

Letter of Findings Number: 07-0613
Sales and Use Tax
For Tax Year 2004

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ISSUES

I. Sales and Use Tax—Agricultural Exemption.

Authority: IC § 6-8.1-3-2; IC § 6-8.1-5-1; [45 IAC 2.2-5-4](#).

Taxpayer protests the assessment of use tax on the purchase of a tractor and attachments.

II. Tax Administration—Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of a ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer owns a farm in Indiana. As the result of an investigation, the Indiana Department of Revenue ("Department") determined that Taxpayer had purchased a tractor and attachments without paying sales tax at the time of purchase. Accordingly, the Department issued proposed assessments for use tax, negligence penalty, and interest. Taxpayer protests the imposition of all assessments associated with the purchase of this tractor and its attachments. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. Sales and Use Tax—Agricultural Exemption.

DISCUSSION

Taxpayer protests the imposition of use tax on the purchase of a tractor and attachments in 2004. Taxpayer states that the tractor is used for farming purposes and so should be exempt from sales and use tax. The Department imposed use tax after reviewing sales records at the dealer which sold the tractor to Taxpayer. The Department determined that the tractor was purchased with the type of attachments which would indicate that the tractor was being used for non-exempt purposes. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment was made, as provided by IC § 6-8.1-5-1(c).

The use tax is established under IC § 6-8.1-3-2(a), which states:

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.

Next, concerning purchases by farmers, [45 IAC 2.2-5-4](#) states in relevant parts:

...

(c) The following is a partial list of items which are considered subject to the sales tax.

TAXABLE TRANSACTIONS

...

Garden and lawn equipment, parts, and supplies.

...

Graders, ditchers, front end loaders, or similar equipment (except equipment designed to haul animal waste).

Any replacement parts or accessories for the above items.

(d) Each of the following items is considered exempt from the sales tax ONLY when the purchaser is occupationally engaged in agricultural production and uses the items directly in direct production of agricultural products.

EXEMPT TRANSACTIONS

...

(9) *Equipment designed to haul animal waste.*

...

(e) *The fact that an item is purchased for use on the farm does not necessarily make it exempt from sale [sic.] tax. It must be directly used by the farmer in the direct production of agricultural products. The property in question must have an immediate effect on the article being produced. Property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces agricultural products. The fact that a piece of equipment is convenient, necessary, or essential to farming is insufficient in itself to determine if it is used directly in direct production as required to be exempt.*

(f) If a farmer makes a purchase tax exempt and later determines that the purchase should have been taxable, a use tax is due on the purchase price and should be remitted to the department of revenue along

with the next annual income tax return, except for sales tax on gasoline which must be shown on the claim for motor fuel tax refund.

...

(Emphasis added.)

Taxpayer purchased the tractor in question along with several attachments, in addition to the main bucket on the front of the tractor, for various uses on the farm. As explained by [45 IAC 2.2-5-4\(e\)](#), the fact that equipment is to be used on a farm is not the determinative question. The equipment must have an immediate effect on the article being produced.

The attachments in question were a mower deck, a bush hog, a grader blade, and a tiller box. At hearing, Taxpayer explained that the mower deck was rarely used due to problems with scalping the grass and that the farm has a standard residential-style mower for mowing purposes. The bush hog was used to maintain pasture land for horses on the farm. The grader blade and tiller box were used in maintenance functions on the farm, such as creating or repairing drainage structures. As explained by [45 IAC 2.2-5-4\(c\)](#), these uses are subject to sales tax.

The tractor was also used to remove animal waste and spread it on Taxpayer's fields where grain crops were grown. As explained by [45 IAC 2.2-5-4\(d\)](#), this is an exempt use of the tractor. At hearing, it was established that the tractor was used approximately eighty (80) percent of the time for waste hauling and twenty (20) percent of the time for the other uses.

In conclusion, the fact that a piece of equipment is to be used on a farm is not enough to qualify for exemption. As explained by [45 IAC 2.2-5-4\(e\)](#), the property in question must have an immediate effect on the article being produced. In this case, the use of the tractor is exempt when hauling animal waste, but not in the other circumstances. Since the tractor is used eighty percent of the time in an exempt activity, and twenty percent of the time in non-exempt activities, eighty percent of the purchase price of the tractor is exempt. Use tax is due on the remaining twenty percent of the purchase price of the tractor.

FINDING

Taxpayer's protest is sustained in part and denied in part.

II. Tax Administration–Negligence Penalty.

DISCUSSION

The Department issued proposed assessments and the ten percent negligence penalty for the tax year in question. Taxpayer protests the imposition of penalty. The Department refers to IC § 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

...

the person is subject to a penalty.

The Department refers to [45 IAC 15-11-2\(b\)](#), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

[45 IAC 15-11-2\(c\)](#) provides in pertinent part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. 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 this section.

In this case, taxpayer incurred a deficiency which the Department determined was due to negligence under [45 IAC 15-11-2\(b\)](#), and so was subject to a penalty under IC § 6-8.1-10-2.1(a). Taxpayer was partially sustained in Issue I, and Taxpayer has affirmatively established that the failure to pay the remaining deficiency was due to reasonable cause and not due to negligence, as required by [45 IAC 15-11-2\(c\)](#).

FINDING

Taxpayer's protest is sustained.

CONCLUSION

As determined in Issue I, the purchase of the tractor and attachments is entitled to an eighty (80) percent exemption. Use tax is due on the remaining twenty (20) percent. As determined in Issue II, the Department will waive the negligence penalty.

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