

Memorandum of Decision: 04-20170747R
Sales Tax
For the Year 2016

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 This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

HOLDING

Individual provided documentation to show that he is entitled to an additional refund. The Department improperly calculated Individual's refund request; Individual should have received \$314.22. Individual is denied for the remainder of his refund claim.

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; *Indiana Dep't of State Revenue v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); [45 IAC 2.2-5-1](#); [45 IAC 2.2-5-4](#); [45 IAC 2.2-5-6](#).

Taxpayer protests the refund denial of the sales tax on his purchase of tangible personal property.

STATEMENT OF FACTS

Taxpayer, an Indiana resident, purchased a Kawasaki Mule. Taxpayer paid the sales tax at the time of the purchase and, subsequently, Taxpayer filed a claim for refund with the Indiana Department of Revenue ("Department").

Upon reviewing Taxpayer's claim for refund, the Department partially denied Taxpayer's request; the Department determined that mule was only .04 percent exempt.

Taxpayer timely protested the refund denial. A phone hearing was held. This Memorandum of Decision ensues. Additional facts will be provided as necessary.

I. Sales & Use Tax - Agricultural Exemptions.

DISCUSSION

The Department determined Taxpayer's purchase of a Mule was taxable because pursuant to AGQ-100, Taxpayer's use of the mule is only .04 percent. Taxpayer, to the contrary, claimed that he is entitled to the agricultural exemption outlined in IC § 6-2.5-5-2.

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. There are also additional exemptions from sales tax and use tax. 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 (2016) 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 the person 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 stated that he used the mule to work on his farm. Taxpayer had knee surgery which limited his mobility and the mule assists him. Taxpayer stated on his AGQ-100 he uses the mule to haul animal waste, haul feed to livestock, hauled tools and equipment, checked on livestock, removed trash, checked fences, recreational riding, and spaying weeds and brush. The Department originally reviewed Taxpayer's AGQ-100 and determined that .04 percent of the mule's use is exempt. However, upon review of the form, the Department now determines that the mule is 4 percent exempt. Thus, Taxpayer is entitled to an additional 3.96 percent of sales tax paid, i.e. \$314.22. Taxpayer however failed to show that the remaining sales tax is exempt.

FINDING

Taxpayer's protest is sustained for \$314.22 and denied for the remaining amount requested.

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