

Letter of Findings Number: 08-0065
Use Tax
For the Years 2004-2006

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ISSUE

I. Use Tax—Agricultural Exemption.

Authority: IC § 6-2.5-5-2; [45 IAC 2.2-5-6](#); [45 IAC 2.2-5-7](#).

Taxpayer protests the Department's assessment of use tax with respect to an item of equipment.

STATEMENT OF FACTS

Taxpayer is an individual who operates a farm. The Indiana Department of Revenue ("Department") audited Taxpayer and determined that he purchased a skid loader, a grain auger, and other miscellaneous items. The Department granted a partial exemption for the skid loader and the grain auger, but determined that those items were used for partially taxable uses, and determined the miscellaneous items were taxable in full. Taxpayer protested the assessment and this Letter of Findings results.

I. Use Tax—Agricultural Exemption.

DISCUSSION

Taxpayer protests the assessment of use tax with respect to a skid loader, an auger, and other items. In particular, Taxpayer argues that he used the items for agricultural purposes.

Under IC § 6-2.5-5-2,

- (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 Indiana Administrative Code, [45 IAC 2.2-5-6](#), expounds on the exemption provided under IC § 6-2.5-5-2.

The regulation states in relevant part:

- (a) In general, all purchases of tangible personal property by persons engaged in the direct production, extraction, harvesting, or processing of agricultural commodities are taxable. (The exemption provided in this regulation [\[45 IAC 2.2\]](#) extends only to agricultural machinery, tools, and equipment.)
- (b) The state gross retail tax shall not apply to sales of agricultural machinery, tools, and equipment to be directly used by the purchaser in the direct production, extraction, harvesting, or processing or *[sic.]* agricultural commodities.
- (c) Purchasers 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. Property is directly used in the direct production, extraction, harvesting, or processing of agricultural commodities if the property in question has 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, i.e. confinement buildings, cooling, heating, and ventilation equipment. The fact that such machinery, tools, or equipment may not touch the commodity or livestock or, by itself, cause a change in the product, is not determinative.
- (d) Exempt purchases:
 - (1) Feeds—Sales of agricultural machinery, tools, and equipment used by the purchaser directly in feeding exempt animals, poultry, etc., are exempt from tax. This exemption does not extend to machinery, equipment, and tools used for the handling, movement, transportation, or storage of feed prior to the actual feeding process.
 - (2) Seeds and plants—Sales of agricultural machinery, tools, and equipment to be used directly by the purchaser to plant seeds and plants purchased exempt from tax are exempt from tax. This exemption does not apply to lawn tractors used to plant grass seed, storage equipment, transportation equipment, or to machinery, tools, or equipment to be incorporated into real estate.

(3) Fertilizers—Sales of agricultural machinery, tools, and equipment to be directly used by the purchaser to fertilize crops. This exemption does not apply to storage equipment, transportation equipment, or to machinery, tools, or equipment to be incorporated into real estate.

(4) Insecticides and fungicides—Sales of agricultural machinery, tools, and equipment to be directly used by the purchaser to apply insecticides and fungicides are exempt from tax. This exemption does not apply to storage equipment, transportation equipment, or machinery, tools, or equipment to be incorporated into real estate.

(5) Other exempt agricultural machinery, tools, and equipment. Sales of other agricultural machinery, tools, and equipment to be directly used by the purchaser in the direct production, extraction, harvesting, or processing or *[sic.]* agricultural commodities are exempt from tax provided such machinery, tools, and equipment are directly used in the production process, i.e. they have an immediate effect upon the agricultural commodities 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 commodities.

(6) Automatic watering equipment for crops; fruit or crop harvesting or picking equipment; machinery and equipment used to bale crops; pruning machinery and equipment used for fruit trees; and equipment used to shear wool from sheep and similar tangible personal property.

(7) Tangible personal property used in or for the purpose of storing work-in-process or semi-finished goods is not subject to tax if the work-in-process or semi-finished goods are ultimately or completely produced for resale and are, in fact, resold. Storage facilities or containers for materials or items currently undergoing production during the production process are deemed temporary storage facilities and containers.

(8) Machinery, tools, and equipment used to move a crop from the field where it was grown and harvested to equipment for temporary storage or for further processing.

(9) Machinery, tools, and equipment used to move exempt items such as seeds, plants, fertilizers, insecticides, and fungicides from temporary storage to the location where such will be used in an exempt process.

(e) Taxable purchases:

(1) Storage equipment. Machinery, tools, and equipment used for storage of agricultural commodities after completion of the production of agricultural commodities are taxable.

(2) Machinery, tools, and equipment which become incorporated into real property are taxable except such machinery, tools, and equipment that are directly used in the production process; i.e., they have a direct effect upon the agricultural commodities being produced, harvested, extracted, or processed.

(3) Machinery, tools, and equipment used in general farm maintenance are taxable. The sale of paint brushes and sprays, oilers, blowers, wheelbarrows, brooms, chain saws, power tools, welders, tire spreaders, drills, sanders, wrenches, and other tools used in general cleaning and maintenances are taxable. However, replacement parts used to replace worn, broken, inoperative, or missing parts on exempt machinery and equipment, are exempt from tax.

(4) Sales of machinery, tools, and equipment to be used in managerial, sales, research, and development, or other nonoperational activities not directly used in production, harvesting, extraction, and processing of agricultural commodities are taxable. This category includes, but is not limited to, machinery, tools, and equipment used in any of the following activities: farm management and administration; selling and marketing; exhibition of farm products; safety and fire prevention; illumination for farm buildings; lighting fixtures for general illumination; heating and cooling equipment for general temperature control; transportation of animals, poultry, feed, fertilizer, etc., to the farm for use in farming; transportation of animals, poultry, and other farm produce from the farm to market.

(f) "Agricultural machinery, tools, and equipment" as used in this regulation [\[45 IAC 2.2\]](#) refers to machinery, tools, and equipment used on a farm to cultivate, grow, produce, reproduce, harvest, extract or process animals, poultry, and crops used to produce food or agricultural commodities for human or animal consumption (or for further use in producing food or agricultural commodities).

(g) "Direct production, extraction, harvesting or processing agricultural commodities" means action which has an immediate effect on the agricultural commodities being produced by "farming" as defined in Regs. 6-2.5-5-1(010) [\[45 IAC 2.2-5-1\]](#) for a human, animal, or poultry consumption. 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 commodities.

(h) Farmer and farming. Refer to Regs. 6-2.5-5-1(010) [\[45 IAC 2.2-5-1\]](#) for definitions of "farmer" and "farming".

Further, with respect to the auger, [45 IAC 2.2-5-7](#) provides:

(a) Agricultural machinery, tools, and equipment directly used in the direct production, extraction, harvesting, or processing of grain, from the time the grain is harvested until the time the grain is dried, are exempt so long as the agricultural machinery, tools, and equipment have an immediate effect upon the grain. Property has an immediate effect on the grain being produced if it is an essential and integral part of an integrated process which produces grain.

-EXAMPLE-

Machinery, tools, and equipment directly used in the processing, drying, or cleaning of grain.

(b) Transportation equipment directly used in the direct production of grain is exempt so long as such equipment has an immediate effect upon the grain. Property has an immediate effect on the grain being produced if it is an essential and integral part of an integrated process which produces grain.

(1) Grain augers which contain perforated cleaning screens are exempt, since this equipment separates foreign matter from grain and, therefore, is an essential and integral part of an integrated process in direct production, which produces grain.

(2) Grain augers without perforated cleaning screens used exclusively to transport wet grain are exempt, since such transportation aerates wet grain and, therefore, has a direct and immediate effect upon the grain and is an essential and integral part of an integrated process which produces grain.

(3) Machinery, tools, and equipment directly used to transport grain from the field where it is harvested to the production processes of drying, cleaning, and holding for the feeding of livestock, or to be further used in the production of food and commodities are exempt.

(c) Wet holding tanks, continuous flow driers, and batch driers are exempt, since these items are integral parts of drying systems and, therefore, such equipment is directly used in direct production of grain.

(d) Grain drying bins. The department has determined that grain drying accessories of a grain drying bin are exempt, since such equipment is used to dry wet grain and, therefore, has a direct and immediate effect upon grain. Alternatively, the department has determined that a grain drying bin's storage structure and parts thereof are subject to tax, since the storage of grain has no direct and immediate effect upon grain.

(1) The following is a list of grain drying bin accessories which are exempt from tax:

- (A) drying floor;
- (B) air entrance;
- (C) stirring devices;
- (D) fans and motor running fans;
- (E) electricity (if predominantly used);
- (F) electrical control panels;
- (G) spreader; and
- (H) floor supports.

(2) The following is a partial list of grain drying bin storage accessories which are subject to tax:

- (A) anchor bolts;
- (B) bin structure;
- (C) roof and vents;
- (D) unloading auger;
- (E) clean sweep;
- (F) wells and pulleys;
- (G) platform; and
- (H) ladders.

The Department has already granted a partial exemption for the skid loader for transporting animal waste and the auger for "direct use in the direct production" of food. However, even if the items are otherwise used in farm operations, Taxpayer has not provided evidence of exempt use beyond that which has already been granted.

FINDING

Taxpayer's protest is denied

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