DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0578
Sales and Use Taxes
Calendar Years 1996, 1997, and 1998

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ISSUE(S)

I. **Selling at Retail** – Best Information Available

Authority: 45 IAC 2.2-6-8; IC 6-8.1-5-1

Taxpayer protests the tax on sales to landfills.

II. **Use Tax** – Mulch spreader and trailer

Authority: 45 IAC 2.2-4-26

Taxpayer protests the use tax on two mulch spreaders and trailers.

STATEMENT OF FACTS

The Taxpayer is a landscape contractor providing lawn seeding and trees. Its primary customers include privately owned landfills and major department stores. No tax was paid on materials sold through lump sum improvements to realty. The taxpayer did not obtain valid exemption certificates from its customers and the customers that responded to the AD-70 "Special Sales/Use Tax Exemption" certificate claimed no exemption.

A projection of materials used on landfill and department store jobs was calculated for 1996 and 1997 because the taxpayer had no sales records available for those years. The total 1998 errors were divided by the total sales for 1998 to develop a percentage of error. This percentage was multiplied by the total 1996 and 1997 sales to arrive at the material portion subject to use tax.

Taxpayer submitted a protest that was received by the Indiana Department of Revenue on November 5, 1999 that states that its sales fall under the environmental control exemption and that it assists landfills in their compliance with these regulations by incorporating grass and other vegetation into the soil along with fertilizer and straw in order to provide the mandate control of surface water runoff from the facility. Taxpayer's customers however failed to submit

exemption certificates, and the ones that did respond, stated they were not exempt.

On July 9, 2002 the hearing officer scheduled a meeting for July 24, 2002 to which the taxpayer responded in a telephone call on July 23, 2002. Taxpayer stated that he would send exemption certificates. The three forwarded Exemption Certificates however are invalid because they covered periods other than those of the audit. Taxpayer was informed that the letter of Findings would be written based upon the information he submitted via FAX and the information contained in the audit file unless he preferred a hearing.

I. **Selling at Retail** – Best Information Available

DISCUSSION

Taxpayer simply protests tax on sales that he claims fall under the environmental exemption.

In reviewing the audit report and the file, it is noted that the assessments, to which the taxpayer disagrees, stem from lump sum contracts to several organizations, some of which have refused to sign the Special Exemption certificates. One specifically states it is not exempt.

Taxpayer, in billing the lump sum contracts, did not pay tax on the material upon purchase nor did it charge sales tax on the material portion when completing these contracts of seeding and mulching.

Taxpayer provided nothing to aid in the resolution of the audit.

FINDING

Taxpayer's protest is denied.

II. **Use Tax** – Mulch spreader and trailer

DISCUSSION

Taxpayer states that the mulch spreader and trailers are actually straw blowers that are built onto their own self-contained trailers and are only suitable for extremely large projects such as landfills. Taxpayer further states that both of these items are used "predominantly for the prevention, control, reduction, or elimination of water pollution which are required to cover the bare soil after the seed and fertilizer is incorporated into the surface and are exempt. Taxpayer cites case in *Indiana Department of Environmental Management v. Amax, Inc.*, 529 N.E.2d 1209 (Ind. App. 1 Dist. 1988).

The case referenced by the taxpayer refers to water runoff from mined lands that carry pollutants and other minerals to the streams and waters of the State.

There is no indication whatsoever, that these are mined lands. The taxpayer is not in the business of mining. To the contrary, the exemptions the taxpayer tries to claim are for contracts for large department stores and other customers that refuse to state that they are exempt from state taxation.

The taxpayer uses the mulch spreaders and trailers in its landscaping business and has not provided proof that they are used in an exempt manner.

FINDING

Taxpayer's protest is denied.

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