

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 02-0044

**Use Tax
Calendar Year 1998**

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ISSUE

I. Use Tax – Agricultural Equipment Exemption

Authority: 45 IAC 2.2-5-6; 45 IAC 2.2-3-4; I.C. 6-2.5-5-2

The taxpayer protests the assessment of use tax on its backhoe.

DISCUSSION

The taxpayer protests the Department's assessment of use tax on a used Case 580 Backhoe, 2-wheel drive. Taxpayer was billed the sales tax on April 20, 1998 but provided the seller with an exemption certificate on April 28, 1998. The taxpayer contends that the backhoe is used in farming and, therefore, qualifies for an exemption.

45 IAC 2.2-5-3 (b) states:

In general purchases of tangible personal property by farmers is 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."

45 IAC 2.2-5-3(d)(8) states that transportation of animals, poultry, feed fertilizer, etc. to the farm for use on farming; is taxable.

45 IAC 2.2-5-4(c) does not allow exemption for graders, ditchers, front-end loaders, or similar equipment (except equipment to haul animal waste).

45 IAC 2.2-5-4(e) further states:

The fact that an item is purchased for use on the farm does not necessarily make it exempt from sale [sic.] tax. The farmer in the direct production of agricultural products must directly use it. 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 that 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.

45 IAC 2.2-5-3(d)(4) exempts implements used in the tilling of land and harvesting of crops therefrom, including tractors and attachments.

45 IAC 2.2-5-3(d)(9) exempts equipment designed to haul waste.

Taxpayer states the backhoe is only used in farming such as aiding in foundation and erection work in building a barn, scraping of horse stalls, trenching for drainage field tile, lifting hay to higher reaches, etc. Taxpayer believes that the item is exempt because it has not been used off the property nor has he made money by using this unit commercially.

45 IAC 2.2-5-3(d)(7) states:

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

45 IAC 2.2-5-4(c) taxes all tools including forks, shovels, hoes, welders, power tools, and hand tools; graders, ditchers, front end loaders, or similar equipment (except equipment designed to haul animal waste).

FINDINGS

The taxpayer's protest is denied.