

recognized animal feed. (*Department of State Revenue; Ch. 5, Reg. 6-2.5-5-1(020); filed Dec 1, 1982, 10:35 am: 6 IR 26; filed Aug 6, 1987, 4:30 pm: 10 IR 2615*)

45 IAC 2.2-5-3 Sales to farmers; agricultural commodities

Authority: IC 6-8.1-3-3

Affected: IC 6-2.5

Sec. 3. (a) Definitions: Fertilizer. The term “fertilizer” means a commodity which contains one or more substances to increase the available plant food content of the soil and which becomes a part of the products grown therein.

Farmer. For definition of “farmer” as used in this regulation [45 IAC 2.2] refer to Regs. 6-2.5-5-1(010) [45 IAC 2.2-5-1].

Farming. The term “farming” means engaged in the commercial production of food or agricultural commodities as a “farmer”.

(b) In general, purchases of tangible personal property by farmers are taxable. The exemptions provided by this regulation [45 IAC 2.2] apply only to seeds, fertilizers, fungicides, insecticides, and other tangible personal property to be directly used by the farmer in the direct production of food and agricultural commodities. This exemption is limited to “farmers”.

(c) The state gross retail tax shall not apply to:

(1) Sales to farmers and to other persons occupationally engaged in the business of producing food and agricultural commodities for human, animal, and poultry consumption (either for sale or further use in producing such food and agricultural commodities for sale) of seeds, plants, fertilizers, fungicides, insecticides, and other tangible personal property to be directly used by the purchaser in the direct production of food and agricultural commodities.

(2) Sales to farmers of seeds, plants, fertilizers, fungicides, insecticides, and other tangible personal property to be directly used by the farmer in the direct production of food or agricultural commodities for human, animal, or poultry consumption either for sale or for further use in producing food and agricultural commodities for sale are exempt from tax. “To be directly used in the direct production of food or agricultural commodities for human, animal, or poultry consumption either for sale or for further use in producing food and agricultural commodities for sale,” 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.

(3) Seeds and plants. Sales to farmers of seeds and plants for sale or for further use in producing food and agricultural commodities for sale are exempt from tax provided such seeds and plants are used directly in farming.

(4) Fertilizer. Sales to farmers of fertilizer are exempt from tax provided that such fertilizer is used directly in farming.

(5) Fungicides and insecticides. Sales to farmers of fungicides and insecticides are exempt from tax provided such items are used directly in farming.

(6) Sales to farmers of tangible personal property used to groom or treat poultry and animals used in the production of food, so as to preserve their health, (including property such as medicines, serums, dehorners, debeakers, hoof trimmers [*sic.*] hormones for productive animals, inoculation needles, and syringes) are exempt from tax.

(d) Non-exempt purchases:

(1) Other tangible personal property. Sales to farmers of other tangible personal property are taxable unless the property is used in direct production of food or agricultural commodities.

(2) Sales of beds, mattresses, kitchen equipment, recreation items, etc., used in conjunction with the operation of migrant labor camps are taxable. Such items are not used directly in farming.

(3) Sales to farmers of property to be incorporated into real estate in such a manner as to become part of the real estate are taxable. If the unit is directly used for manufacture or a process of manufacture, it is to be considered as personal property.

(4) Materials purchased for use in construction, reconstruction, alteration, remodeling, servicing, repairing, maintenance, or improvement of farm buildings incorporated into realty are taxable.

(5) Purchases of fences, fencing material, gates, posts, fence stretchers, and electric fence chargers are taxable.

(6) Purchases of watering tubs and troughs and tile for drainage are taxable.

(7) Tangible personal property purchased by a farmer for use in general farm maintenance of taxable items is taxable.

(8) Sales to farmers of tangible personal property to be used in managerial, sales, or other farm activities not directly related to the production of food are taxable. The following farm activities are not directly related to the production of food or agricultural commodities: farm management and administration; selling and marketing; exhibition of farm products; safety and fire prevention; illumination for farm buildings, 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.

(9) Buildings which only protect the animals from adverse weather conditions are taxable.

(e) Exempt Purchases: (1) Heating, cooling, and ventilation equipment for agricultural production is exempt when it is directly used in the direct agricultural production process provided that such equipment is directly used in the production process, i.e. has 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 agricultural commodities.

(2) Confinement buildings that confine animals in order to (1) maintain physical integrity of the product, (2) create and control the environment in order to facilitate production, and (3) function in conjunction with exempt machinery such as fans, thermostats, vents, cooling and heating systems, are exempt. In addition, in order to qualify for the exemption, the confinement building must serve a breeding, gestation, farrowing, and nursing or finishing function. For purposes of this exemption, confinement involves holding the animal within the confines of the building or an attached confined porch area.

(3) Fences, fencing materials, gates, posts, and electric fence chargers (listed in 45 IAC 2.2-5-3(d)(6) and 2.2-5-4(c) [45 IAC 2.2-5-4(c)]) are exempt only if the same are purchased for use in confining livestock during the production processes of breeding, gestation, farrowing, calving, nursing, or finishing. Fencing materials are taxable if the fence is used to confine horses, ponies, donkeys, or pets not used in agricultural production. Fencing materials are also taxable if the fence is used only as a partition fence between adjoining landowners or as a means to keep wildlife, stray animals, or trespassers from entering cropland or farm premises.

(4) Purchases of feeding and watering equipment. (*Department of State Revenue; Ch. 4, Reg. 6-2.5-5-1(030); filed Dec 1, 1982, 10:35 am: 6 IR 26; filed Aug 6, 1987, 4:30 pm: 10 IR 2615*)

45 IAC 2.2-5-4 Farmers and others engaged in agricultural production

Authority: IC 6-8.1-3-3

Affected: IC 6-2.5

Sec. 4. (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.

SALES AND USE TAX

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.

-EXAMPLE-

The selling of whole watermelons by a farmer from a stand located on his property is not subject to sales tax. However, the selling of watermelon by the slice is subject to sales tax since the food is sold for immediate human consumption.

(Department of State Revenue; Ch. 5, Reg. 6-2.5-5-1(040); filed Dec 1, 1982, 10:35 am: 6 IR 27; filed Aug 6, 1987, 4:30 pm: 10 IR 2617)

45 IAC 2.2-5-5 Raising horses, donkeys and ponies; application for sales tax

Authority: IC 6-8.1-3-3

Affected: IC 6-2.5

Sec. 5. (a) The raising of saddle horses, harness horses, ponies, donkeys, or any other similar animals not used directly in direct agricultural production does not qualify as agricultural production for "human consumption" under the gross retail sales and use tax act. Consequently, the purchase of supplies, food, materials, and equipment used in raising or maintaining such animals are subject to the sales tax unless the items are directly used or consumed in the production of such animals for resale in the regular course of the purchaser's business.

(b) The purchase of any of the above animals is subject to the sales tax unless the purchaser is a registered retail merchant