

**Letter of Findings: 04-20160348
Sales and Use Tax
For the Year 2013**

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Indiana Farmer was liable for the sales tax (or use tax) on materials, including lumber, frame, track, valley, guide, screws, spikes, bracket, clips, trim, metal, and trusses, he purchased to construct a building.

ISSUE

I. Sales & Use Tax - Agricultural Exemptions.

Authority: IC § 6-2.5-1-1 et seq.; IC § 6-2.5-3-4; IC § 6-2.5-5-2; IC § 6-8.1-5-1; 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); Indiana Dep't of State Revenue v. RCA Corp., 310 N.E.2d 96 (Ind. Ct. App. 1974); 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); [45 IAC 2.2-3-14](#); [45 IAC 2.2-5-1](#); [45 IAC 2.2-5-4](#); [45 IAC 2.2-5-6](#).

Taxpayer protests the assessment of tax on his purchases of tangible personal property.

STATEMENT OF FACTS

Taxpayer, an Indiana farmer, purchased materials including lumber, frame, track, valley, guide, screws, spikes, bracket, clips, trim, metal, and trusses ("Items at Issue") without paying sales tax at the time of the purchase. The Indiana Department of Revenue ("Department") discovered that Taxpayer did not pay sales tax at the time of the purchase nor did Taxpayer self-assess and remit use tax to the Department. As a result, the Department assessed Taxpayer additional tax and interest.

Taxpayer timely protested the assessment and submitted additional documentation to support his protest. A phone hearing was held. This Letter of Findings ensues. Additional facts will be provided as necessary.

I. Sales & Use Tax - Agricultural Exemptions.

DISCUSSION

The Department's audit assessed Taxpayer use tax on his purchases of tangible personal property because Taxpayer did not pay sales tax at the time of the transactions, nor did he self-assess and remit the use tax to the Department. Taxpayer, to the contrary, claimed that he is entitled to the exemption found in the Department's Sales Tax Information Bulletin 9 (January 2016) ("Information Bulletin 9").

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 § 6-2.5-1-1 et seq. 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 and [45 IAC 2.2-3-14\(a\)](#). There are also additional exemptions from sales tax and use tax. Some statutory exemptions under [IC 6-2.5-5](#) which apply to sales tax may also apply to use tax. [45 IAC 2.2-3-14\(b\)](#). 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). "[W]here such an exemption is claimed, the party claiming the same must show a case, by sufficient evidence, which is clearly within the exact letter of the law." *Id.* at 100-101.

Taxpayer in this instance claimed that his purchases of the Items at Issue were exempt from sales tax and use tax. Taxpayer referenced Information Bulletin 9, which addresses issues concerning agricultural production exemptions under IC § 6-2.5-5-2.

IC § 6-2.5-5-2 (as in effect for 2013) 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.

(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 referencing several examples outlined in the Information Bulletin 9, states in relevant part, that "[i]n reviewing the Bulletin #9 . . . my lumber and materials are . . . tax exempt." Taxpayer further explained, as follows:

These materials were used for the construction of a feed processing facility in the direct production of processing corn into feed for cows . . . raised to be processed and the meat sold. As a farmer, the construction is also used to store hay and other feed which is fed to the cattle as well. The use is used in direct production of agricultural products for sale.

In addition, Taxpayer offered six photos to demonstrate his use of the Items at Issue. Thus, Taxpayer believes that he is entitled to the agricultural exemptions on the purchases of the Items at Issue.

Upon review, however, Taxpayer's reliance of the above mentioned Information Bulletin 9 is misplaced. Taxpayer may argue, and rightly so, that a building used as a processing facility and storage is essential for his cattle operation. However, 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; i.e., the Items at Issue must be involved in the direct production of the agricultural commodity and must have a direct effect upon that commodity.

At the hearing, Taxpayer explained that he raises and sells animals, such as cows, for human consumption and uses a grinder to process the corn to feed his animals. To preserve the quality of the feed, processed or otherwise, he purchased Items at Issue to construct the building to protect the feed from severe weather and moisture. Taxpayer's documentation demonstrates that the building is "also used to store hay and other feed which is fed to the cattle as well. . . ." That is, Taxpayer constructed the building to preserve the quality of the feed and hay, which he uses to feed and to bed his animals that would be sold for human consumption later. In other words, Taxpayer does not sell the feed nor hay, rather the feed and hay are for his animals. Therefore, the building he constructed is to prepare feeds and store hay to raise his cattle and it is pre-production.

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.

Posted: 11/30/2016 by Legislative Services Agency
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