

Letter of Findings Number: 09-0615
Use Tax
For the Year 2005

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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 two equipment items.

II. Tax Administration—Negligence Penalty.

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

Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is a partnership operating a farm in Indiana. The Indiana Department of Revenue ("Department") audited Taxpayer and determined that it purchased a "trough flange," a "ring corn bin," and a "trunk adder" exempt from Indiana sales tax. The Department determined that those items were not directly used in the direct production of agricultural commodities and thus assessed use tax on those items. 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 "ring corn bin" and a "trunk adder." In particular, Taxpayer argues that it used these items for agricultural purposes. Taxpayer did not protest the trough flange.

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:

- ...
- (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.

...
(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.

...
(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, 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.

...
(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.

Taxpayer explained its operations, the particular uses of the two protested items, and how each item is necessary in the drying of corn in its agricultural operations. The items are used to move grain continually into Taxpayer's corn dryers and to ensure that the corn dryers have sufficient capacity to work properly. Though the items may appear to be mere storage items for the grain to be dried, the two protested items were directly used in the direct production of Taxpayer's grain by providing volume and continuous movement of the grain through the grain-drying process. Based on the continuous use of the equipment as an integrated process in its agricultural operations, Taxpayer has provided sufficient information to conclude that the protested items were directly used in the direct production of agricultural commodities, therefore meeting the statutory test for exemption from sales and use tax.

FINDING

Taxpayer's protest is sustained.

II. Tax Administration—Negligence Penalty.

DISCUSSION

Taxpayer protests the imposition of the ten percent negligence penalty on the sales tax payments that it made after the due date for the payments.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides:

(b) "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.

(c) 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. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer has provided sufficient information to conclude that it acted reasonably with regard to its use tax accrual for the remaining taxable item.

FINDING

Taxpayer's protest is sustained.

CONCLUSION

Taxpayer's protest is sustained with regard to the two items it protested. Taxpayer's protest of the negligence penalty is sustained.

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