

**Letter of Findings: 08-0008
Gross Retail Tax
For the Year 2004**

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ISSUES

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 "bush hog" purchased for use in taxpayer's farming operation is subject to gross retail (use) tax.

II. Ten-Percent Negligence Penalty.

Authority: IC § 6-8.1-5-1(b); IC § 6-8.1-10-2.1(a)(3); IC § 6-8.1-10-2.1(a)(4); IC § 6-8.1-10-2.1(d); [45 IAC 15-11-2\(b\)](#); [45 IAC 15-11-2\(c\)](#).

Taxpayer asks the Department to exercise its discretion to abate the ten-percent negligence penalty on the ground that taxpayer exercised reasonable business care in concluding that the bush hog was exempt from sales tax.

STATEMENT OF FACTS

Taxpayer operates a farm and is engaged in the business of raising beef cattle and grain. In addition, taxpayer individually assists in the operation of a neighboring dairy farm. Taxpayer purchased a "bush hog." A "bush hog" is heavily built rotary mower typically attached to the back of a farm tractor. At the time of the purchase, taxpayer 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 bush hog was taxable in part 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."

Taxpayer maintains that the bush hog is exempt because it is used to mow his pastures. Taxpayer explains that mowing the pastures is necessary in order to "keep weeds and grass down so the pasture will come back for the cows to graze and produce milk." In addition, mowing the pasture helps to prevent the cows from becoming infected with conjunctivitis or "pink eye." Besides mowing pastures, the bush hog is used to remove corn stalks and prepare the corn fields for the next season's planting. Taxpayer points out that the bush hog is used for his own purposes and that the equipment is not rented out to others.

The exemption which taxpayer seeks 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 bush hog is necessary, essential, and integral to its production taxpayer's agricultural products. The Department is prepared to agree that the bush hog 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 bush hog 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 bush hog is directly involved in the direct production of taxpayer's agricultural products.

FINDING

Taxpayer's protest is respectfully denied.

II. Ten-Percent Negligence Penalty.

DISCUSSION

Taxpayer believes that it is entitled to abatement of the ten-percent negligence penalty because it had a reasonable cause for its position that it was exempt from paying sales tax when it purchased the bush hog.

IC § 6-8.1-10-2.1(a)(3) requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer's negligence. IC § 6-8.1-10-2.1(a)(4) requires a ten-percent penalty if the taxpayer "fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment."

IC § 6-8.1-10-2.1(d) states that, "If a person subject to the penalty imposed under this section can show that the failure to... pay the full amount of tax shown on the person's return... or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall wave *[sic]* the penalty."

Departmental regulation [45 IAC 15-11-2\(b\)](#) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." *Id.*

IC § 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation [45 IAC 15-11-2\(c\)](#) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed...."

Under IC § 6-8.1-5-1(b), "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." An assessment – including the negligence penalty – is presumptively valid.

The Department is prepared to agree that it had a "reasonable" cause to believe that the bush hog was an exempt item of agricultural equipment.

FINDING

Taxpayer's protest is sustained.

CONCLUSION

Taxpayer is denied as to the substantive issue of whether it was required to pay sales tax on the purchase price of the bush hog. Taxpayer is sustained as to its protest of the negligence penalty.

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