

Letter of Findings Number: 08-0011
Sales and Use Tax
For The Tax Year 2004

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ISSUES

I. Sales and Use Tax – Agricultural Exemption.

Authority: IC § 6-8.1-5-1(c); IC § 6-2.5-2-1(a); IC § 6-2.5-3-2(a); IC § 6-2.5-5-2(a); IC § 6-2.5-5-2(b)(2). [45 IAC 2.2-5-4\(e\)](#); *Indiana Dep't of State Revenue v. Interstate Warehousing*, 783 N.E.2d 248, 350 (Ind. 2003).

The Taxpayer protests the imposition of use tax on a skidloader.

II. Tax Administration – Interest.

Authority: IC § 6-8.1-10-1.

The Taxpayer protests the imposition of interest greater than three percent.

STATEMENT OF FACTS

On September 15, 2004, the Taxpayer purchased a skidloader without paying sales tax. After an audit of the agricultural equipment dealer, the Indiana Department of Revenue (Department) assessed use tax, penalty, and interest. The Taxpayer protested this assessment. In response to the Taxpayer's protest, the Department sent the Taxpayer a questionnaire concerning the Taxpayer's usage of the skidloader. The Taxpayer responded that he used the skidloader 30 percent of the time for hauling of animal waste, 15 percent of the time for repairing tile ditches, 25 percent of the time for loading dirt, 40 percent of the time for moving stone, and 50 percent of the time for leveling ground. After reviewing the Taxpayer's responses on the questionnaire, the Department granted the Taxpayer an agricultural exemption for the 30 percent of the skidloader's usage for moving animal waste. The Department issued an adjusted assessment of use tax, penalty, and interest. The Taxpayer protested the adjusted assessment. A hearing was held and this Letter of Findings results.

I. Sales and Use Tax – Agricultural Exemption.

DISCUSSION

All tax assessments are presumed to be valid. IC § 6-8.1-5-1(b). The Taxpayer bears the burden of proving that any assessment is incorrect. *Id.* Exemption statutes are to be strictly construed against the Taxpayer. *Indiana Dep't of State Revenue v. Interstate Warehousing*, 783 N.E.2d 248, 350 (Ind. 2003).

IC § 6-2.5-2-1(a) imposes a sales tax on retail transactions made in Indiana. IC § 6-2.5-3-2(a) imposes a complementary use tax on the storage, use or consumption of tangible personal property in Indiana, if the property was acquired in a retail transaction as defined for sales tax purposes. Equipment purchased by a farmer is taxable unless the equipment qualifies for an exemption from the use tax. There are agricultural exemptions provided by statute for some items used on a farm. "[G]athering, moving, or spreading animal waste" is exempt pursuant to IC § 6-2.5-5-2(b)(2). The Taxpayer stated that he used the skidloader 30 percent of the time to haul animal waste. Therefore, 30 percent of the skidloader's use qualifies for exemption from the sales and use tax.

There is also an agricultural exemption provided for equipment purchased for, "direct use in the direct production" of agricultural products at IC § 6-2.5-5-2(a). The agricultural exemption is explained at [45 IAC 2.2-5-4\(e\)](#) as follows:

The fact that an item is purchased for use on the farm does not necessarily make it exempt from sale [sic.] tax. The farmer in the direct production of agricultural products must directly use it. 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 that 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.

In the questionnaire, the Taxpayer stated that along with moving animal waste, the Taxpayer used the skidloader for repairing tile ditches, loading dirt, moving stone, and for leveling ground. Although these uses of the skidloader are essential to the farming operation, they do not meet the standard to qualify for the agricultural exemption pursuant to IC § 6-2.5-5-2(a).

FINDING

The Taxpayer's protest to the assessment of use tax is denied.

II. Tax Administration – Interest.

DISCUSSION

The Department assessed interest pursuant to the provisions of IC § 6-8.1-10-1. The Taxpayer protests the portion of the interest that is greater than 3 percent.

The Department's rate of interest is calculated by applying the provisions of IC § 6-8.1-10-1(c) as follows:

The commissioner shall establish an adjusted rate of interest for a failure described in subsection (a) and for an excess tax payment on or before November 1 of each year. For purposes of subsection (b), the adjusted rate of interest shall be the percentage rounded to the nearest whole number that equals two (2) percentage points above the average investment yield on state money for the state's previous fiscal year, excluding pension fund investments as published in the auditor of state's comprehensive annual financial report.

The interest rate for 2008, as calculated following the statutory formula, is eight percent.

The Department does not have the authority to waive any or all of the interest for any tax assessment. IC § 6-8.1-10-1(e). Therefore, the Taxpayer must pay the interest as calculated by the Department.

FINDING

The Taxpayer's protest to the imposition of interest greater than three percent is denied.

CONCLUSION

As to Issue I, the Taxpayer's protest is denied. As to Issue II, the Taxpayer's protest is denied.

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