

Letter of Findings: 04-20221195
Gross Retail and Use Tax
For the Year 2018

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 This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.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

The Department agreed that Indiana Resident established that his purchase of a Polaris vehicle was partially exempt from sales or use tax. Indiana Resident provided information explaining the extent to which the Polaris was directly involved in the production of qualifying agricultural commodities.

ISSUE

I. Gross Retail and Use Tax - Agricultural Exemption.

Authority: [IC 6-2.5-2-1](#); [IC 6-2.5-3-1](#); [IC 6-2.5-3-2](#); [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); *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); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Rhoads v. Ind. Dep't of State Revenue*, 774 N.E.2d 1044 (Ind. Tax Ct. 2002); *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); Sales Tax Information Bulletin 9 (November 2017).

Taxpayer argues that the purchase of a "Polaris" vehicle was exempt from sales tax or use tax on the ground that the vehicle is used in the production of agricultural food products.

STATEMENT OF FACTS

Taxpayer is an Indiana resident. Taxpayer purchased a Polaris vehicle for approximately \$22,000.

The Indiana Department of Revenue ("Department") assessed Taxpayer sales/use tax on the grounds that the Polaris was not directly used in the direct production of agricultural products.

In a use tax "Compliance Review" issued to Taxpayer and dated December 2021, the Department explained that the assessment was made after having "received correspondence pertaining to the AGQ-100 Agricultural Equipment Exemption Usage Questionnaire."

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. This decision follows a review and consideration of the documentation provided at the time the protest was submitted and information subsequently provided. This Letter of Findings results.

I. Gross Retail Tax - Agricultural Exemption.

DISCUSSION

Taxpayer's representative explained that Taxpayer operates an Indiana farm and that the Polaris "is used exclusively to produce alfalfa and clover." Therefore, the Polaris "is used in the direct production of agriculture products and . . . would be exempt from sale[s]/use taxation under the Indiana code."

As with any assessment of Indiana listed taxes, it is Taxpayer's responsibility here to establish that the proposed

assessments of tax, interest, and penalty are incorrect. As stated in [IC 6-8.1-5-1\(c\)](#) and Indiana case law, "The notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid, including during an action appealed to the tax court under this chapter. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." See also *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

In order to meet the statutory burden, a taxpayer challenging an assessment is required to provide documentation explaining and supporting his or her challenge that the Department's position 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 an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana. [IC 6-2.5-2-1\(a\)](#). A person who acquires property in a retail transaction (a "retail purchaser") is liable for the tax on the transaction. [IC 6-2.5-2-1\(b\)](#).

Indiana also imposes a complementary excise tax called "the use tax" 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." [IC 6-2.5-3-2\(a\)](#). "'Use' means the exercise of any right or power of ownership over tangible personal property." [IC 6-2.5-3-1\(a\)](#).

In effect and practice, the use tax is functionally equivalent to the sales tax. See *Rhoads v. Ind. Dep't of State Revenue*, 774 N.E.2d 1044, 1047 (Ind. Tax Ct. 2002).

Taxpayer necessarily relies on [IC 6-2.5-5-2](#) which provides as follows:

- (a) Transactions involving agricultural machinery, tools, and equipment, including material handling equipment purchased for the purpose of transporting materials into activities described in this subsection from an onsite location, are exempt from the state gross retail tax if the person acquiring that property acquires it for the person's 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.
- (c) Transactions involving agricultural machinery or equipment, including material handling equipment purchased for the purpose of transporting materials into activities described in this subsection from an onsite location, are exempt from the state gross retail tax if the person acquiring the property:
 - (1) acquires it for the person's direct use in:
 - (A) the direct application of fertilizers, pesticides, fungicides, seeds, and other tangible personal property; or
 - (B) the direct extraction, harvesting, or processing of agricultural commodities;for consideration; and
 - (2) is occupationally engaged in providing the services described in subdivision (1) on property that is:
 - (A) owned or rented by another person occupationally engaged in agricultural production; and
 - (B) used for agricultural production.

In applying any tax exemption such as [IC 6-2.5-5-2](#), the overarching 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); *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).

The Department has issued Sales Tax Information Bulletin 9 (November 2017), 20180131 Ind. Reg. 045180049NRA (in effect at the time of the Polaris purchase) 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 (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.

Bulletin 9 also addresses agricultural functions which do *not* 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.*

Based on the "AGQ-100 Agricultural Equipment Exemption Usage Questionnaire," Taxpayer explained that the Polaris was used for agricultural purposes. Among the purposes mentioned were that the Polaris was used for "application of crop seed," "application of fertilizer," and "application of insecticide/fungicide." Taxpayer signed and submitted the information "under penalty of perjury." Based on that information, the Department calculated that the Polaris was used for exempt purposes 78 percent of the time and that the assessment should be adjusted to reflect that conclusion.

The Department agrees that Taxpayer has met his burden under [IC 6-8.1-5-1\(c\)](#) of establishing that the original assessment amount was wrong and should be adjusted to reflect the extent to which the Polaris is used in an exempt manner.

FINDING

To the extent provided in this Letter of Findings, Taxpayer's protest is sustained.

January 20, 2023

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An [html](#) version of this document.