

**Letter of Findings Number: 04-20140301**  
**Use Tax**  
**For Tax Years 2011 and 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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

### HOLDING

The purchase of tangible personal property was subject to sales and use taxes. The agricultural exemption did not apply.

### ISSUES

#### **I. Use Tax—Agricultural Exemption.**

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

Taxpayer protests the imposition of use tax on its purchases of tangible personal property.

#### **II. Tax Administration—Negligence Penalty.**

**Authority:** IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of ten percent negligence penalties.

### STATEMENT OF FACTS

Taxpayer is an Indiana business which aerielly sprays crops for farmers. As the result of an audit, the Indiana Department of Revenue ("Department") determined that during the tax years 2011 and 2012 Taxpayer had incorrectly purchased tangible personal property ("TPP") without paying sales tax at the time of purchase. Taxpayer failed to respond to repeated attempts by the Department to set up an appointment to conduct the audit. Without Taxpayer's participation in the audit process, the Department therefore issued proposed assessments for use tax, negligence penalties, and interest for those years based on the best information available. After the proposed assessments were issued, Taxpayer protested that it was eligible for the agricultural exemption from sales and use taxes. An administrative hearing was held 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 certain purchases of TPP during the tax years 2011 and 2012. The Department based its proposed assessments on the best information available to it, due to Taxpayer's lack of participation in the audit process. As a result of the protest process, Taxpayer states that it was part of the agricultural industry and was therefore eligible for the 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).

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.

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 sales tax is not paid at the time tangible personal property ("TPP") is purchased, use tax will be imposed.

Taxpayer states that it properly claimed the agricultural exemption. There are several sales and use tax exemptions available. One of these is the agricultural exemption, provided under 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).

Therefore, in order to be eligible for the exemption found under IC § 6-2.5-5-2, the purchaser must be occupationally engaged in the production of food or commodities which it sells for human or animal consumption, as provided by IC § 6-2.5-5-2(b)(2).

In this case, Taxpayer is a service provider. The service is the aerial spraying of crops belonging to other people. The TPP which Taxpayer purchased was not eligible for the agricultural exemption since it did not sell any of the food or commodities which were sprayed, as provided by IC § 6-2.5-5-2(b)(2). Therefore, Taxpayer's purchases of TPP did not qualify for the agricultural exemption and sales tax should have been paid at the point of purchase. Since sales tax was not paid at the time of purchase on the TPP in question, use tax was properly imposed. Taxpayer has not met the burden of proving the proposed assessments wrong, as required by IC § 6-8.1-5-1(c).

## FINDING

Taxpayer's protest is denied.

## II. Tax Administration—Negligence Penalty.

### DISCUSSION

The Department issued proposed assessments and ten percent negligence penalties for the tax years in question. Taxpayer protests the imposition of penalty. Taxpayer believes that it acted in a reasonable manner and that the penalties should be waived.

The Department refers to IC § 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

- (3) incurs, upon examination by the department, a deficiency that is due to negligence;

...

the person is subject to a penalty.

The Department refers to [45 IAC 15-11-2](#)(b), which states:

"Negligence", on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

[45 IAC 15-11-2](#)(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-2.1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, Taxpayer incurred assessments which the Department determined were due to negligence under [45 IAC 15-11-2](#)(b), and so was subject to penalties under IC § 6-8.1-10-2.1(a). Taxpayer clearly was not eligible for the agricultural exemption, as explained in Issue I above. Also, Taxpayer failed to participate in the audit process, despite repeated attempts by the Department to contact Taxpayer. Therefore, the negligence penalties were properly imposed.

#### **FINDING**

Taxpayer's protest is denied.

#### **SUMMARY**

Taxpayer is denied in Issue I regarding the imposition of use tax. Taxpayer is denied in Issue II regarding the imposition of penalties for the years at issue.

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