

**Letter of Findings Number: 04-20110166**  
**Use Tax**  
**For Tax Year 2009**

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**ISSUE**

**I. Use Tax—Agricultural Exemption.**

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

Taxpayer protests the imposition of use tax on his purchase of a fence.

**STATEMENT OF FACTS**

Taxpayer is an Indiana farmer. In 2009, Taxpayer purchased a fence for use on the farm. After auditing the vendor, the Indiana Department of Revenue ("Department") determined that Taxpayer had purchased the fence without paying sales tax at the time of purchase or paying use tax after the purchase. The Department therefore issued a proposed assessment for use tax, ten percent negligence penalty, and interest. Taxpayer protested the proposed assessment. An administrative hearing was held, and this Letter of Findings results. Further facts will be supplied as required.

**I. Use Tax—Agricultural Exemption.**

Taxpayer protests the imposition of use tax on his purchase of the fence. The Department determined that sales tax should have been paid at the time of purchase. The Department, therefore, assessed use tax on Taxpayer's purchase of the fence. Taxpayer maintains that its purchase of the fence is eligible for the agricultural exemption. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

The sales tax is imposed by IC § 6-2.5-2-1, which states:

- (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.

The use tax is imposed under IC § 6-2.5-3-2(a), which states:

- (a) An 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, regardless of the location of that transaction or of the retail merchant making that transaction.

Also, [45 IAC 2.2-3-4](#) provides:

Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana state gross retail tax has been collected at the point of purchase.

Therefore, when tangible personal property is acquired in a retail transaction and is stored, used, or consumed in Indiana, Indiana use tax is due if sales tax has not been paid at the point of purchase. In this case, the Department determined that Taxpayer had acquired tangible personal property in a retail transaction and used that property in Indiana without paying sales tax at the point of purchase. The Department, therefore, issued proposed assessments for use tax as provided by [45 IAC 2.2-3-4](#).

Taxpayer protests that the fence is eligible for the agricultural exemption. That exemption is found at IC § 6-2.5-5-2, which states:

- (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.

In addition, [45 IAC 2.2-5-3](#), provided in relevant part, states:

- (b) In general, purchases of tangible personal property by farmers are taxable. The exemptions provided by this regulation [45IAC 2.2] apply only to seeds, fertilizers, fungicides, insecticides, and other tangible personal

property to be directly used by the farmer in the direct production of food and agricultural commodities. This exemption is limited to "farmers".

(c) The state gross retail tax shall not apply to:

(1) Sales to farmers and to other persons occupationally engaged in the business of producing food and agricultural commodities for human, animal, and poultry consumption (either for sale or further use in producing such food and agricultural commodities for sale) of seeds, plants, fertilizers, fungicides, insecticides, and other tangible personal property to be directly used by the purchaser in the direct production of food and agricultural commodities.

(2) Sales to farmers of seeds, plants, fertilizers, fungicides, insecticides, and other tangible personal property to be directly used by the farmer in the direct production of food or agricultural commodities for human, animal, or poultry consumption either for sale or for further use in producing food and agricultural commodities for sale are exempt from tax. "To be directly used in the direct production of food or agricultural commodities for human, animal, or poultry consumption either for sale or for further use in producing food and agricultural commodities for sale," 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 which produces food or an agricultural commodity.

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(d) Non-exempt purchases:

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(5) Purchases of fences, fencing material, gates, posts, fence stretchers, and electric fence chargers are taxable.

...

(e) Exempt Purchases:

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(3) Fences, fencing materials, gates, posts, and electric fence chargers (listed in [45 IAC 2.2-5-3\(d\)\(6\)](#) and [2.2-5-4\(c\) \[45 IAC 2.2-5-4\(c\)\]](#)) are exempt only if the same are purchased for use in confining livestock during the production processes of breeding, gestation, farrowing, calving, nursing, or finishing. Fencing materials are taxable if the fence is used to confine horses, ponies, donkeys, or pets not used in agricultural production. Fencing materials are also taxable if the fence is used only as a partition fence between adjoining landowners or as a means to keep wildlife, stray animals, or trespassers from entering cropland or farm premises.

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Taxpayer believes that the fence is directly used to directly produce cattle as described in [45 IAC 2.2-5-3\(e\)\(3\)](#), and that it qualifies for the agricultural exemption. During the protest, Taxpayer provided substantial analysis and documentation in support of this position.

Taxpayer has met the burden of proving the proposed assessment wrong as required by IC § 6-8.1-5-1(c).

#### **FINDING**

Taxpayer's protest is sustained.

*Posted: 06/29/2011 by Legislative Services Agency*

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