

**Letter of Findings: 04-20140417
Gross Retail Tax
For the Year 2011**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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. Gross Retail Tax - Agricultural Exemption.

Authority: IC § 6-2.5-5-2; IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Mynsberge v. Dep't of State Revenue, 716 N.E.2d 629 (Ind. Tax Ct. 1999); Tri-States Double Cola Bottling Co. v. Dep't of State Revenue, 706 N.E.2d 282 (Ind. Tax Ct. 1999); Dep't of Revenue, State of Ind. v. Kimball Intern., Inc., 520 N.E.2d 454 (Ind. Ct. App. 1988); Sales Tax Information Bulletin 9 (July 2012); Sales Tax Information Bulletin 9 (August 2008).

Taxpayer argues that its purchase of an all terrain vehicle was exempt from sales tax on the ground that the vehicle is used in the production of agricultural products.

STATEMENT OF FACTS

Taxpayer is an Indiana resident engaged in producing various agricultural products. Taxpayer purchased a Polaris all terrain vehicle ("ATV"). The Indiana Department of Revenue ("Department") assessed Taxpayer sales tax on the ground that such equipment is not generally directly used in the direct production of agricultural products. Taxpayer disagreed with the assessment and submitted a protest to that effect. An administrative hearing was scheduled to provide Taxpayer an opportunity to explain the basis for the protest. Taxpayer declined the opportunity but asked that her protest be addressed based on the documentation provided at the time the protest was submitted. This Letter of Findings results.

I. Gross Retail Tax - Agricultural Exemption.

DISCUSSION

Taxpayer owns and operates an Indiana farming operation. In 2011, Taxpayer purchased ATV in Indiana. Taxpayer submitted an exemption certificate to the seller at the time of purchase and consequently did not pay the sales tax. The Department later investigated the purchase. In response, Taxpayer submitted a Form AGQ-100, the Agricultural Equipment Exemption Usage Questionnaire, reporting her uses of the ATV on her farm. Based on this information, the Department determined that Taxpayer's ATV did not qualify for the exemption.

Taxpayer explained that the ATV is used for the following purposes: collect field stones; spray crops; transport farming equipment such as chain saws; assist in the removal of trees and brush; "wet down PVC tile spouts when burning off ditch banks;" check field tile lines; and shuttle semi drivers and equipment operators.

Taxpayer does not specifically cite to any statutory authority, but Taxpayer apparently relies on IC § 6-2.5-5-2 which provides as follows:

- (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.

Taxpayer is required to establish that the original assessment is wrong. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." See *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012).

In applying any tax exemption, the general rule is that "tax exemptions are strictly construed in favor of taxation and against the exemption." *Dep't of Revenue, State of Ind. v. Kimball Intern., Inc.*, 520 N.E.2d 454, 456 (Ind. Ct. App. 1988).

IC § 6-2.5-5-2 like all tax exemption provisions, is strictly construed against exemption from the tax. *Mynsberge v. Dep't of State Revenue*, 716 N.E.2d 629, 636 (Ind. Tax Ct. 1999); *Tri-States Double Cola Bottling Co. v. Dep't of State Revenue*, 706 N.E.2d 282, 283 (Ind. Tax Ct. 1999).

The Department has issued Sales Tax Information Bulletin 9 (July 2012), 20120725 Ind. Reg. 045120427NRA, addressing the exemption on which Taxpayer depends. The Bulletin provides in part as follows:

The purchases of agricultural machinery, tools, and equipment are exempt from sales and use tax if the machinery, tools, and equipment are directly used in the direct production, extraction, harvesting, or processing of agricultural commodities. The machinery, tools, and equipment must have an immediate effect on the commodity produced. See also Sales Tax Information Bulletin 9 (August 2008) 20080827 Ind. Reg. 045080655NRA.

The Bulletin also addresses agricultural functions which do meet the requirements set out in IC § 6-2.5-5-2.

It is important to note that the exemption does not apply to machinery, tools, and equipment used for any of the following:

- General farm maintenance;
- Farm management and administration;
- Selling and marketing;
- Exhibition of farm products;
- Safety and fire prevention;
- Illumination;
- Heating and cooling equipment for general temperature control;
- Transportation of animals, poultry, feed, fertilizer, etc. to the farm for use in farming; and
- Transportation of animals, poultry, and other farm produce from the farm to market.

These categories of items are taxable because they are not considered by the Department to be directly used by the purchaser in the direct production, extraction, harvesting, or processing of agricultural commodities. *Id.*

The Form AGQ-100 Taxpayer prepared explained that the ATV is used for transporting tools, equipment, and employees. In addition, the ATV is used for "picking up field rock," "spot spraying weeds & brush," and for "tree and brush removal."

The Department is unable to agree that Taxpayer has met the burden under IC § 6-8.1-5-1(c) of establishing that the assessment is wrong because Taxpayer's use of the ATV is not directly used in the production of agricultural commodities. Taxpayer makes use of the ATV for purposes which are ancillary to the actual production of its commodities and for purposes which do not have an immediate effect on the commodities produced.

The Department agrees that the ATV is not used for recreational or frivolous purposes but does not agree that its use here meets the requirements set out in the exemption statute.

FINDING

Taxpayer's protest is respectfully denied.

