

**Letter of Findings: 04-20120535**  
**Gross Retail Tax**  
**For the Year 2009**

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**ISSUE**

**I. Horse Purchase – Use Tax**

**Authority:** IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-3-2(a); IC § 6-2.5-5-1; [45 IAC 2.2-3-4](#); [45 IAC 2.2-5-5](#); Letter of Findings 04-20120179 (July 25, 2012).

Taxpayer argues that he is not required to pay sales or use tax on the purchase of a race horse.

**STATEMENT OF FACTS**

The Indiana Department of Revenue ("Department") determined that Taxpayer should have paid sales tax on a horse acquired in a transaction which took place in Indiana. The Department issued a proposed assessment of use tax. Taxpayer disagreed with the assessment and submitted a protest to that effect. Taxpayer indicated that a hearing on the matter was not necessary and asked that a written decision be issued addressing the protest. This Letter of Findings results.

**I. Horse Purchase – Use Tax**

**DISCUSSION**

The Department concluded that Taxpayer had "paid for and obtained tangible personal property in Indiana upon which tax [had] not been paid." Taxpayer disagrees concluding that the tangible personal property – a race horse – was exempt under the relevant portions of Indiana law.

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.

As authority for the decision subjecting Taxpayer to use tax, the Department pointed to [45 IAC 2.2](#). That portion of the administrative code contains various provisions the most general and apparently relevant is found at [45 IAC 2.2-3-4](#) which states:

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.

Taxpayer acquired the horse as a result of a "claiming race." The question of whether horses acquired in a claiming race are subject to sales/use tax is addressed in Letter of Findings 04-20120179 (July 25, 2012), 20120926 Ind. Reg. 045120535NRA. In that Letter of Findings, the Department determined the race horses purchased and acquired in a "claiming race" constituted retail transactions "involving tangible personal property" and were subject to Indiana's sales/use tax.

Because Taxpayer does not raise the "claiming race" issue anew, it need not be addressed here. Instead Taxpayer argues that the acquisition of the race horse was exempt on the ground that "any [and] all items involved with agriculture and the breeding and racing of horses" is exempt.

IC § 6-2.5-5-1 provides a sales tax exemption for animals, equipment, and supplies purchased for "agricultural purposes."

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.
- (3) the machinery or equipment is designed for use in gathering, moving, or spreading animal waste.

However Taxpayer has not provided information establishing that it is in the business of producing "food," "food ingredients," or food "commodities" such that Taxpayer would be entitled to the exemption.

Additionally, [45 IAC 2.2-5-5](#) notes:

- (a) The raising of saddle horses, harness horses, ponies, donkeys, or any other similar animals not used directly in direct agricultural production does not qualify as agricultural production for "human consumption"

under the gross retail sales and use tax act. Consequently, the purchase of supplies, food, materials, and equipment used in raising or maintaining such animals are subject to the sales tax unless the items are directly used or consumed in the production of such animals for resale in the regular course of the purchaser's business.

(b) The purchase of any of the above animals is subject to the sales tax unless the purchaser is a registered retail merchant and is buying such animal for resale in the regular course of his business.  
(Emphasis added).

In Taxpayer's case, the animal at issue was Taxpayer's race horse. Thus the race horse does not come within the scope of the sales tax exemption found at IC § 6-2.5-5-1 because the exemption requires that animals must be used for the "direct use in the direct production of food...."

Taxpayer acquired "tangible personal property" in a retail transaction; the agricultural exemption Taxpayer cites is inapplicable. Therefore, the Department correctly assessed use tax on the acquisition of the race horse.

**FINDING**

Taxpayer's protest is respectfully denied.

*Posted: 02/27/2013 by Legislative Services Agency*

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