

Letter of Findings Number: 04-20130056
Use Tax
For Tax Year 2009

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ISSUE

I. Use Tax—Imposition.

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

Taxpayer protests the use of two items in calculation for use tax liability.

STATEMENT OF FACTS

Taxpayer is an Indiana farmer. As the result of an audit for the tax year 2009, the Indiana Department of Revenue ("Department") determined that Taxpayer had not paid use tax on some items which he purchased. The Department, therefore, issued a proposed assessment for use tax. Taxpayer protested the imposition of use tax on these items. An administrative hearing was conducted and this letter of findings results. Further facts will be provided as required.

I. Use Tax—Imposition.

DISCUSSION

Taxpayer protests the inclusion of a tractor and a loader in a use tax assessment. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as required 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. (Emphasis added).

When tangible property has not been subject to sales tax it may be subject to use tax.

The use tax is defined in [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.

(Emphasis added).

The use tax is imposed by IC § 6-2.5-3-2, 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.

(Emphasis added).

Taxpayer claims that these items are exempt from Indiana sales tax under IC § 6-2.5-5-2, which exempts certain agricultural machinery from state sales tax. 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 claims that the tractor is used to feed large bales of hay to cattle. The tractor transports bales of hay to a feeder. The cattle eat the hay from the feeder. While the tractor is convenient and perhaps a necessary or essential piece of equipment to feed the cattle, it is not directly used in the direct production of the cattle. 45 IAC § 2.2-5-4 states:

...

- (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.

(Emphasis added.)

The tractor transports the hay to the feeder and thus the feeder is directly used in the direct production of cattle. The tractor is one step removed from the direct production of cattle and is thus not exempt under IC § 6-2.5-5-2.

Taxpayer claims that the loader feeds large bales of hay to cattle. The loader attaches to the tractor and picks up and delivers bales of hay into a feeder. The cattle eat the hay from the feeder. Again, while the loader is convenient and perhaps a necessary or essential piece of equipment to feed the cattle, it is not directly used in the direct production of the cattle. The tractor transports the hay to the feeder and thus the feeder is directly used in the direct production of cattle. The tractor is one step removed from the direct production of cattle and is thus not exempt under IC § 6-2.5-5-2.

Taxpayer claims that the tractor and loader clean cattle manure from barns, hauls cattle manure, and spreads cattle manure. IC § 6-2.5-5-2 (b) exempts agricultural machinery or equipment from 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.

Taxpayer meets the requirements identified in IC § 6-2.5-5-2 (b). However, the tractor and loader are also used for other nonexempt purposes. Therefore, the tractor and loader are partially exempt and partially taxable. The assessment exempted a portion of the tractor and loader. The tractor was determined to be 17 percent exempt and the loader was determined to be 7 percent exempt. Taxpayer has not provided any documentation to support increasing the exempt percentages of either the tractor or the loader.

Taxpayer claims that the tractor and loader mows, rakes and bales hay. However, Taxpayer does not sell hay but gives it to his neighbors. Thus, the tractor is not engaged in the production of an agricultural commodity and is not exempt under IC § 6-2.5-5-2.

After review of the supplied documentation, the Department is not convinced that the tractor and loader are directly used in the direct production of agricultural products, that the tractor and loader should receive a higher percentage of exemption for the gathering, moving and spreading of animal waste, or that the tractor and loader are used in the direct production of an agricultural commodity. Taxpayer has not provided any documentation as required by IC § 6-8.1-5-1(c) to show that the tractor or loader should be exempt from sales tax under IC § 6-2.5-5-2. Thus, these items should be subject to use tax.

FINDING

Taxpayer's protest is denied.

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