

**Letter of Findings: 04-20140088
Sales and Use 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. 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

Taxpayer's evidence did not show that the pole barn material used to build a pole barn was directly used in the direct production of Taxpayer's poultry and livestock, meaning that the pole barn does not have an immediate effect on the poultry and livestock being produced. Taxpayer's protest on the imposition of the negligence penalty is sustained.

ISSUES

I. Sales & Use Tax - Agricultural Exemptions.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-3-4; IC § 6-2.5-5-2; IC § 6-8.1-5-1; [45 IAC 2.2-5-1](#); [45 IAC 2.2-5-4](#); [45 IAC 2.2-5-6](#); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Indiana Dep't of State Revenue v. RCA Corp., 310 N.E.2d 96 (Ind. Ct. App. 1974).

Taxpayer protests the assessment of tax on his purchase of pole building materials.

II. Tax Administration - Negligence Penalty.

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

Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana farmer who raises chickens and livestock for food consumption. Taxpayer also produces hay, corn, and beans on his property to feed the chickens and livestock. Taxpayer purchased pole building materials in 2011. Taxpayer used the pole building materials to build a pole barn. Taxpayer used the pole barn for the following purposes: to house the cattle; store hay, feed, corn and minerals that are used to feed the chickens and livestock; and to store farm equipment. 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 the pole building materials 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 & Use Tax - Agricultural Exemptions.

DISCUSSION

The Department assessed Taxpayer use tax on his purchase of the pole building materials because Taxpayer did not pay sales tax at the time of the transaction, nor did he self-assess and remit the use tax to the Department. Taxpayer, to the contrary, claimed that he is entitled to the agricultural exemption found in IC § 6-2.5-5-2.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid 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 Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

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 § 6-2.5-2-1; IC § 6-2.5-3-2. 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. IC § 6-2.5-5 et. seq. 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 § 6-2.5-5-2 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)**.

[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).

In this instance, Taxpayer, in relevant part, states:

The property in question does have an immediate effect on the article being produced. The pole barn material was used to build a pole barn to house the cattle; store the hay, feed, corn, and minerals that are fed directly to the chickens and livestock; and to store farm equipment that is used in the direct production of agriculture. This is an immediate effect.

Thus, Taxpayer believes that he is entitled to the agricultural exemption on the purchase of the pole barn material.

The Department, however, must respectfully disagree. The issue is whether the pole barn is directly used in the direct production of Taxpayer's poultry and livestock, meaning that the pole barn has an immediate effect on the poultry and livestock being produced. Pursuant to the above mentioned statutes and regulations, all purchases of tangible personal property by persons engaged in the direct production, extraction, harvesting, or processing of agricultural commodities are taxable, unless the use of the tangible personal property satisfies the "double-direct"

test: the equipment at issue must be involved in the direct production of the agricultural commodity and must have a direct effect upon that commodity. Taxpayer's documentation demonstrates that he used the pole barn material to build a pole barn to house cattle and store farm equipment, corn, feed, hay, and minerals. In this case, the pole barn does not have an immediate effect on the raising of the poultry and livestock. Taxpayer may argue that he needed the pole barn to protect the hay, feed, corn, and minerals from moisture and to keep the farm equipment covered. However, Taxpayer's uses of the pole barn in this manner did not have an immediate effect on the livestock or poultry. It is merely tangential. Therefore, the pole barn is not exempt from sales tax. Additionally, Taxpayer's pole barn does not match any of the exempt items in the regulation.

Since Taxpayer did not pay sales tax at the time of the purchase, the use tax is properly imposed.

FINDING

Taxpayer's protest is respectfully denied.

II. Tax Administration - Negligence Penalty.

DISCUSSION

Taxpayer also protests the imposition of the negligence penalty, as this is his first pole building materials purchase and he would have paid the tax if he was aware that the materials were not exempt.

Pursuant to IC § 6-8.1-10-2.1(a), the Department may assess a ten (10) percent negligence penalty if the taxpayer:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department.

[45 IAC 15-11-2](#)(b) further 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.

The Department may waive a negligence penalty as provided in [45 IAC 15-11-2](#)(c), in part, as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) 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. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer has provided sufficient documentation establishing that his failure to pay tax or timely remit tax was due to reasonable cause and not due to negligence.

FINDING

Taxpayer's protest on the imposition of the negligence penalty is sustained.

SUMMARY

For the reasons discussed above, Taxpayer's protest of the assessment of use tax on his purchase of the pole building materials is respectfully denied. Taxpayer's protest of the imposition of the negligence penalty is sustained.

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