

Letter of Findings: 04-20130316
Sales and Use Tax
For the Year 2010

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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 § 6-2.5-5-1; IC § 6-8.1-5-1; [45 IAC 2.2-5-1](#); [45 IAC 2.2-5-4](#); [45 IAC 2.2-5-6](#); Indiana Dep't of State Revenue v. RCA Corp., 310 N.E.2d 96 (Ind. Ct. App. 1974); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the assessment of use tax on his use of gravel on his farm.

STATEMENT OF FACTS

Taxpayer is a farmer who raises calves for food consumption. Taxpayer also produces hay on his property to feed his calves. Taxpayer purchased gravel on six separate occasions in 2010. Taxpayer used the gravel as a base for round hay bale feeders, which are used in the feeding process for Taxpayer's calves. Taxpayer did not pay sales tax at the time of purchase because Taxpayer claimed an exemption. The Indiana Department of Revenue ("Department") assessed Indiana use tax on these items pursuant to a "Doubtful Purchase" investigation. Taxpayer timely protested the assessment of use tax and provided additional documentation to support his protest. An administrative hearing was held on the protest and this Letter of Findings ensues. Additional facts will be provided as necessary.

I. Sales and Use Tax – Agricultural Exemptions.

DISCUSSION

All tax assessments are prima facie evidence that the Department's claim for the tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. 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 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).

IC § 6-2.5-5-1 states:

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. (**Emphasis added**).

[45 IAC 2.2-5-1\(a\)](#) further provides:

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. (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. (Bullets added).

(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. (Emphasis added).**

There is no question that Taxpayer is a farmer engaged in the direct production of food or agricultural commodities and is entitled to claim the exemption for tangible personal property purchased to be directly involved in the direct production of Taxpayer's agricultural product. The issue is whether the gravel is directly used in the direct production of Taxpayer's calves, meaning that the gravel has an immediate effect on the calves being produced. In this case, gravel does not have an immediate effect on the raising of cattle. Taxpayer may argue that he needed the gravel to protect the hay from moisture and mud and to keep the tractor from getting stuck. However, Taxpayer's use of the gravel in this manner did not have an immediate effect on the cattle. It is merely tangential. Therefore, the gravel is not exempt from sales tax.

FINDING

Taxpayer's protest is respectfully denied.

Posted: 09/25/2013 by Legislative Services Agency
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