

Letter of Findings Number: 04-20130476
Use Tax
For Tax Year 2010

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ISSUE

I. Use Tax—Rotary Cutter.

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](#).

Taxpayer protests the assessment of use tax on a rotary cutter.

STATEMENT OF FACTS

Taxpayer is an Indiana farmer. As the result of an investigation, the Indiana Department of Revenue ("Department") issued a proposed assessment for use tax, penalty, and interest on the purchase of a gator and a rotary cutter ("Cutter") in 2010. Taxpayer paid the portion of the assessment related to the purchase of the gator, but protests the portion of the proposed assessment of use tax on its purchase of the Cutter. An administrative hearing was conducted and this Letter of Findings results. Further facts will be supplied as required.

I. Use Tax— Rotary Cutter.

DISCUSSION

Taxpayer protests the imposition of use tax on the purchase of a rotary cutter. Taxpayer protests that the Cutter is exempt. 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.

The relevant statute regarding agricultural machinery exemptions is IC § 6-2.5-5-2, which 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:

...

(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.

(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).

Therefore, in order for a person to acquire agricultural machinery, tools, or equipment exempt from sales and use taxes, the person must acquire the agricultural machinery, tools, or equipment for his direct use in the direct production of food and food ingredients or commodities for sale, as provided by IC § 6-2.5-5-2.

Taxpayer claims that the Cutter is exempt from use tax under [45 IAC 2.2-5-4\(d\)\(4\)](#), which states that transactions are exempt for "implements used in the tilling of land and harvesting of crops therefrom, including tractors and attachments." Specifically, Taxpayer argues that the Cutter is necessary to mow hay fields to allow his cattle to properly graze, to produce hay to feed the cattle he raises, and to cut corn stalk stubble in preparation for the next year's tilling.

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 "double direct" test in which a purchase for agricultural use is exempt only when the property is directly used in the direct production, extraction, harvest, or processing of agricultural commodities. Therefore, equipment used prior to the start of or after the end of the production, extraction, harvesting, or processing of agricultural commodities is not eligible for the agricultural commodities exemption. This standard is reiterated in [45 IAC 2.2-5-4 \(e\)](#) that states:

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.

The preparation of fields for proper grazing does not directly affect the cattle. Rather, it is a pre-production activity similar to storing feed prior to actually feeding the cattle. The hay which Taxpayer cuts down with the Cutter is not itself an agricultural product because Taxpayer does not sell the hay and so this activity does not qualify for exemption under IC § 6-2.5-5-2. The cutting of corn stalk stubble is a post-harvest/pre-tilling activity

and is not direct use in the direct production of an agricultural product.

In conclusion, the Cutter is not agricultural machinery, tools, or equipment which is directly used in the direct production, extraction, harvesting, or processing of agricultural commodities. The Cutter therefore does not qualify for the exemption found under IC § 6-2.5-5-2. Taxpayer has not met the burden imposed under IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is denied.

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