

Letter of Findings Number: 04-20140327
Use Tax
For Tax Year 2012

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.

ISSUE

I. Use Tax—Agricultural Exemption.

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

Taxpayer protests the assessment of use tax.

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 hydraulic proportioning valve with control box and power cable. Taxpayer protests the assessment of use tax. An administrative hearing was conducted and this Letter of Findings results. Further facts will be supplied as required.

I. Use Tax—Agricultural Exemption.

DISCUSSION

Taxpayer protests the imposition of use tax on the purchase of a hydraulic proportioning valve with control box and power cable. Taxpayer protests that the items are exempt from sales and use tax due to an agricultural exemption. 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).

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.

[45 IAC 2.2-3-4](#) further explains:

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.

Therefore, when tangible personal property ("TPP") is used, stored, or consumed in Indiana, use tax is due unless sales tax was paid at the time of the transaction, or if there is an applicable exemption to sales and use taxes. A transaction subject to the state's sales tax necessarily involves the transfer of TPP. The state's use tax is triggered when a person exercises ownership over TPP.

IC § 6-2.5-5-2(a) 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.

During the administrative hearing, Taxpayer stated that the items at issue are permanently mounted on a land leveler which is used for leveling fields and forming ditches to allow surface drainage. Taxpayer stated that the

items were attached to a land leveler blade upon which no sales or use tax was ever paid or assessed. However, Taxpayer did not provide any documentation to establish that no sales or use tax was paid or assessed on the land leveler blade. Additionally, Taxpayer did not provide documentation to establish that the land leveler blade was properly exempt itself. Pursuant to IC § 6-2.5-5-2, the items at issue are not exempt because they are not being used in direct production but are instead being used during pre-production. Therefore, the items are not tax exempt and are subject to taxation under IC § 6-2.5-3-2.

The Department refers to [45 IAC 2.2-5-4\(c\)](#), which states:

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.

(Emphasis Added).

[45 IAC 2.2-5-4\(c\)](#) specifically states that any spare parts or accessories for graders, ditchers, front end loaders, or similar equipment is taxable. The items at issue are permanently mounted on a leveler blade. Thus, according to [45 IAC 2.2-5-4\(c\)](#) they are considered accessories of the leveler and do not qualify for exemption under IC § 6-2.5-5-2.

In conclusion, the hydraulic proportioning valve with control box and power cable is not agricultural machinery, tools, or equipment which is directly used in the direct production, extraction, harvesting, or processing of agricultural commodities. The items therefore do not qualify for the exemption found under IC § 6-2.5-5-2 and are subject to taxation under IC § 6-2.5-3-2. Additionally, items are accessories pursuant to [45 IAC 2.2-5-4\(c\)](#) and are subject to taxation. 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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