

**Letter of Findings: 07-0441
Gross Retail Tax
For the Year 2004**

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ISSUE

I. Agricultural Equipment – Use Tax.

Authority: IC § 6-2.5-3-2; IC § 6-2.5-5-2; [45 IAC 2.2-5-6](#); [45 IAC 2.2-5-6\(c\)](#); [45 IAC 2.2-5-6\(e\)\(3\)](#).

Taxpayer challenges the Department's determination that a backhoe purchased for use in taxpayer's farming operation is subject to gross retail (use) tax.

STATEMENT OF FACTS

Taxpayer is a Subchapter S farm corporation engaged in the business of raising corn, soybeans, and wheat. In 2004, taxpayer purchased a backhoe from an out-of-state vendor. At the time of the purchase, taxpayer's representative provided an Agricultural Exemption Certificate exempting the purchase from Indiana sales tax.

The Department of Revenue (Department) subsequently reviewed the transaction and concluded that the purchase of the backhoe was taxable and issued a proposed assessment of use tax. Taxpayer disagreed with the Department's decision and submitted a protest to that effect. An administrative hearing was conducted by telephone and this Letter of Findings results.

I. Agricultural Equipment – Use Tax.

DISCUSSION

Pursuant to [IC 6-2.5-3-2](#), "an excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction."

Nonetheless taxpayer challenges the Department's decision that the purchase of the backhoe was taxable because taxpayer maintains that the backhoe is used "in the direct production of corn, soybeans, and wheat...." Taxpayer explains that the backhoe is used to "repair and install field tile, grass waterways, water and sediment control basins, rock chutes, and rock boxes." In addition taxpayer points out that the backhoe is to assist in preparing the soil and in the harvesting of its corn, wheat, and soybeans. Further, taxpayer states that the backhoe is not used outside its own farming operation and that the equipment is not rented to other users. The exemption is set out at IC § 6-2.5-5-2 as follows:

- (a) Transactions involving agricultural machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for his direct use in the direct production, extraction, harvesting, or processing of agricultural commodities.
- (b) Transactions involving agricultural machinery or equipment are exempt from the state gross retail tax if:
 - (1) the person acquiring the property acquires it for use in conjunction with the production of food and food ingredients or commodities for sale;
 - (2) the person acquiring the property is occupationally engaged in the production of food or commodities which he sells for human or animal consumption or uses for further food and food ingredients or commodity production; and
 - (3) the machinery or equipment is designed for use in gathering, moving, or spreading animal waste.

The statutory exemption is further explained in the Department's regulation set out in [45 IAC 2.2-5-6](#) which states in part that, "Purchase[s] of agricultural machinery, tools, and equipment to be directly used by the purchaser in the *direct production*, extraction, harvesting, or processing of agricultural commodities are exempt from tax provided such machinery, tools, and equipment have a *direct effect* upon the agricultural commodities produced, harvested, etc." [45 IAC 2.2-5-6\(c\)](#) (*Emphasis added*).

Taxpayer argues that the backhoe is necessary, essential, and integral to its production of soybeans, corn, and wheat. The Department is prepared to agree that the backhoe is necessary to taxpayer's agricultural operation. However, the regulation recognizes what is essentially the "double-direct" test; the equipment at issue must be involved in the *direct production* of the agricultural commodity and must have a *direct effect* upon that commodity. In taxpayer's case, the backhoe falls with the category of taxable equipment described in [45 IAC 2.2-5-6\(e\)\(3\)](#) which states that, "Machinery, tools, and equipment used in general farm maintenance are taxable."

The Department is unable to agree that the backhoe is directly involved in the direct production of taxpayer's wheat, soybean, and corn.

FINDING

Taxpayer's protest is respectfully denied.

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