

**Letter of Findings: 04-20160535**  
**Gross Retail Tax**  
**For the Years 2013 and 2014**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 requires 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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

Farmer provided sufficient documentation that the repair parts for a feed grinder and parts for an animal waste sprayer were exempt from sales tax. The remaining items are not exempt from sales tax.

### ISSUES

#### I. Gross Retail Tax - Agricultural Exemption.

**Authority:** IC § 6-2.5-5-2; IC § 6-8.1-5-1; IC § 6-2.5-3-2; 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. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Dep't of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, (Ind. 2014); 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); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax. Ct. 2010); [45 IAC 2.2-3-4](#); [45 IAC 2.2-5-6](#); [45 IAC 2.2-5-4](#); Sales Tax Information Bulletin 9 (July 2012); Sales Tax Information Bulletin 9 (August 2008).

Taxpayer protests the assessment of use tax.

#### II. Gross Retail Tax - Construction Contract.

**Authority:** IC § 6-8.1-5-1; Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the assessment of tax on a construction contract.

### STATEMENT OF FACTS

Taxpayer is an Indiana resident engaged in producing various agricultural products. The Indiana Department of Revenue ("Department") assessed Taxpayer use tax on certain transactions. 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's representative provided Taxpayer's basis for his protest during the hearing. This Letter of Findings results.

#### I. Gross Retail Tax - Agricultural Exemption.

### DISCUSSION

Taxpayer owns and operates an Indiana farming operation. The Department assessed use tax on several transactions. Taxpayer protests the imposition of tax on its purchase of a hog welder and related parts and fuel, repair parts for a feed grinder, two way radio replacements for tractors, parts for a sprayer used to clear animal waste, and a construction contract. Taxpayer argues that the items at issue are used for agricultural purposes and therefore exempt from sales or use tax. In addition, Taxpayer argues that the construction contract was for labor as part of a building construction project that was contracted through a subcontractor.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect.

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." *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

Taxpayer argues that use tax was improperly imposed on the purchase of hog welder and related parts and fuel, repair parts for a feed grinder, two way radio replacements in tractors, parts for a sprayer used to clear animal waste due to the items being used in an exempt agricultural manner. 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.

Indiana's agriculture exemption is listed 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.

[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 tangible personal property ("TPP") is used, stored, or consumed in Indiana, use tax is due unless sales tax was paid at the time of the transaction, or if there is another applicable exemption to sales and use taxes. A transaction subject to the state's sales tax necessarily involves the transfer of TPP. The state's use tax is triggered when a person exercises ownership over TPP.

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).

"In general, 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\(a\)](#). However, there is an exemption for "agricultural machinery, tools, and equipment to be directly used by the purchaser in the direct production, extraction, harvesting, or processing or [sic.] agricultural commodities." [45 IAC 2.2-5-6\(b\)](#); IC § 6-2.5-5-2(a).

A taxpayer must establish that the property was acquired for "direct use in the direct production, extraction, harvesting, or processing of agricultural commodities." IC § 6-2.5-5-2(a). Property which is directly used in the direct production of agricultural commodities "is an essential and integral part of an integrated process." [45 IAC](#)

[2.2-5-6\(g\)](#). Therefore, a taxpayer must establish that the property for which this exemption is claimed is "integral and essential to its production process." *Graham Creek Farms*, 819 N.E.2d at 156. Whether property is essential and integral to an integrated process is determined by "identifying the points where production begins and where it ends." *Id.* [45 IAC 2.2-5-6\(d\)](#) identifies additional purchases which are exempt:

Exempt purchases: (1) Feeds-Sales of agricultural machinery, tools, and equipment used by the purchaser directly in feeding exempt animals, poultry, etc., are exempt from tax. This exemption does not extend to machinery, equipment, and tools used for the handling, movement, transportation, or storage of feed prior to the actual feeding process.

...

(5) Other exempt agricultural machinery, tools, and equipment. Sales of other agricultural machinery, tools, and equipment to be directly used by the purchaser in the direct production, extraction, harvesting, or processing or [sic.] agricultural commodities are exempt from tax provided such machinery, tools, and equipment are directly used in the production process, i.e. they have an immediate effect upon the agricultural commodities 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 commodities.

...

(8) Machinery, tools, and equipment used to move a crop from the field where it was grown and harvested to equipment for temporary storage or for further processing.

(9) Machinery, tools, and equipment used to move exempt items such as seeds, plants, fertilizers, insecticides, and fungicides from temporary storage to the location where such will be used in an exempt process.

(10) Replacement parts used to replace worn, broken, inoperative, or missing parts on exempt machinery and equipment.

(11) Safety clothing or equipment which is required to allow a farmer to participate in the production process without injury or to prevent contamination of the livestock or commodity during production.

[45 IAC 2.2-5-6\(e\)](#) specifically identifies taxable purchases:

Taxable purchases: (1) Storage equipment. Machinery, tools, and equipment used for storage of agricultural commodities after completion of the production of agricultural commodities are taxable.

(2) Machinery, tools, and equipment which become incorporated into real property are taxable except such machinery, tools, and equipment that are directly used in the production process; i.e., they have a direct effect upon the agricultural commodities being produced, harvested, extracted, or processed.

(3) Machinery, tools, and equipment used in general farm maintenance are taxable. The sale of paint brushes and sprays, oilers, blowers, wheelbarrows, brooms, chain saws, power tools, welders, tire spreaders, drills, sanders, wrenches, and other tools used in general cleaning and maintenances are taxable. However, replacement parts used to replace worn, broken, inoperative, or missing parts on exempt machinery and equipment, are exempt from tax.

(4) Sales of machinery, tools, and equipment to be used in managerial, sales, research, and development, or other nonoperational activities not directly used in production, harvesting, extraction, and processing of agricultural commodities are taxable. This category includes, but is not limited to, machinery, tools, and equipment used in any of the following activities: farm management and administration; selling and marketing; exhibition of farm products; safety and fire prevention; illumination for farm buildings; lighting fixtures for general illumination; heating and cooling equipment for general temperature control; transportation of animals, poultry, feed, fertilizer, etc., to the farm for use in farming; transportation of animals, poultry, and other farm produce from the farm to market.

[45 IAC 2.2-5-4](#) states, example omitted:

(a) Agricultural exemption certificates may be used only if the purchaser is occupationally engaged in the business of producing food or commodities for human, animal, or poultry consumption for sale or for further use in such production.

(b) The department has determined that persons occupationally engaged in producing food and commodities as used in the Indiana sales and use tax act, shall mean and include only those persons, partnerships, or corporations whose intention it is to operate a farm at a profit and not those persons who intend to operate a

farm for pleasure as a hobby. Operations similar to those of a pony farm, riding stable, or the production and raising of dogs and pets, are not classified as farms for the purpose of the state gross retail tax act.

(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.

(f) If a farmer makes a purchase tax exempt and later determines that the purchase should have been taxable, a use tax is due on the purchase price and should be remitted to the department of revenue along with the next annual income tax return, except for sales tax on gasoline which must be shown on the claim for motor fuel tax refund.

(g) A farmer would not ordinarily qualify to claim an exemption on electric or other utility bills unless the amount of electricity used in direct agricultural production is separately metered. In order to qualify for an exemption when separate meters are not use [sic.], a farmer should be prepared to prove to the satisfaction

of the department of revenue that the predominant use of electricity was for direct agricultural production. An exemption should never be claimed for telephone service.

(h) The sale by a farmer of grocery food not for immediate human consumption from a stand located on the seller's property is not subject to sales tax, and the farmer is not required to register as a retail merchant unless he conduct [sic.] sales of taxable items.

[45 IAC 2.2-5-4](#)(e) reiterates that "[t]he 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[, i.e. it must be] an essential and integral part of an integrated process which produces agricultural products."

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.

Taxpayer argues that use tax was improperly imposed on the purchase of the hog welder and related parts and fuel, repair parts for a feed grinder, two way radio replacements in tractors, parts for a sprayer used to clear animal waste due to the items being used in an exempt agricultural manner. Taxpayer explains the hog welder, related parts and fuel were used to repair the metal pins the hogs stay in while they are growing. However, pursuant to [45 IAC 2.2-5-4](#) fencing and gating were a taxable event for farmer in Indiana. Thus, the Department cannot agree that the welder, fuel and parts is exempt under IC § 6-2.5-5-2.

Next, Taxpayer protests that repair parts for a feed grinder are exempt under IC § 6-2.5-5-2 because it is essential to its agricultural production. According to [45 IAC 2.2-5-6](#)(d), "Sales of agricultural machinery, tools, and equipment used by the purchaser directly in feeding exempt animals, poultry, etc., are exempt from tax. This exemption does not extend to machinery, equipment, and tools used for the handling, movement, transportation, or storage of feed prior to the actual feeding process." The feed grinder is used in grinding feed to add to the hogs' food. Thus, the feed grinder and parts are exempt as long as tangible personal property is not part of storage, handling, or transporting the feed to the hogs.

Taxpayer also protested use tax assessed on the purchase of a two way radio used in its tractors. While communication is important it is not directly used in the direct production, extraction, harvesting, or processing of agricultural commodities as required by IC § 6-2.5-5-2. Thus, the Taxpayer's protest regarding the radio is denied because it is not directly used in direct agriculture production.

Finally, Taxpayer protests the imposition of tax on the purchase of repair parts for its sprayer used to remove animal waste. IC § 6-2.5-5-2(b)(3) specifically exempts machines and equipment used to remove animal waste as

exempt for purposes of sales tax. Thus, repair parts used for the sprayer to remove animal waste are exempt from use tax. Taxpayer's protest regarding the repair parts or the sprayer is sustained.

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 for the hog welder, parts, and fuel and the two way radio for the tractors. Taxpayer did meet its burden under IC § 6-8.1-5-1(c) for the feed grinder and replacement/repair parts for its sprayer.

### **FINDING**

Taxpayer's protest is denied in part and sustained in part.

## **II. Gross Retail Tax - Construction Contract.**

### **DISCUSSION**

As stated above, "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." Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Taxpayer also protests use tax assessed on a contraction contract. Taxpayer explained that it engaged contractor to build a building for Taxpayer. The contractor subcontracted out labor to a subcontractor. Taxpayer therefore argues that the contract was for labor and therefore not subject to use tax. Taxpayer was only able to provide the invoice of the contractor for an amount of labor different than the amount Taxpayer is protesting. Taxpayer also provided a statement from subcontractor signed in 2016 stating that the transaction at issue was for labor. Unfortunately, this documentation is not enough to meet Taxpayer's burden under IC § 6-8.1-5-1(c).

As explained during the hearing and the Department's letter setting the hearing, the protest process is a taxpayer's opportunity to clearly explain their protest and to provide relevant and cogent supporting documentation. Taxpayer has not presented a sufficiently developed argument for the Department to address. See *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 485 n.9, (Ind. Tax Ct. 2012) (stating in a footnote parenthetical "that poorly developed and non-cogent arguments are subject to waiver" by the Indiana Tax Court) (citing *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax. Ct. 2010)). Taxpayer has not met the burden to proving the proposed assessment wrong as required by IC § 6-8.1-5-1(c).

### **FINDING**

Taxpayer's protest is denied.

### **SUMMARY**

As stated in Issue I Taxpayer's protest is denied in part and sustained in part. As stated in Issue II Taxpayer's protest is denied.

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