

Letter of Findings: 04-20182351
Gross Retail Tax
For the Years 2015, 2016, and 2017

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 This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.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

Agricultural Feed Producer was properly assessed additional gross retail tax on the purchase of delivery trucks and related supplies because the truck purchases did not qualify for the 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 (January 2019).

Taxpayer protests the imposition of use tax on the purchase of tender trucks and related supplies.

STATEMENT OF FACTS

Taxpayer is a business in Indiana engaged in the manufacture of livestock feed. The Indiana Department of Revenue ("Department") conducted a sales and use tax audit for tax years 2015, 2016, and 2017 and assessed additional use tax on purchases on which Taxpayer did not pay sales tax at the time of purchase. Taxpayer disagreed with the assessment on the basis that it believes some of these purchases should qualify for the agricultural exemption, and submitted a protest to that effect. An administrative hearing was held to provide Taxpayer an opportunity to explain the basis for the protest and provide supporting documentation. This Letter of Findings results. Additional facts will be addressed below as necessary.

I. Gross Retail Tax - Agricultural Exemption.

DISCUSSION

Taxpayer owns and operates an Indiana agricultural operation that produces feed for livestock. The Department assessed use tax on several transactions, including the purchase of tender trucks (or "delivery trucks"). The tender trucks are used to deliver Taxpayer's finished products to customers' locations. Taxpayer protests the imposition of tax on its purchase of tender trucks and related purchases. Taxpayer argues that the items at issue are used for agricultural purposes and therefore exempt from sales or use tax. Taxpayer asserts that the tender trucks, used to transport finished animal feed to its customers' farm operations, are exempt from gross retail tax because they are used in the production or processing of agricultural commodities.

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 is found at IC § 6-2.5-5-2, 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.
- (Emphasis added).**

Taxpayer relies upon Sales Tax Information Bulletin 9 (January 2019), 20190227 Ind. Reg. 045190130NRA, to support its argument that it is entitled to a gross retail tax exemption for the transactions under protest. Section B of Sales Tax Information Bulletin 9 (2019) states:

The purchases of agricultural machinery, tools, and equipment are exempt from sales and use tax if the machinery, tools, and equipment (including material handling equipment purchased for the purpose of transporting materials into activities from an onsite location) 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. 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 pesticides 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, pesticides, 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.

Regarding the exemption for material handling equipment, this term means pieces of equipment that transport materials within the production process and **within an onsite location**. The type of equipment that would fall within the meaning of this term would include dollies, forklifts, chain or belt conveyers, and pallet jacks. **Further, the term "onsite location" means a location where the agricultural production takes place that is owned or leased by the person occupationally engaged in agricultural production and property contiguous to said property, which is also owned or leased by the same person occupationally engaged in agricultural production.**

Examples:

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6. In the same manner, Corporation C is engaged in the business of selling agricultural chemicals, seed, fertilizers, and/or other related agricultural products to farmers. Corporation C purchases fertilizer, chemical, or seed transportation equipment that will be used to transport agricultural products from locations that are owned or leased by Corporation C to its customers' fields. **If Corporation C's property is not the property used for agricultural production and therefore not an onsite location, then the purchase of the transportation equipment used to transport agricultural products is not exempt from tax because the equipment purchased for the purpose of transporting these materials from Corporation C's location to its customers is not material handling equipment used on an onsite location.**

(Emphasis added.)

Taxpayer asserts that its delivery trucks are used in an integrated production process and should therefore be exempt from gross retail tax under IC § 6-2.5-5-2. However, the "integrated production process" for Taxpayer ends when the production of the feed is complete. Taxpayer's production process begins when it receives the grain purchased for processing, and ends when the feed is complete. This process ends prior to Taxpayer placing the finished feed in the tender trucks for delivery.

As stated in Information Bulletin 9, transportation equipment used to transport agricultural products offsite to a third-party's farming operation is not exempt from tax because it is not considered to be "material handling equipment" as described in Example 6 of Information Bulletin 9. Taxpayer provided several photographs and videos showing the features of each of the trucks and related equipment. These photos and videos showed that the tender trucks at issue are used to deliver feed to several different customers in a single load, as the different feed types are separated into compartments in the trucks. This evidence further supports the conclusion that the trucks are not used in an integrated production process, as the trucks are able to make deliveries to multiple, unrelated farming operations in a single load.

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. The fact that an item is purchased for use on a farm does not necessarily make it exempt from sales tax. Taxpayer's supporting documentation fails to demonstrate that its tender trucks are directly used in the direct production of agricultural commodities. Taxpayer's use of the tender trucks to deliver feed to offsite customers are not considered an exempt activity under the Indiana exemption statute and regulations.

FINDING

Taxpayer's protest is respectfully denied.

June 3, 2019

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