

**Letter of Findings: 09-0544
Gross Retail Tax
For 2006 and 2007**

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ISSUES

I. Farm Tractor Rental – Gross Retail Tax.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-3-2(a); IC § 6-2.5-5-2; IC § 6-8.1-5-1(c); [45 IAC 2.2-4-27](#)(a).

Taxpayer argues that it was not subject to Gross Retail Tax on monthly rental payments for a farm tractor.

II. Trackhoe Purchase – Gross Retail Tax.

Authority: IC § 6-2.5-3-2(a); [45 IAC 2.2-1-1](#)(d).

Taxpayer states that it is not subject to sales or use tax on the purchase of a "trackhoe" because the vehicle was purchased in a casual sale.

III. Contract Price – Gross Retail Tax.

Authority: IC § 6-2.5-2-1(b).

Although Taxpayer agrees that items which it purchased were subject to Gross Retail Tax, it argues that it is not liable for the entire cost and that some of the liability should be apportioned to the vendors.

IV. Fuel – Gross Retail Tax.

Authority: IC § 6-2.5-7-3(a); IC § 6-8.1-5-1(c).

Taxpayer argues that it not subject to Gross Retail Tax on fuel because the fuel was used on a farm.

STATEMENT OF FACTS

Taxpayer is an Indiana construction company. Taxpayer also operates a small farm. The Department of Revenue (Department) conducted an audit review of Taxpayer's business records and found that Taxpayer owed additional Gross Retail Tax. Taxpayer submitted a brief protest letter which was later supplemented with a handwritten note. This Letter of Findings is written in response to that protest.

I. Farm Tractor Rental – Gross Retail Tax.

DISCUSSION

Taxpayer rented a "Cat 850 farm tractor" and paid approximately \$2,400 each month in rental fees. Taxpayer maintains that the rental fees are not subject to tax.

As a threshold issue, it is the Taxpayer's responsibility to establish that the proposed tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made."

Pursuant to IC § 6-2.5-2-1, a sales tax, known as state gross retail tax, is imposed on retail transactions made in Indiana unless a valid exemption is applicable. Retail transactions involve the transfer of tangible personal property. IC § 6-2.5-3-2(a). A complementary 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. IC § 6-2.5-3-2.

Specifically, IC § 6-2.5-2-1 provides as follows:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

(b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

[45 IAC 2.2-4-27](#)(a) states that, "In general, the gross receipts from renting or leasing tangible personal property are taxable. This regulation... only exempts from tax those transactions which would have been exempt in an equivalent sales transaction."

Taxpayer seems to suggest, that if the "Cat 850 farm tractor" was used – as its name implies – on Taxpayer's farming operation, the \$2,400 monthly rental fee is not subject to tax.

IC § 6-2.5-5-2 provides a sales tax exemption:

(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.

There is no across-the-board exemption for farm machinery such as Taxpayer's "Cat 850 farm tractor" but only for equipment directly used in the direct production of agricultural commodities and if the person renting the equipment "acquires it for use in conjunction with the production of food and food ingredients or commodities for sale...." In this instance, Taxpayer has failed to meet its burden of demonstrating that the original assessment was wrong since Taxpayer has provided to no evidence establishing how the equipment at issue was used.

FINDING

Taxpayer's protest is respectfully denied.

II. Trackhoe Purchase – Gross Retail Tax.

DISCUSSION

Taxpayer purchased a "Trackhoe" for approximately \$94,500. Taxpayer contends that the purchase price "qualifies as a casual sale not subject to sales tax since this was purchased from an individual not in the business of buy & selling equipment to the public."

"Indiana imposes a use tax 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 the location of the retail merchant making that transaction.'" IC § 6-2.5-3-2(a).

However, [45 IAC 2.2-1-1](#)(d) provides an exemption for "casual sales." The regulation states:

The Indiana gross retail tax is not imposed on gross receipts from casual sales except for gross receipts from casual sales of motor vehicles and sales of rental property. A casual sale is an isolated or occasional sale by the owner of tangible personal property purchased or otherwise acquired for his use or consumption, where he is not regularly engaged in the business of making such sales.

The record establishes that the Trackhoe cost \$94,500 and that it was purchased from "McKlin." It is not known whether "McKlin" is or is not "regularly engaged in the business or making such sales" or whether the "Trackhoe" is or is not a "motor vehicle" or is or is not "rental property." Without more, it is not possible to sustain Taxpayer's protest.

FINDING

Taxpayer's protest is respectfully denied.

III. Contract Price – Gross Retail Tax.

DISCUSSION

Taxpayer made various purchases for which it did not pay sales tax. Taxpayer admits its failure to pay the tax "was an oversight on my part" but does not feel that Taxpayer should bear the entire cost.

IC § 6-2.5-2-1(b) provides that, "The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state."

Taxpayer argues that it is not solely responsible for the tax and that the vendor – having failed to collect sales tax at the time of the initial transaction – is responsible for at least one portion of the tax.

Taxpayer is apparently making an equitable argument that it should not be required to shoulder the entire burden of the uncollected tax and asks the Department to apportion the amount of tax due between the vendor – which should have collected the tax – and Taxpayer which should have paid the tax. However, IC § 6-2.5-2-1(b) does not allow for apportionment of tax liability which makes the "person who acquires property in a retail transaction is liable for the tax on the transaction." Id. It is the vendor's responsibility to collect the tax and hold it in trust for the state. The vendor may have failed in its responsibility to collect the tax, but that does not relieve Taxpayer of the liability.

FINDING

Taxpayer's protest is respectfully denied.

IV. Fuel – Gross Retail Tax.

Taxpayer's protest on this issue consists of the statement that "[vendor] delivered approximately 3,000 gallons of fuel to [its] farm each year."

Sales tax is imposed on the sale of gasoline. IC § 6-2.5-7-3(a) states, "With respect to the sale of gasoline which is dispensed from a metered pump, a retail merchant shall collect, for each unit of gasoline sold, state gross retail in an amount equal to the product, rounded to the nearest one-tenth of one cent... of: (1) the price per unit before the addition of state and federal taxes; multiplied by (2) seven percent...."

Taxpayer apparently believes that the fuel is exempt because it was delivered to a farm but offers no explanation as to how or why a particular exemption applies to the purchase of gasoline or if the fuel was used in an exempt manner. As noted previously, IC § 6-8.1-5-1(c) requires that the Taxpayer demonstrate that the proposed assessment is wrong. In this case, Taxpayer has failed to do so.

FINDING

Taxpayer's protest is respectfully denied.

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