

Letter of Findings Number: 04-20100690
Sales/Use Tax
For Tax Year 2007

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ISSUES

I. Sales/Use Tax – Farm Equipment.

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

Taxpayer protests the imposition of use tax on a skid-steer.

II. Tax Administration – 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 has businesses that involve fencing, livestock and grain, among others. For federal tax purposes, Taxpayer filed a Schedule F for "the principal product [that] is livestock and grain." Taxpayer was audited for sales/use tax for the year 2007. Among the items assessed was a skid-steer. Taxpayer was also assessed a ten percent penalty. Taxpayer protested the Department's proposed assessment of the skid-steer and the penalty. An administrative hearing was held, and this Letter of Findings results. Further facts will be supplied as required below.

I. Sales/Use Tax – Farm Equipment.

DISCUSSION

The Department initially 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).

Indiana imposes a sales tax on retail transactions and a complementary use tax on tangible personal property that is stored, used, or consumed in the state. IC § 6-2.5-2-1; IC § 6-2.5-3-2.

At issue in Taxpayer's protest is a skid-steer (loader). The Audit Report states in relevant part, "The taxpayer purchased a skid loader... exempt from the gross retail tax."

Taxpayer argues:

[IC 6-2.5-5-1](#) and -2 exempts transactions involving agricultural machinery, tools, and equipment from the state gross retail tax or use tax if the person acquiring that property acquires it for his direct use in the direct production, extraction, harvesting, or processing of agricultural commodities.

Taxpayer then concludes:

[The skid steer] is not used in general farm maintenance but in direct production, extraction, harvesting, or processing of agricultural commodities and has a direct effect on the article being produced....

In a follow-up to the Department, Taxpayer notes:

- a) The loading and unloading of feed is the loading of feed on the Skidsteer [sic] (loader) to take to the animals and then direct unloading of feed to the animals for immediate and direct consumption;
- b) The seeds, beans, corn, etc. is to move items from temporary storage to the field where the items are used for an exempt process (planting);
- c) The removal of direct waste products from animal pens is to insure healthy non-diseased animals.

The relevant exemption statute, IC § 6-2.5-5-2, 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.

(Emphasis added).

Taxpayer states that:

[T]he usage of the asset was exclusively for [Taxpayer's] farming business in the direct production and processing of agricultural commodities. Such uses include items as loading and unloading of feed (35[percent]), seeds (5[percent]), beans (5[percent]), corn (5[percent]), sawdust (10[percent]), and the

removal of waste products from animal pens and lots (40[percent]) to insure healthy non-diseased animals. (Emphasis added).

[45 IAC 2.2-5-6](#)(d) states in relevant part:

(1) Feeds—Sales of agricultural machinery, tools, and equipment used by the purchaser directly in feeding exempt animals, poultry, etc., are exempt from tax. This exemption does not extend to machinery, equipment, and tools used for the handling, movement, transportation, or storage of feed prior to the actual feeding process.

(2) Seeds and plants—Sales of agricultural machinery, tools, and equipment to be used directly by the purchaser to plant seeds and plants purchased exempt from tax are exempt from tax. This exemption does not apply to lawn tractors used to plant grass seed, storage equipment, transportation equipment, or to machinery, tools, or equipment to be incorporated into real estate.

And [45 IAC 2.2-5-4](#)(c) lists under the heading of "Taxable Transactions" the following:

Graders, ditchers, front end loaders, or similar equipment (except equipment designed to haul animal waste). (Emphasis added).

Thus Taxpayer's use of the skid-steer is partially exempt and partially non-exempt. Under the Indiana Code and the Indiana Administrative Code, only the removal of animal waste is exempt usage. Taxpayer's protest is sustained to the extent that the skid-steer is used to remove animal waste—i.e., 40 percent of the usage.

FINDING

Taxpayer is sustained regarding a portion of its protest of the skid-steer. Taxpayer's protest of the skid-steer is sustained to the extent that it is used to remove animal waste, which is 40 percent of the usage. With regards to the other uses of the skid-steer, Taxpayer's protest is denied.

II. Tax Administration – Penalty.

DISCUSSION

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 in relevant part:

(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.

Given the fact sensitive nature of the analysis of the skid-steer in Section I, and the fact that Taxpayer's protest was partially sustained, the Department finds that Taxpayer has established reasonable cause regarding its protest of the penalty.

FINDING

Taxpayer's protest of the penalty is sustained.

SUMMARY

Taxpayer is sustained regarding a portion of its protest of the skid-steer. Taxpayer's protest of the skid-steer is sustained to the extent that it is used to remove animal waste, which is 40 percent of the usage. With regards to the other uses of the skid-steer, Taxpayer's protest is denied. Taxpayer's protest of the penalty is sustained.

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