DEPARTMENT OF STATE REVENUE

04-20090544.SLOF

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

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ISSUES

I. Purchase Invoices – Gross Retail Tax.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-3-2(a); IC § 6-8.1-5-1(c).

Taxpayer argues that the Department of Revenue's audit incorrectly assessed use tax on purchases for which sales tax had previously been paid.

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" on the ground that the trackhoe is not a "vehicle" and that the trackhoe was acquired in a "casual sale."

III. Fuel Purchases – Gross Retail Tax.

Authority: IC § 6-2.5-5-1; IC § 6-2.5-5-1(a); IC § 6-8.1-5-1(c); Indianapolis Fruit Co. v. Indiana Dep't of State Revenue, 691 N.E.2d 1379 (Ind. Tax Ct. 1998); 45 IAC 2.2-5-1(a); 45 IAC 2.2-5-4(e).

Taxpayer maintains that twenty percent of the fuel it purchases is used for exempt agricultural purposes.

IV. Farm Equipment – Gross Retail Tax.

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

Taxpayer maintains that it is not subject to sales or use tax on the purchase of a calf feeder, a hay feeder, and 2006 Komatsu Tractor because these items of equipment are used for exempt agricultural purposes.

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. An administrative hearing was conducted and a Letter of Findings was issued. Taxpayer found fault with the Letter of Findings and requested a rehearing. The request for rehearing was granted, and a second hearing was held. This Supplemental Letter of Findings results.

I. Purchase Invoices – Gross Retail Tax.

DISCUSSION

Taxpayer argues that the Department's audit assessed use tax on ten different purchases for which tax was paid at the time of the original transactions. The purchases are as follows:

B & W Equipment Co., Inc. Invoice 080097 dated April 11, 2006, $1,500
Crowe Equipment, Inc., Invoice S16968, August 25, 2006, $4,000
Crowe Equipment, Inc., Invoice S16451, July 10, 2006, $140.98
Crowe Equipment, Inc., Invoice S18695, February 27, 2007, $710.00
HosesDoneRight, LLC, Invoice 1746, February 17, 2006, $4,237.77
Hopf Equipment, Inc., May 3, 2010, $70,000
Hopf Equipment, Inc., August 16, 2006, $2,829.24
Hopf Equipment, Inc., October 10, 2006, $18,668.55
Hopf Equipment, Inc., May 3, 2006, $5,000
Southeaster Equipment Co., Inc., February 14, 2006, $58,000

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." (Emphasis added). Finding fault with the assessment, criticizing the assessment, or suggesting an alternative assessment is insufficient; IC § 6-8.1-5-1(c) requires that the Taxpayer meet its burden of establishing that the original assessment is wrong.

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.

However, Taxpayer states that the sales tax on the ten transactions documented above has already been paid. After reviewing the invoices provided during the rehearing, the Department is prepared to agree that sales tax was charged on these invoices. Therefore, to the extent that these sales tax amounts were "double-counted" on the audit report, Taxpayer's protest is sustained.

FINDING

Taxpayer's protest is sustained.

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 buying & 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."

Taxpayer argues that the Trackhoe is not a vehicle because it is not driven on the highway and it is not required to be licensed.

The 45 IAC 2.2-1-1(d) provides little immediate guidance as to what is and is not a "vehicle." However, for purposes of this assessment, the distinction has no practical effect. Assuming for the moment that the Trackhoe was not a vehicle, we do not have sufficient information to determine whether or not "McKlin" is or is not "regularly engaged in the business of making such sales." Id. Under IC § 6-8.1-5-1(c), Taxpayer has not established that the original assessment was wrong.

FINDING

Taxpayer's protest is respectfully denied.

III. Fuel Purchases – Gross Retail Tax.

DISCUSSION

The Department assessed tax on the purchase of fuel. Taxpayer's representative objects arguing that he is in both the construction and farming business and that fuel used in the farming business was exempt. Therefore, Taxpayer concludes that it should be entitled to purchase twenty-percent of his fuel exempt.

IC § 6-2.5-5-1 provides:

Transactions involving animals, feed, seed, plants, fertilizer, insecticides, fungicides, and other tangible personal property are exempt from the state gross retail tax if: (1) the person acquiring the property acquires it for his direct use in the direct production of food and food ingredients or commodities for sale or for further use in the production of food and food ingredients or commodities for sale; and (2) the person acquiring the property is occupationally engaged in the production of food and food ingredients or commodities which he sells for human or animal consumption or uses for further food and food ingredient or commodity production. (Emphasis added).

The fact that an item is purchased for use on Taxpayer's farming operation does not necessarily make it exempt. 45 IAC 2.2-5-4(e). In order to qualify for the exemption, Taxpayer must also show how the tangible personal property for which it seeks an exemption is directly used in its direct production process. IC § 6-2.5-5-1(a); Indianapolis Fruit Co. v. Indiana Dep't of State Revenue, 691 N.E.2d 1379, 1383 (Ind. Tax Ct. 1998). In other words, the tangible personal property for which Taxpayer seeks the exemption must be integral and essential to its production process, a determination that is often made by identifying the points where the food production begins and where the food production ends. 45 IAC 2.2-5-1(a); 45 IAC 2.2-5-4(e); Indianapolis Fruit, 691 N.E.2d at 1383-84.

Taxpayer asks that the Department exempt twenty percent of its fuel purchases because the fuel is consumed at Taxpayer's farm. According to Taxpayer's representative, he cultivates and harvests approximately 200 acres of hay for 38 cattle and he uses the fuel for "spraying, cutting, baling, gathering, transporting and stacking and feeding all winter...."

According to the audit report, Taxpayer purchased approximately $118,000 in fuel; taxpayer suggests that approximately $23,600 of fuel (twenty percent) was used in the farming operation. Taxpayer may well be right and

that $23,600 worth of fuel should not have been taxed. However, based on the information provided, Taxpayer might just as likely used $33,600, $13,600 or $136 worth of fuel on his farm. Even if one were to accept the Taxpayer's contention that $23,600 worth of fuel was delivered to the farming operation, how much of that fuel was used for an exempt purpose and how much was used in a non-exempt purpose? The Department has no reason to doubt Taxpayer's good faith intentions on this issue, but there is nothing in law or practice which permits a hearing officer to "guesstimate" a particular taxpayer's liability. Under IC § 6-8.1-5-1(c), Taxpayer has failed to meet its burden of proof sufficient to establish that the original assessment was wrong.

FINDING

Taxpayer's protest is respectfully denied.

IV. Farm Equipment – Gross Retail Tax.

DISCUSSION

Taxpayer asks that the Department remove from the audit report the assessment on three items originally listed on Taxpayer's depreciation schedule. Taxpayer asks that the assessment on a "calf feeder," a "hay feeder," and a "2006 Komatsu Tractor" be removed. The first two items are found on page six of the audit report and are both designated with "reference number" of 4835. The Komatsu Tractor is found on page seven of the audit report and does not have a reference number. Taxpayer contends that the agricultural exemption found at IC § 6-2.5-5-1 is applicable because the items are directly used in the direct production of food or food commodities.

Based upon the information provided prior to and during the hearing, the Department is prepared to agree that Taxpayer has met its burden under IC § 6-8.1-5-1(c) of establishing that the "calf feeder" and the "hay feeder" are exempt but has not met its burden of demonstrating that the Komatsu Tractor is exempt.

FINDING

Taxpayer is denied in part and sustained in part.

SUMMARY

The assessment of use tax on the ten items addressed in Part I and on the "calf feeder" and "hay feeder" addressed in Part VI should be abated; in all other respects, Taxpayer's protest is respectfully denied.

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