

Letter of Findings: 04-20190137
Gross Retail Tax
For the Year 2015

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 This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.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

Individual was properly assessed additional gross retail tax on the purchase of an all-terrain vehicle because the vehicle purchase did not qualify for a full agricultural manufacturing exemption.

ISSUE

I. Gross Retail Tax - Agricultural Exemption.

Authority: IC § 6-2.5-5-2; 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); *Dep't of Revenue, State of Ind. v. Kimball Int'l, Inc.*, 520 N.E.2d 454 (Ind. Ct. App. 1988); Sales Tax Information Bulletin 9 (November 2015).

Taxpayer argues that his purchase of an all-terrain vehicle was exempt from sales tax on the basis that the vehicle is used in the production of agricultural products.

STATEMENT OF FACTS

Taxpayer is an Indiana resident engaged in producing agricultural products, including livestock. Taxpayer purchased a Polaris all-terrain vehicle ("ATV") in 2015. The Indiana Department of Revenue ("Department") assessed Taxpayer sales tax on the ground that such equipment is not directly used in the direct production of agricultural products. Specifically, the Department concluded that Taxpayer uses the ATV for both exempt and non-exempt purposes and was therefore entitled to a twenty-five percent sales tax exemption on the purchase.

Taxpayer disagreed with the assessment and submitted a protest to that effect. Taxpayer waived his right to an administrative hearing and requested that the protest be addressed based on the documentation provided to the Department. This Letter of Findings results. Further relevant facts will be addressed below as necessary.

I. Gross Retail Tax - Agricultural Exemption.

DISCUSSION

Taxpayer owns and operates an Indiana farming operation. In 2015, Taxpayer purchased an ATV in Indiana. Taxpayer did not pay sales tax on the purchase at the time of the transaction. The Department later investigated the purchase. In response to the investigation, Taxpayer submitted a form AGQ-100, the Agricultural Equipment Exemption Usage Questionnaire, reporting his uses of the ATV on his farm. Based on this information, the Department determined that Taxpayer's ATV qualified for a twenty-five percent exemption and issued Taxpayer a proposed assessment for the taxable portion of the purchase.

Taxpayer is required to establish that the original assessment is wrong. 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." See *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). 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 Int'l, Inc.*, 520 N.E.2d 454, 456 (Ind. Ct. App. 1988).

The exemption from gross retail tax on purchases of tangible personal property used in agricultural production,

applicable at the time of the transaction, is found at IC § 6-2.5-5-2 (2015), which provides:

(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.

Taxpayer relies upon Sales Tax Information Bulletin 9 (November 2015), 20151125 Ind. Reg. 045150408NRA, to support his argument that he is entitled to a one hundred percent gross retail tax exemption for the transaction under protest. Section B of Sales Tax Information Bulletin 9 states:

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 including material handling equipment purchased for the purpose of transporting materials into such activities from an onsite location. **The machinery, tools, and equipment must have an immediate effect on the commodity produced.** The exemption includes safety clothing or equipment that is required to allow a worker to participate in a production process without injury or to prevent contamination of the product during production, as well as machinery, tools, and equipment used:

1. To feed exempt animals, plant seeds, fertilize crops, and apply insecticides and fungicides;
2. To move a crop from the field where it was grown and harvested to equipment for temporary storage for further processing;
3. To move exempt items such as seeds, plants, fertilizers, insecticides, and fungicides from temporary storage to a location where such will be used in an exempt process; and
4. By the purchaser directly in feeding exempt animals.

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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.
(Emphasis added.)

Taxpayer's protest letter asserts that the ATV is used one-hundred percent for the purpose of feeding his livestock. However, on the AGQ-100 form submitted to the Department on November 14, 2015 - prior to Taxpayer's current protest - Taxpayer indicated that he used the ATV for the purposes of hauling feed to livestock to be sold, hauling tools and equipment, checking on livestock, and running/checking fencing around property

lines. He also specifically indicated on the form that the ATV is used to haul feed to livestock twenty-five percent of the time. This prior representation to the Department is in direct conflict with the claim in Taxpayer's current protest, and Taxpayer has submitted no verifiable documentation to reconcile the discrepancy. At the time of the purchase, Taxpayer affirmed under penalty of perjury that he used the ATV for exempt purposes twenty-five percent of the time. Taxpayer submitted a second AGQ-100 that was completed subsequent to filing the instant protest. This form contradicts the form as originally filed, and the Department finds that it was completed solely for the purpose of supporting Taxpayer's argument in protest.

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; Taxpayer's use of the ATV is not directly used in the direct production of agricultural commodities seventy-five percent of the time. As Taxpayer reported on the AGQ-100 form, Taxpayer makes use of the ATV for purposes which are ancillary to the actual production of its commodities and for purposes which do not have an immediate effect on the commodities produced. The fact that an item is purchased for use on a farm does not necessarily make it exempt from sales tax. Use of the ATV to haul tools and equipment, check livestock, and check fencing are not considered exempt activities under the Indiana exemption statute and regulations. These activities are considered to be general farm maintenance and/or farm management and administration; they are not activities used directly in the direct production of agricultural commodities as required by IC § 6-2.5-5-2.

The Department agrees that the ATV is used for the exempt purpose of feeding livestock twenty-five percent of the time. However, Taxpayer has not demonstrated that he uses the ATV for an exempt purpose one hundred percent of the time. Therefore, Taxpayer's purchase of the ATV is not fully exempt from the imposition of gross retail tax.

FINDING

Taxpayer's protest is respectfully denied.

March 26, 2019

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