

Letter of Findings: 04-20120291
Sales and Use Tax
For the Year 2008

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ISSUE

I. Sales and Use Tax – Agricultural Exemptions.

Authority: IC § 6-2.5-1-1 et seq.; IC § 6-2.5-3-4; IC § 6-2.5-5-2; IC § 6-8.1-5-1; [45 IAC 2.2-5-1](#); [45 IAC 2.2-5-4](#); [45 IAC 2.2-5-6](#); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Indiana Dep't of State Revenue v. RCA Corp., 310 N.E.2d 96 (Ind. Ct. App. 1974); Sales Tax Information Bulletin 9 (August 2008).

Taxpayer protests the assessment of tax on his purchase of a tractor.

STATEMENT OF FACTS

Taxpayer operates a farm, which includes planting corn and raising cattle. In 2008, Taxpayer purchased a tractor at an auction in Indiana. The Indiana Department of Revenue ("Department") conducted a sales/use tax audit of the auction house. Pursuant to the audit, the Department discovered that Taxpayer did not pay sales tax at the time of the purchase. Subsequently, Taxpayer submitted additional information, including a completed Agricultural Equipment Exemption Usage Questionnaire ("Questionnaire"), claiming that his purchase/use of the tractor qualified for the agricultural exemptions.

The Department determined that Taxpayer's purchase/use of the tractor qualified for nine (9) percent of exemption based on the information provided by Taxpayer. As a result, the Department assessed Taxpayer additional tax on the remaining ninety-one (91) percent of the purchase and interest.

Taxpayer timely protests the assessment and submitted additional documentation to support his protest. A hearing was held. This Letter of Findings ensues. Additional facts will be provided as necessary.

I. Sales and Use Tax – Agricultural Exemptions.

DISCUSSION

Based on Taxpayer's information, the Department's audit determined that Taxpayer's tractor qualified for nine (9) percent exemption. Thus, the Department assessed Taxpayer sales/use tax on the remaining ninety-one (91) percent purchase/use of the tractor. Taxpayer, to the contrary, claimed that all his usage of the tractor should be exempt.

As a threshold issue, all tax assessments are prima facie evidence that the Department's assessment of tax is presumed correct. "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012).

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 § 6-2.5-1-1 et seq. Generally, all purchases of tangible personal property by persons engaged in the direct production, extraction, harvesting, or processing of agricultural commodities are taxable. [45 IAC 2.2-5-6\(a\)](#). An exemption from use tax is granted for transactions where the gross retail tax ("sales tax") was paid at the time of purchase pursuant to IC § 6-2.5-3-4. There are also additional exemptions from sales tax and use tax. A statute which provides a tax exemption, however, is strictly construed against the taxpayer. Indiana Dep't of State Revenue v. RCA Corp., 310 N.E.2d 96, 97 (Ind. Ct. App. 1974). "[W]here such an exemption is claimed, the party claiming the same must show a case, by sufficient evidence, which is clearly within the exact letter of the law." Id. at 100-101.

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).**

[45 IAC 2.2-5-1](#), in relevant part, explains:

(a) Definitions. "Farmers" means only those persons **occupationally engaged in producing food or agricultural commodities for sale or for further use in producing food or such commodities for sale**. These terms are limited to those persons, partnerships, or corporations regularly engaged in the commercial production for sale of vegetables, fruits, crops, livestock, poultry, and other food or agricultural products. Only those persons, partnerships, or corporations whose intention it is to produce such food or commodities at a profit and not those persons who intend to engage in such production for pleasure or as a hobby qualify within this definition.

"Farming" means engaging in the commercial production of food or agricultural commodities as a farmer.

"To be directly used by the farmer in the direct production of food or agricultural commodities" requires that 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.

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

...

(2) Sales to farmers of animals and poultry to be directly used by the farmer in the direct production of food and agricultural commodities are exempt from tax. Domestic animals and birds, pets, game animals and birds, furbearing animals, fish, and other animals or poultry not directly used by the farmer in the direct production of food or agricultural commodities are subject to tax. Baby chicks, ducklings, geese, turkey poults, hatching eggs, pigs, hogs [sic.,] lambs, sheep, livestock, calves, and cows are exempt from tax, **provided that they are directly used by the farmer in the direct production of food or agricultural commodities for sale**.

(3) Sales to farmers and to other persons occupationally engaged in the business of producing food and agricultural commodities for human, animal, or poultry consumption (either for sale or for further use in producing such food and agricultural commodities for sale) of animal and poultry life **to be directly used by the purchaser in the direct production of food and agricultural commodities**.

(4) Sales of animals and poultry to a farmer **to be directly used by the farmer in the direct production of food or agricultural commodities** (either for sale or for further use in producing such food or commodities for sale) for human, animal, or poultry consumption are exempt from tax. (**Emphasis added**).

[45 IAC 2.2-5-4](#), in relevant part, further illustrates:

(c) The following is a partial list of items which are considered subject to the sales tax.

TAXABLE TRANSACTIONS

Fences, posts, gates, and fencing materials.

Water supply systems for personal use.

Drains.

Any motor vehicle which is required by the motor vehicle law to be licensed for highway use.

Ditchers and graders.

Paints and brushes.

Refrigerators, freezers, and other household appliances.

Garden and lawn equipment, parts, and supplies.

Electricity for lighting and other non-agricultural use.

Any materials used in the construction or repair of non-exempt: buildings, silos, grain bins, corn cribs, barns, houses, and any other permanent structures.

Items of personal apparel, including footwear, gloves, etc., furnished primarily for the convenience of the workers if the workers are able to participate in the production process without it.

Pumps.

All saws.

All tools, including forks, shovels, hoes, welders, power tools, and hand tools.

Building materials or building hardware such as lumber, cement, nails, plywood, brick, paint.

Plumbing, electrical supplies, and accessories, pumps.

Horses, ponies, or donkeys not used as draft animals in the production of agricultural products.

Food for non-exempt horses, ponies, etc.

Fertilizer, pesticides, herbicides, or seeds to be used for gardens and lawns.

Field tile or culverts.

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

Any replacement parts or accessories for the above items.

(d) Each of the following items is considered **exempt from the sales tax ONLY** when the purchaser is occupationally engaged in agricultural production and uses the items **directly in direct production of agricultural products**.

EXEMPT TRANSACTIONS

- (1) Livestock and poultry sold for raising food for human consumption and breeding stock for such purposes.
- (2) Feed and medicines sold for livestock and poultry described in Item (1).
- (3) Seeds, plants, fertilizers, fungicides, insecticides, and herbicides.
- (4) Implements used in the tilling of land and harvesting of crops therefrom, including tractors and attachments.
- (5) Milking machines, filters, strainers, and aerators.
- (6) Gasoline and other fuel and oil for farm tractors and for other exempt farm machinery.
- (7) Grease and repair parts necessary for the servicing of exempt equipment.
- (8) Containers used to package farm products for sale.
- (9) Equipment designed to haul animal waste.
- (10) Equipment such as needles, syringes, and vaccine pumps.

(e) **The fact that an item is purchased for use on the farm does not necessarily make it exempt from sale [sic] tax. It must be directly used by the farmer in the direct production of agricultural products.** 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 agricultural products. **The fact that a piece of equipment is convenient, necessary, or essential to farming is insufficient in itself to determine if it is used directly in direct production as required to be exempt. (Capitalized emphasis in original) (Emphasis added).**

[45 IAC 2.2-5-6](#) also states:

- (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:
 - (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.
 - (3) Fertilizers--Sales of agricultural machinery, tools, and equipment to be directly used by the purchaser to fertilize crops. This exemption does not apply to storage equipment, transportation equipment, or to machinery, tools, or equipment to be incorporated into real estate.
 - (4) Insecticides and fungicides--Sales of agricultural machinery, tools, and equipment to be directly used by the purchaser to apply insecticides and fungicides are exempt from tax. This exemption does not apply to storage equipment, transportation equipment, or machinery, tools, or equipment to be incorporated into real estate.
 - (5) Other exempt agricultural machinery, tools, and equipment. Sales of other agricultural machinery, tools, and equipment to be directly used by the purchaser in the direct production, extraction, harvesting, or processing or [sic] agricultural commodities are exempt from tax provided such machinery, tools, and equipment are directly used in the production process, i.e. they have an immediate effect upon the agricultural commodities 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 agricultural commodities.
 - (6) Automatic watering equipment for crops; fruit or crop harvesting or picking equipment; machinery and equipment used to bale crops; pruning machinery and equipment used for fruit trees; and equipment used to shear wool from sheep and similar tangible personal property.
 - (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.

(8) Machinery, tools, and equipment used to move a crop from the field where it was grown and harvested to equipment for temporary storage or for further processing.

(9) Machinery, tools, and equipment used to move exempt items such as seeds, plants, fertilizers, insecticides, and fungicides from temporary storage to the location where such will be used in an exempt process.

(10) Replacement parts used to replace worn, broken, inoperative, or missing parts on exempt machinery and equipment.

(11) Safety clothing or equipment which is required to allow a farmer to participate in the production process without injury or to prevent contamination of the livestock or commodity during production.

(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.

(2) Machinery, tools, and equipment which become incorporated into real property are taxable except such machinery, tools, and equipment that are directly used in the production process; i.e., they have a direct effect upon the agricultural commodities being produced, harvested, extracted, or processed.

(3) Machinery, tools, and equipment used in general farm maintenance are taxable. The sale of paint brushes and sprays, oilers, blowers, wheelbarrows, brooms, chain saws, power tools, welders, tire spreaders, drills, sanders, wrenches, and other tools used in general cleaning and maintenances are taxable. However, replacement parts used to replace worn, broken, inoperative, or missing parts on exempt machinery and equipment, are exempt from tax.

(4) Sales of machinery, tools, and equipment to be used in managerial, sales, research, and development, or other nonoperational activities not directly used in production, harvesting, extraction, and processing of agricultural commodities are taxable. This category includes, but is not limited to, machinery, tools, and equipment used in any of the following activities: farm management and administration; selling and marketing; exhibition of farm products; safety and fire prevention; illumination for farm buildings; lighting fixtures for general illumination; heating and cooling equipment for general temperature control; transportation of animals, poultry, feed, fertilizer, etc., to the farm for use in farming; transportation of animals, poultry, and other farm produce from the farm to market.

(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. (**Emphasis added**).

The Department's Sales Tax Information Bulletin 9 (August 2008), 20080827 Ind. Reg. 045080655NRA, which is applicable in this instance, further illustrates:

I. Purchases

...

B. Agricultural Machinery, Tool, and Equipment

The purchases of agricultural machinery, tools and equipment are exempt from sales and use tax if the machinery, tools and equipment are directly used in the direct production, extraction, harvesting, or processing of agricultural commodities. If the machinery or equipment is not directly used in the direct production of agricultural commodities, but is designed for use in the gathering, moving, or spreading of animal waste, the machinery or equipment may be exempt if the following conditions are met:

1. the person acquiring the equipment acquires it for use in conjunction with the production of food or commodities for sale.
2. the person acquiring the machinery or equipment is occupationally engaged in the production of food or commodities that are sold for human or animal consumption or are used for further food or commodity production.
3. the machinery or equipment is designed for use in gathering, moving, or spreading animal waste.

In this instance, based on the Questionnaire Taxpayer completed, the Department concluded that Taxpayer's tractor was entitled to nine (9) percent exemption. The Department further determined that Taxpayer was not entitled to the agricultural exemptions for the following use of its tractor: (1) hauling feed to livestock to be sold ("Round Bales"), (2) checking on livestock, (3) "Moving Round Bales," and (4) "Mowing with Bushog."

At the hearing, Taxpayer's representative asserted that all the above mentioned uses of the tractor qualified

for the agricultural exemptions pursuant to Section I.B., examples 1, 2 and 4 of the Department's Sales Tax Information Bulletin 9 (July 2012), 20120725 Ind. Reg. 045120427NRA. Taxpayer also submitted several photos and two excerpts of articles discussing "Causes of Pinkeye" and "Management Tips for Round Bale Hay Harvesting, Moving, and Storage" to support his protest. Taxpayer's representative asserted that "[f]eeding of round bales directly to the cattle in the winter should be exempt." Taxpayer's representative further argued that "[u]se of the tractor with a bushhog attached should be exempt" because "[t]his usage of the bushhog is to mow the pasture field to prevent the exempt animals from contracting pinkeye or other eye infections caused by tall stems. It should not be considered general farm maintenance and does not pertain to mowing right of ways and the like." Additionally, Taxpayer's representative maintained that "[m]oving round bales from the field to the barn should also be exempt. The storage of the hay out of the weather is the last step in the process of harvesting hay."

Upon reviewing Taxpayer's supporting documentation, the Department must respectfully disagree. Pursuant to the above mentioned statutes and regulations, all purchases of tangible personal property by persons engaged in the direct production, extraction, harvesting, or processing of agricultural commodities are taxable, unless the use of the tangible personal property satisfies the "double-direct" test; the equipment at issue must be involved in the direct production of the agricultural commodity and must have a direct effect upon that commodity. Taxpayer's documentation demonstrates that he used the tractor for hauling feed to livestock (round bales in winter) before actually feeding the cattle and, thus, his use of the tractor, at best, was pre-production. Taxpayer's use of the tractor to check on cattle was not production. Similarly, Taxpayer's use of the tractor for moving round bales was not production because Taxpayer did not sell the bales.

Finally, Taxpayer may argue that he needed the tractor with an attached bushhog to maintain the pasture (or farm) to prevent the cattle from eye irritation caused by tall weeds and grasses, which may cause "pinkeye" disease. However, Taxpayer's use of the tractor in this manner did not have an immediate effect on the cattle. Thus, Taxpayer did not directly use the tractor with an attached bushhog for mowing in the direct production. The fact that the tractor was purchased for use on the farm does not necessarily make it exempt from sales tax. [45 IAC 2.2-5-4\(e\)](#).

In short, Taxpayer's documentation failed to demonstrate that his use of the tractor – for (1) hauling feed to livestock to be sold ("Round Bales"), (2) checking on livestock, (3) "Moving Round Bales," and (4) "Mowing with Bushhog" – were directly used in his direct production. Thus, the Department's audit properly allowed Taxpayer nine (9) percent of exemption on his purchase of the tractor.

FINDING

Taxpayer's protest is respectfully denied.

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