

Letter of Findings Number: 04-20120398
Use Tax
For Tax Year 2009

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ISSUE

I. Use Tax—Agricultural Equipment Exemption.

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

Taxpayer protests the assessment of use tax on a tractor.

STATEMENT OF FACTS

Taxpayer is a farmer. Taxpayer raises calves on his farm. As the result of an investigation, the Indiana Department of Revenue ("Department") issued proposed assessments for use tax on the purchase of a tractor, a "2002 John Deere 6420 Tractor" purchased in the tax year 2009 (the "Tractor"). Taxpayer protests the proposed assessment of use tax on its purchase of the Tractor. An administrative hearing was conducted by telephone and this Letter of Findings results. Further facts will be supplied as required.

I. Use Tax— Agricultural Equipment Exemption.

DISCUSSION

Taxpayer protests the imposition of use tax on the purchase of the Tractor. Taxpayer protests that the uses of the Tractor were for farm related activities, inter alia, tilling the land, harvesting crops, and to carry feed to dairy cattle. 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 use tax is imposed under IC § 6-2.5-3-2(a), which states:

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.

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).

Also of relevance is [45 IAC 2.2-5-4](#), which states in relevant part:

(a) Agricultural exemption certificates may be used only if the purchaser is occupationally engaged in the business of producing food or commodities for human, animal, or poultry consumption for sale or for further use in such production.

(b) The department has determined that persons occupationally engaged in producing food and commodities as used in the Indiana sales and use tax act, shall mean and include only those persons, partnerships, or corporations whose intention it is to operate a farm at a profit and not those persons who intend to operate a farm for pleasure as a hobby. Operations similar to those of a pony farm, riding stable, or the production and raising of dogs and pets, are not classified as farms for the purpose of the state gross retail tax act.

...

(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.

(f) If a farmer makes a purchase tax exempt and later determines that the purchase should have been taxable, a use tax is due on the purchase price and should be remitted to the department of revenue along with the next annual income tax return, except for sales tax on gasoline which must be shown on the claim for motor fuel tax refund.

(Emphasis added).

In other words, the equipment must be used directly in the direct production of agricultural products (referred to also as the "double direct test") to be exempt from sales or use tax. As mentioned above, IC § 6-2.5-5-2 states that "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." This statute applies a "dual direct" test in which a purchase for agriculture use is exempt only when the property is directly used in the direct production, extraction, harvest, or processing of agricultural commodities.

Taxpayer argues that the Tractor was used for farm related activities, inter alia, tilling the land, harvesting crops, and to carry feed to dairy cattle. Therefore, because the Tractor is used for farm related activities, Taxpayer maintains that the Tractor should be equally exempt from sales and use tax.

The tilling of the land and harvesting of crops are farm related activities which do meet the double direct test required by Indiana law. However, the Department has already taken into consideration that these activities were exempt, and based on information provided by Taxpayer, a nineteen percent exemption was granted based on how often the Tractor was used for these purposes. Taxpayer has not provided any new information that shows it is entitled to a greater exemption for these or any other purpose.

For the carrying of feed to Taxpayer's cattle, Taxpayer cites to [45 IAC 2.2-5-6\(d\)](#) as follows:

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.

Taxpayer says that the tractor "was only used 1 1/2 to 2 hours per day (not continuously) to feed dairy cattle while they were being milked." Taxpayer believes that [45 IAC 2.2-5-6\(d\)](#) supports his claim that the tractor would be exempt for this purpose. However, this regulation applies to automated feeding equipment, and not equipment used to transport feed to pasture. It is also used prior to the feeding process, not during the feeding process, since the tractor is presumably not functioning while the feeding is occurring.

Taxpayer also maintains that [45 IAC 2.2-5-4\(e\)](#), where it states that machinery must be "directly used by the farmer in the direct production of agricultural products," supports Taxpayer's position that the tractor is exempt because Taxpayer believes that it is directly used in the direct production of milk. However, the tractor would need to have an "immediate effect" on the production of milk in order to be exempt. [45 IAC 2.2-5-4\(e\)](#) also states that "[p]roperty 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," and that "[t]he 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." Taxpayer has not shown that the Tractor has an immediate effect on the production of milk, and therefore Taxpayer has not met the burden of proof set out in IC § 6-8.1-5-1.

FINDING

Taxpayer's protest is respectfully denied.

Posted: 01/30/2013 by Legislative Services Agency
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