key to whether Covance's utility purchases qualify for exemption is found in the R&D Exemption Statute, which now states in its entirety:

> (a) As used in this section, "research and development activities" includes design, refinement, and testing of prototypes of new or improved commercial products before sales have begun for the purpose of determining facts, theories, or principles, or for the purpose of increasing scientific knowledge that may lead to new or enhanced products. The term does not include any of the following:
>
> (1) Efficiency surveys.
>
> (2) Management studies.
>
> (3) Consumer surveys.
>
> (4) Economic surveys.
>
> (5) Advertising or promotions.
>
> (6) Research in connection with nontechnical activities, including literary, historical, social sciences, economics, humanities, psychology, or similar projects.
>
> (7) Testing for purposes of quality control.
>
> (8) Market and sales research.
>
> (9) Product market testing, including product testing by product consumers or through consumer surveys for evaluation of consumer product performance or consumer product usability.
>
> (10) The acquisition, investigation, or evaluation of another's patent, model, process, or product for the purpose of investigating or evaluating the value of a potential investment.
> (11) The providing of sales services or any other service, whether technical or nontechnical in nature.

(b) As used in this section, “research and development equipment” means tangible personal property that:

(1) consists of or is a combination of:

(A) laboratory equipment;

(B) computers;

(C) computer software;

(D) telecommunications equipment; or

(E) testing equipment;

(2) has not previously been used in Indiana for any purpose; and

(3) is acquired by the purchaser for the purpose of research and development activities devoted directly to experimental or laboratory research and development for:

(A) new products;

(B) new uses of existing products; or

(C) improving or testing existing products.

(c) As used in this section, “research and development property” means tangible personal property that:

(1) has not previously been used in Indiana for any purpose; and

(2) is acquired by the purchaser for the purpose of research and development activities devoted to experimental or laboratory research and development for:

(A) new products;

(B) new uses of existing products; or

(C) improving or testing existing products.

(d) For purposes of subsection (c)(2), a research and development activity is devoted to experimental or laboratory research and development if the activity is considered essential and integral to

experimental or laboratory research and development. The term does not include activities incidental to experimental or laboratory research and development.

(e) For purposes of subsection (c)(2), an activity is not considered to be devoted to experimental or laboratory research and development if the activity involves:

(1) heating, cooling, or illumination of office buildings;

(2) capital improvements to real property;

(3) janitorial services;

(4) personnel services or accommodations;

(5) inventory control functions;

(6) management or supervisory functions;

(7) marketing;

(8) training;

(9) accounting or similar administrative functions; or

(10) any other function that is incidental to experimental or laboratory research and development.

(f) A retail transaction:

(1) involving research and development equipment; and

(2) occurring after June 30, 2007, and before July 1, 2013; is exempt from the state gross retail tax.

(g) A retail transaction:

(1) involving research and development property; and

(2) occurring after June 30, 2013;

is exempt from the state gross retail tax.

(h) The exemption provided by subsection (g) applies regardless of whether the person that acquires the research and development

> property is a manufacturer or seller of the new or existing products specified in subsection (c)(2).

IND. CODE § 6-2.5-5-40 (2019) (emphases added).

ANALYSIS

Neither party disputes the material facts related to the first two issues; instead, they dispute how the law applies to those facts. Specifically, each party disputes the other's interpretation of the meaning of certain terms in the R&D Exemption Statute. Conflicting interpretations such as these are particularly appropriate for resolution by summary judgment. See Mynsberge v. Indiana Dep't of State Revenue, 716 N.E.2d 629, 631 (Ind. Tax Ct. 1999) (stating that "[q]uestions of statutory interpretation are [] particularly amenable to resolution by summary judgment" (citation omitted).)

1. The Older Utilities

As indicated, the R&D Exemption Statute provides that retail transactions occurring after June 30, 2007, but before July 1, 2013, involving R&D Equipment are exempt from sales tax. See I.C. § 6-2.5-5-40(f). The parties, however, offer different interpretations of the meaning of the statutory term "research and development equipment." Covance argues that its purchases of utilities qualify as purchases of R&D Equipment eligible for exemption even though subsection (b) of the R&D Exemption Statute does not specifically list "utilities" as tangible personal property that qualifies as exempt R&D Equipment. (See Pet'rs' Br. at 12.) Covance reasons that because Indiana Code § 6-2.5-1-27 deems electricity, water, and gas to be tangible personal property for purposes of Indiana's sales tax statutes, the use of the term "tangible personal property" in subsection (b) of the R&D Exemption Statute necessarily includes those utilities. (See Pet'rs' Br. at 12.) On the other hand, the Department argues that subsection (b) of the

R&D Exemption Statute singles out a finite subset of all possible tangible personal property that is exempt R&D Equipment, thereby excluding all other types of tangible personal property. (See Resp't Resp. Opp'n Pet'rs' Mot. Summ. J. ("Resp't Resp. Br.") at 6-7.)

Turning to the R&D Exemption Statute itself, subsection (b) expressly lists the following tangible personal property as exempt R&D Equipment: "(A) laboratory equipment; (B) computers; (C) computer software; (D) telecommunications equipment; or (E) testing equipment"; that list does not include electricity, water, and gas. I.C. § 6-2.5-40(b)(1). The Court must therefore determine whether this list of R&D Equipment includes those utilities because they are generally deemed to be tangible personal property under Indiana Code § 6-2.5-1-27.

In interpreting the Legislature's use of statutory terms, the Court applies the statute as written, giving all of its words their plain and ordinary meaning unless the statute indicates otherwise. Schiffler v. Marion Cnty. Assessor, 184 N.E.3d 726, 729 (Ind. Tax Ct. 2022), review denied. Here, the definition of the term R&D Equipment includes only property that "consists of or is a combination of" the expressly listed items; therefore, the plain text does not contain any written indication that this finite, insular list of tangible personal property is merely an illustrative rather than an exclusive listing of tangible personal property eligible for exemption. I.C. § 6-2.5-4-40(b)(1). Moreover, Covance has not persuaded the Court that the text provides any clues that would invite a broadening of the types of eligible tangible personal property. For instance, the Legislature could have used terms like "such as," "including," or "for example" to suggest the list was not exclusive, but it did not. See I.C. § 6-2.5-4-40(b)(1). Thus, the plain

language of the statute on its face does not support a finding that it includes other unlisted types of tangible personal property. See Indiana Dep't of State Revenue v. Horizon Bancorp, 644 N.E.2d 870, 872 (Ind. 1994) (stating that unambiguous statutes must be read to mean what they plainly express and their plain meanings may not be enlarged or restricted).

Furthermore, finding that the plain meaning forecloses any expansion of the list of eligible R&D Equipment comports with two common interpretive principles. The first principle instructs that exemption statutes are construed narrowly with any ambiguities resolved in favor of the state imposing the tax. See Raintree Friends Hous., Inc. v. Indiana Dep't of State Revenue, 667 N.E.2d 810, 813 (Ind. Tax Ct. 1996). Therefore, a narrow reading of the R&D Exemption Statute would preclude adding an item not stated in the statute. The second principle instructs that a specific statute, such as the R&D Exemption Statute, controls over a general one, such as Indiana Code § 6-2.5-1-27, which is generally applicable throughout all of the sales tax statutes. City Sec. Corp. v. Dep't of State Revenue, 704 N.E.2d 1122, 1128 (Ind. Tax Ct. 1998) (stating that "[w]hen two statutory provisions [related to the same subject matter] are in conflict with one another, the more specific of the two controls" (citation omitted)).

According to the plain meaning of the R&D Exemption Statute, Covance's purchases and consumption of natural gas, water, and electric utilities between January 1, 2011, and June 30, 2013 (i.e., the Older Utilities) are not purchases of tangible personal property listed under Indiana Code § 6-2.5-5-40(b)(1) and therefore do not qualify as exempt R&D Equipment. As a result, the Department did not err by denying Covance's

refund claims related to Covance's purchases of the Older Utilities. Consequently, the Department is entitled to summary judgment on this issue.[4]

2. The Newer Utilities

Effective January 1, 2013, the Legislature amended the R&D Exemption Statute to exempt retail transactions occurring after June 30, 2013, that involve R&D Property. See I.C. § 6-2.5-5-40(g). Thus, Covance's purchases of the Newer Utilities were exempt if they involved R&D Property.

As a threshold matter, the definitions of R&D Equipment (the term relevant to the Older Utilities) and R&D Property (the term relevant to the Newer Utilities) are similar, but not identical. Subsection (b) of the R&D Exemption Statute defines R&D Equipment as tangible personal property acquired for the purpose of research and development activities "devoted directly to experimental or laboratory research and development" whereas subsection (c) defines R&D Property identically but for the omission of the word "directly." Compare I.C. § 6-2.5-5-40(b)(3) with (c)(2). In addition, the Legislature differentiated the two terms further by 1) explaining that R&D Property is "devoted to experimental or laboratory research and development if the activity is considered essential and integral to experimental or laboratory research and development" and that such an activity "does not include activities incidental to experimental or laboratory

[4] The Court notes that Covance has made an "alternative" argument regarding the Older Utilities. Covance asserts that under the plain language of Indiana Code § 6-2.5-5-40(f), its Older Utilities are exempt R&D Equipment because "[a]s the parties have stipulated that [Older] Utilities were predominately used directly in [research and development], the parties have essentially stipulated that [they] were involving R&D [E]quipment when consumed." (Pet'rs' Br. at 12-13.) Covance's alternative argument fails, however, for the same reason its primary argument fails: the plain meaning of the term R&D Equipment as used in subsection (b) of the R&D Exemption Statute does not list utilities as tangible personal property that is exempt R&D Equipment; thus, the transactions cannot involve R&D Equipment under Indiana Code § 6-2.5-5-40(f)(1).

research and development[,]" and 2) providing a list of ten activities that are not devoted to experimental or laboratory research and development. See I.C. § 6-2.5-5-40(d)-(e) (emphases added). In contrast, the Legislature describes exempt R&D Equipment simply as that property "devoted directly to experimental or laboratory research and development for[ ] new products[,] new uses of existing products[,] or [] improving or testing existing products" without further explanation of the relationship. I.C. § 6-2.5-5-40(b)(3) (emphasis added). Accordingly, the two terms, R&D Equipment and R&D Property, are different, have different meanings, and must be analyzed independently.

Covance's position is that its purchases of Newer Utilities are 100% exempt and it is therefore entitled to a full refund. (See Pet'rs' Br. at 9-10.) As support for its position, Covance advances two arguments. First, it argues that the Department has essentially stipulated that the purchases of the Newer Utilities meet all of Indiana Code § 6-2.5-5-40(g)'s statutory elements. (See Pet'rs' Br. at 9-10.) In the alternative, Covance argues that the Newer Utilities are 100% exempt based on the predominant use standard set forth in the Department's own administrative regulation of 45 IAC 2.2-4-13. (See Pet'rs' Br. at 10-11.) On the other hand, the Department's position is that the plain language of the R&D Exemption Statute applies on a "dollar-for-dollar" basis and, therefore, Covance is entitled only to a partial refund with respect to its R&D Property. (See Resp't Br. at 10-11.) The Department also argues that the predominant use standard in 45 IAC 2.2-4-13 is simply not applicable to Covance's claims for refund. (See Resp't Br. at 11-12.)

a) The Parties' Stipulations and the R&D Exemption Statute

In this case, both Covance and the Department agree that gas, water, steam, and electric utilities qualify as R&D Property and that Covance's Newer Utilities were

predominately (i.e., more than 50% of the time) used or consumed for an exempt purpose. (See, e.g., Pet'rs' Des'g Evid., Ex. 1 ¶¶ 8-16, Ex. 2 ¶¶ 1-2; Resp't Resp. Br. at 5-6.) Covance therefore concludes that its purchases of Newer Utilities meet all the statutory requirements necessary for a 100% exemption under Indiana Code § 6-2.5-5-40(g). (See Pet'rs' Br. at 9-10.) (See also Pet'rs' Br. at 12-13 (maintaining that because the parties "have stipulated that the [Older Utilities] were predominately used directly in [research and development], the parties have essentially stipulated that [they] were involving R&D [E]quipment when consumed"); Pet'rs' Des'g Evid., Stip. Ex. A at 3, 6 (indicating that the parties agreed that "[i]n conducting its research and development activities, [Covance] . . . consumes utility services including natural gas, water, and electricity"); Stip. Ex. C at 2, 4, 8.)

The Department contends, however, that "based on the plain meaning of the statute, [Covance is only] entitled to a refund of sales tax for each and every purchase of utilities where the purchase involved [R&D Property]. For those purchases of utilities that did not involve [R&D Property, therefore], the Department properly denied the requested refund because the exemption did not apply." (Resp't Br. at 12 (citations omitted).)

The plain language of Indiana Code § 6-2.5-5-40 unambiguously instructs how to apply the exemption to R&D Property. Indeed, subsection (d) of the R&D Exemption Statute states that R&D Property is exempt if it is acquired for activities devoted to experimental or laboratory research and development because it is essential and integral to experimental or laboratory research and development, further stating that it does not apply to activities incidental to experimental or laboratory research and development. See I.C. § 6-2.5-5-40(d). Accordingly, the plain language of the statute provides the

exemption for R&D Property is based on its actual use: tangible personal property essential and integral to experimental or laboratory research and development is fully exempt, while tangible personal property "incidental to experimental or laboratory research and development" is not. See I.C. § 6-2.5-5-40(d). In addition, subsection (e) identifies specific activities that are not exempt. See I.C. § 6-2.5-5-40(e). These two subsections indicate the Legislature's intent to wholly exempt, dollar-for-dollar, purchases of utilities essential and integral to exempt R&D activities; it does not exempt any purchases of utilities incidental to exempt R&D activities. See Horizon Bancorp, 644 N.E.2d at 872 (stating that unambiguous statutes must be read to mean what they plainly express and their plain meanings may not be enlarged or restricted).

b) The Predominant Use Standard

Alternatively, Covance asserts that the Newer Utilities are 100% exempt based on the predominant use standard set forth in the Department's administrative regulation 45 IAC 2.2-4-13(e). (See Pet'rs' Br. at 10-11.) That regulation states that "[w]here public utility services are sold from a single meter and the services or commodities are utilized for both exempt and nonexempt uses, the entire gross receipts will be subject to tax unless the services or commodities are used predominately for excepted purposes. Predominant use shall mean that more than fifty percent (50%) of the utility services and commodities are consumed for excepted uses." 45 IND. ADMIN. CODE 2.2-4-13(e) (2011). (See also Pet'rs' Br. at 10 (claiming that because "[t]he Department admits that more than 50% of all [the Newer] Utilities were directly used in R&D . . . the predominant use standard should apply").)

The Department reasons that Indiana Code § 6-2.5-5-40 does not apply the predominant use standard as its measure because it "simply makes no reference to [either] a predominate use standard or to 45 IAC 2.2-4-13." (Resp't Br. at 12.) Additionally, the Department contends, the predominant use standard in 45 IAC 2.2-4-13 "is not applicable to [Covance's] claims for refund because [the regulation] interprets and enforces other consumption and manufacturing exemptions, not the R&D [e]xemption." (Resp't Br. at 11 (referring to the introductory language of the regulation that states it "affects" Indiana Code § 6-2.5-4-5 and Indiana Code § 6-2.5-5-5.1[5]).)

When the language of a statute is ambiguous, it is appropriate for the Court to look to a clarifying regulation that indicates how the statute is to be applied. See Johnson Cnty. Farm Bureau Co-op. Ass'n v. Indiana Dep't of State Revenue, 568 N.E.2d 578, 585-86 (Ind. Tax Ct. 1991), aff'd, 585 N.E.2d 1336 (Ind. 1992). Here, however, the Court need not refer to 45 IAC 2.2-4-13 as a clarifying resource because the regulation expressly applies to different exemption statutes than the R&D Exemption Statute and cannot clarify the application of the wholly unrelated R&D Exemption Statute. Moreover, as the Court has previously explained, the plain language of Indiana Code § 6-2.5-5-40 unambiguously instructs how to apply the exemption for R&D Property, eliminating any need to consider any clarifying regulation.

[5] Indiana Code § 6-2.5-4-5 provides that retail sales of utilities by a public utility company to a purchaser that uses those utilities in its manufacturing process are not subject to sales tax. See IND. CODE § 6-2.5-4-5 (2011) (amended 2012). Indiana Code § 6-2.5-5-5.1 provides that "[t]ransactions involving tangible personal property are exempt from [sales tax] if the person acquiring the property acquires it for direct consumption as a material to be consumed in the direct production of other tangible personal property in the person's business of manufacturing, processing, refining, repairing, mining, agriculture, horticulture, floriculture, or arboriculture." IND. CODE § 6-2.5-5-5.1(a), (b) (2011).

The statutory structure regarding the exemption for R&D Property is antithetic to fully exempting purchases of utilities that are partly used for exempt R&D purposes merely because the purchases were predominantly used for exempt R&D purposes. Consequently, the Department is entitled to summary judgment on this issue.

3. The Manufacturing Exemptions

In each of Covance's original tax appeal petitions (see supra note 1), Covance alleged that its utility purchases were exempt from sales tax under Indiana Code § 6-2.5-5-3(b) and Indiana Code § 6-2.5-5-6 (the Manufacturing Exemptions) in addition to being exempt under the R&D Exemption Statute.[6] (See, e.g., Resp't Des'g Evid., Ex. 1 ¶¶ 27-28, 30-31.) The Department asserts, however, that it is entitled to judgment as a matter of law regarding these claims because the Tax Court lacks subject matter jurisdiction to decide them. (See Resp't Br. at 8-10; Hr'g Tr. at 39.) The Department explains that 1) Covance did not reference the Manufacturing Exemptions in its claims for refund or in its administrative appeals, and 2) the Department did not mention the Manufacturing Exemptions in its final determinations. (See Resp't Br. at 9; Hr'g Tr. at 39-41.) The Department reasons therefore that Covance did not have a final determination on these claims, which is the equivalent to the failure to exhaust administrative remedies and deprives the Tax Court of subject matter jurisdiction. (See Resp't Br. at 8-10.)

[6] Indiana Code § 6-2.5-5-3(b) exempts from sales tax those transactions involving the purchase of manufacturing machinery, tools, and equipment "if the person acquiring that property acquires it for direct use in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property." IND. CODE § 6-2.5-5-3(b) (2011) (amended 2017). Indiana Code § 6-2.5-5-6 exempts from sales tax those transactions involving tangible personal property "if the person acquiring the property acquires it for incorporation as a material part of other tangible personal property which the purchaser manufactures, assembles, refines, or processes for sale in his business." IND. CODE § 6-2.5-5-6 (2011).

The Department's assertion that Covance did not raise the Manufacturing Exemption claims at the administrative level is contradicted by the fact that two of Covance's four designated refund claims state that it sought a refund because it "uses this electricity in [its] Research & Development/**Mfg** functions." (See Resp't Summ. J. Evid., Ex. 5 at 2-3 (emphasis added).) Thus, Covance did raise the Manufacturing Exemption claims, albeit tersely, at the administrative level, and did not fail to exhaust its administrative remedies as to the issue of their applicability.

In any event, whether administrative remedies have been exhausted is relevant to whether the Court may exercise its subject matter jurisdiction, not to whether it has subject matter jurisdiction in the first instance. See, e.g., First Am. Title Ins. Co. v. Robertson, 19 N.E.3d 757, 760-61 (Ind. 2014) (explaining that the exhaustion of administrative remedies requirement is a procedural error that does not implicate a trial court's subject matter jurisdiction), amended on other grounds by 27 N.E.3d 768 (Ind. 2015). Indeed, the only relevant inquiry in determining whether a court has subject matter jurisdiction is "whether th[e] kind of claim the plaintiff advances falls within the general scope of authority conferred upon such court by the constitution or statute." Matter of Adoption of H.S., 483 N.E.2d 777, 780 (Ind. Ct. App. 1985) (emphases added) (citation omitted).

Subject matter jurisdiction is the power of a court to hear and determine a particular class of cases. K.S. v. State, 849 N.E.2d 538, 540 (Ind. 2006). It "does not depend upon the sufficiency or correctness of the averments in [a] complaint, the stating of a good cause of action, the validity of [a party's] demand, or [a party's] right to relief." Matter of Adoption of H.S., 483 N.E.2d at 780. See also, e.g., Pivarnik v. N. Ind. Pub. Serv. Co., 636 N.E.2d 131, 137 (Ind. 1994) (emphasizing that subject matter jurisdiction concerns

the power of a court to decide particular types of cases, not the intricacies of pleading them). The Tax Court has exclusive statutory subject matter jurisdiction over the class of cases known as "original tax appeals," which are cases that arise under the tax laws of Indiana and that are initial appeals of final determinations made by the Department with respect to any of the statutorily listed taxes. See IND. CODE § 33-26-3-1, -3 (2023); IND. CODE § 6-8.1-1-1 (2023) (designating taxes as listed taxes). See also State v. Sproles, 672 N.E.2d 1353, 1357 (Ind. 1996) (explaining how a case arises under the tax laws and when there is a final determination).

Here, the Tax Court unquestionably has subject matter jurisdiction because 1) Covance's case arises under Indiana tax laws by challenging whether an exemption from sales tax applies in determining whether a refund is due under the facts, and 2) it is an initial appeal of the Department's final determinations denying, either in full or in part, the amount of the refunds Covance requested. Moreover, the Department has not shown, as a matter of law, that the Court lacks subject matter jurisdiction to decide whether Covance's utility purchases qualify for the Manufacturing Exemptions merely because they were not mentioned in its final determinations. See, e.g., IND. CODE § 6-8.1-5-1 (2011) (amended 2015); Horseshoe Hammond, LLC v. Indiana Dep't of State Revenue, 865 N.E.2d 725, 727 (Ind. Tax Ct. 2007), review denied (both indicating the well-established principle that this Court hears appeals from final orders by the Department denying refund claims de novo, meaning it is not bound by either the evidence or the legal arguments made to the Department at the administrative level).) Accordingly, the Court

denies the Department's motion for summary judgment on this claim.[7]

4. Covance's Due Process and Equal Protection Allegations[8]

All four of Covance's original tax appeal petitions have also alleged that "[t]he Department failed to accurately apply the law in violation of the Equal Protection and Due Process Clauses of the United States Constitution." (See Resp't Des'g Evid., Ex. 1 at 6 ¶ (e), 13 ¶ (e), 20 ¶ (f), 27 ¶ (f).) Covance, however, did not include this claim in its summary judgment motion. (See Pet'rs' Br.) The Department, on the other hand, has moved for summary judgment in its favor on these constitutional claims, asserting that Covance's petitions "do not allege a single fact in support [there]of" and thus the issue has been waived. (See Resp't Br. at 19-22; Resp't Resp. Br. at 18.)

Indiana is a notice pleading state. Indiana Trial Rule 8(A) requires only that a complaint set forth only "a short and plain statement of the claim showing that the pleader is entitled to relief[;]" the rule does not require it to detail all the facts upon which the claim is based or delineate a specific legal theory of recovery to be adhered to throughout the case. See Ind. Trial Rule 8(A); Trail v. Boys & Girls Clubs of Nw. Ind., 845 N.E.2d 130, 141 (Ind. 2006) (Rucker, J., dissenting). "But even under notice pleading, a plaintiff must still set out the operative facts of the claim." Trail, 845 N.E.2d at 136-37 (explaining that

[7] Because Covance has not sought summary judgment on this issue, (see Hr'g Tr. at 51-52), it has not advanced any facts or argument to show that the Manufacturing Exemptions even apply to its utility purchases. (See Pet'rs' Br.; Pet'rs' Mem. Opp'n [Resp't] Mot. Summ. J. ("Pet'rs' Resp. Br."); Pet'rs' Reply [Resp't] Resp. Opp'n Pet'rs' Mot. Summ. J. ("Pet'rs' Reply Br."); Hr'g Tr.) There are genuine issues of material fact concerning whether the Manufacturing Exemptions apply to Covance's utility purchases that cannot be resolved by summary judgment but may be litigated at trial if the parties so choose.

[8] Two of Covance's petitions additionally claim that the "Department erroneously denied a refund for tax amounts paid above the amount of tax due pursuant to a Sales and Use Tax Compliance Agreement[.]" (Resp't Des'g Evid., Ex. 1 at 20 ¶ (e), 27 ¶ (e).) Because Covance has not even mentioned this agreement at all in any of its briefing or during the summary judgment hearing, (see Pet'rs' Br.; Pet'rs' Resp. Br.; Pet'rs' Reply Br.; Hr'g Tr.), the Court will not consider the claim.

this policy is sound because it allows the defendant to prepare appropriate defenses and it preserves judicial resources).

When claiming a violation of the Equal Protection Clause of the United States Constitution, a litigant must generally prove that it is 1) a member of a class that is suspect or which trammels on fundamental rights and the class is not rationally related to a legitimate state interest or that 2) as a member of a legitimate class, it is treated differently than persons who in all relevant respects are alike.[9] See Nordlinger v. Hahn, 505 U.S. 1, 10 (1992); City of Cleburne, Tex. v. Cleburne Living Ctr., 473 U.S. 432, 440 (1985). When claiming a violation of the U.S. Constitution's Due Process Clause, a litigant must generally prove that, as a taxpayer, it has not been provided with notice and a meaningful opportunity to be heard before its tax liability is finally fixed or that it has been assessed a tax that is arbitrary, oppressive, or unjust.[10] See Griffin v. Dep't of Local Gov't Fin., 794 N.E.2d 1171, 1176-77 (Ind. Tax Ct. 2003) (citations omitted), review denied. None of Covance's petitions pled any operative facts with respect to either of these claims – they merely allege that its rights under these clauses have been violated. (See Resp't Des'g Evid., Ex. 1.) A bald accusation is insufficient for purposes of notice pleading under Trial Rule 8. See Trail, 845 N.E.2d at 137-38.

The Court notes that Covance does not directly respond to the arguments the Department makes in its summary judgment motion on this issue, but merely states that

> [t]he Department's position that Covance is precluded from arguing the [Manufacturing E]xemptions codified in Indiana Code § 6-2.5-5-3

[9] The Equal Protection Clause of the United States Constitution provides that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1.

[10] The Fourteenth Amendment also guarantees that no state shall "deprive any person of life, liberty, or property, without due process of law[.]" U.S. CONST. amend. XIV, § 1.

> and § 6-2.5-5-6, despite raising them in their protests, would deny Covance due process and equal protection under the law. Further, the Department's decisions, rendering Covance liable for taxes they do not owe under the law, have also denied Covance due process and equal protection under the law . . . [T]he Department's failure to include arguments advanced by Covance in the decisions denying Covance's protests is akin to denying Covance a meaningful opportunity to be heard which amounts to a violation of Covance's due process and is contrary to how similarly suited tax payers are treated and therefore constitutes a violation of Covance's equal protection under the law. Accordingly, there is a genuine dispute of material fact as to whether the [D]epartment's decisions have denied Covance due process and equal protection under the law.

(Pet'rs' Mem. Opp'n [Resp't] Mot. Summ. J. at 9.) Thus, Covance's response is strictly accusatory, not supported by any facts or designated evidence, and constitutes a non sequitur.

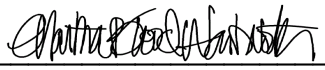
As this Court has explained above, Covance's Manufacturing Exemption claims are still viable and may be resolved at trial. Supra note 7. Any alleged issues involving a violation of Equal Protection or Due Process rights that may stem from the resolution of those claims are therefore premature for resolution today.

CONCLUSION

With respect to the first two issues in this case, summary judgment is granted to the Department and denied to Covance. With respect to the third issue, neither party is entitled to summary judgment. As to the fourth issue, summary judgment is granted to the Department and denied to Covance. Under separate cover, the Court will schedule a case management conference with the parties to develop a case management plan

regarding any and all issues that have survived summary judgment and remain for trial.

SO ORDERED this 5th day of January 2023.



Martha Blood Wentworth, Judge
Indiana Tax Court

Distribution:
Matthew T. Black, Brian A. Clay, Lydia A. Golten, Caryn Nieman-Szyper