

Letter of Findings Number: 04-20160017
Use Tax
For Tax Year 2012-2013-2014

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

An Indiana farm established that the process of drying grain to reach a specific moisture content for marketability was an integrated process involving elevator "dry legs" and dry conveyor system, which moved grain to the drying floors of grain bins where final drying occurred. The "dry legs" and conveyer system were part of agricultural processing and thus eligible for the agricultural exemption.

ISSUE

I. Use Tax—Imposition.

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

Taxpayer protests the inclusion of two items in calculation for use tax liability.

STATEMENT OF FACTS

Taxpayer is an Indiana farmer. As the result of an audit for the tax years 2012, 2013 and 2014, the Indiana Department of Revenue ("Department") determined that Taxpayer had not paid use tax on some items which it purchased. The Department, therefore, issued a proposed assessment for use tax. Taxpayer protested the imposition of use tax on two of these items. An administrative hearing was conducted and this Letter of Findings results. Further facts will be provided as required.

I. Use Tax—Imposition.

DISCUSSION

Taxpayer protests the inclusion of elevator "dry legs" and a dry conveyor system in a use tax assessment. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as required by IC § 6-8.1-5-1(c).

The 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. (Emphasis added).

When tangible property has not been subject to sales tax it may be subject to use tax. The use tax is defined in [45 IAC 2.2-3-4](#), which states:

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. (Emphasis added).

The use tax is imposed by IC § 6-2.5-3-2, which states:

- (a) 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.
(Emphasis added).

Taxpayer claims that these items are exempt from Indiana sales tax under IC § 6-2.5-5-2, which exempts certain agricultural machinery from state sales tax. 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.)

Taxpayer provided information showing that the elevator "dry legs" and dry conveyor system moves grain from the grain dryer to the drying floors of the grain bins. The "dry legs" lift the grain from the dryer to the conveyer system which then directs the partially dried grain to a grain bin with a drying floor. According to Taxpayer, over the past thirty (30) years technology has improved. Due to the increased awareness of mycotoxin contamination and other microorganisms that can contaminate grain that adversely affects both human and animal health when the grain is ingested, farmers have had to change their drying methods to lower these risks. Farms now use a grain drying method called the combination drying method. The combination drying method involves first drying the grain in a high temperature dryer where, depending on the grain, it is dried to 16 percent to 18 percent moisture content. The grain is then moved to the drying floors of the grain bins for further drying until the grain is marketable.

The elevator "dry legs" and dry conveyor system moves the grain to the drying floors of the grain bins and thus the drying floors of the grain bins are directly used in the direct production of a marketable product. The elevator "dry legs" and dry conveyor system are part of an integrated process that are in direct production of marketable grain and is thus exempt under IC § 6-2.5-5-2.

After review of Taxpayer's protest, the Department agrees that the elevator "dry legs" and dry conveyor system are directly used in the direct production of agricultural products. Taxpayer has provided documentation as required by IC § 6-8.1-5-1(c) to show that the elevator "dry legs" and dry conveyor system should be exempt from sales tax under IC § 6-2.5-5-2. Thus, these items are not subject to use tax.

FINDING

Taxpayer's protest is sustained.

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