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DEPARTMENT OF STATE REVENUE

04-20100616.LOF

Letter of Findings Number: 04-20100616 Sales Tax For Tax Years 2007-2009

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ISSUE

I. Sales Tax-Drainage Plows.

Authority: IC § 6-8.1-5-1(c); IC § 6-2.5-2-1; IC § 6-2.5-5-2; [45 IAC 2.2-5-3](#); [45 IAC 2.2-5-4](#); Sales Tax Information Bulletin 9 (August 2008).

Taxpayer protests the imposition of sales tax on its sales of drainage plows.

STATEMENT OF FACTS

Taxpayer is an S Corporation. Among the items that Taxpayer sells is a brand of drainage plow for field tile installation (hereinafter "drainage plow(s)"). The Audit Report states that Taxpayer made "several sales for which either the exemption certificate was not present or the delivery/shipping information was not available." Taxpayer filed a protest; an administrative hearing was held, resulting in this Letter of Finding. Further facts will be supplied as required below.

I. Sales Tax-Drainage Plows.

At the outset, the Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

Turning to the issue at hand, the Audit Report states that Taxpayer is a "distributor" for certain brand of drainage plow that is used to install field tile. The Audit Report notes that during the audit period:

[T]axpayer made the majority of their sales exempt from tax. Exemption certificates were present for many of these sales or the taxpayer was able to demonstrate that the items had been delivered out of state. However, there were several sales for which either the exemption was not present or the delivery/shipping information was not available.

The Audit Report also states:

The taxpayer's defense of this assessment is that the items being sold are not taxable per a Revenue Ruling made by the department. The taxpayer has thus far been unable to produce the Ruling in order that the facts presented at the time of the determination can be compared to the current situation. They feel that this item is eligible for the agricultural production exemption on the Indiana ST-105 sales tax exemption form. However, under current law this is not the case.

Further, the Audit Report states, "[45 IAC 2.2-5-3\(d\)\(6\)](#)... expressly states that tile purchased for drainage is taxable[,] " with the Audit Report concluding that "[t]herefore a plow which is used to install the tile would also not fall into the exempt machinery category."

[45 IAC 2.2-5-3\(d\)\(6\)](#), under "Non-exempt purchases," states "Purchases of watering tubs and troughs and tile for drainage are taxable."

Sales tax in Indiana is imposed by IC § 6-2.5-2-1, which states:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

With that in mind, we can now turn to Taxpayer's argument.

Taxpayer protests that field tile is eligible for the agricultural exemption and therefore that its drainage plow is exempt too. The agricultural exemption is found at IC § 6-2.5-5-2, which states:

- (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.

In addition to 45IAC 2.2-5-3(d)(6), also of relevance is [45 IAC 2.2-5-4](#). That portion of the regulation states in relevant part:

(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.

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.

(Emphasis added).

Thus, as can be seen from both 45 IAC 2.2-5-3(d)(6) and 45 IAC 2.2-5-4(c), field tile is listed in the Indiana Administrative Code ("IAC") as a taxable item. Taxpayer nonetheless asserts that the regulation exceeds the Department's regulatory authority, and Taxpayer asserts that field tile is directly used to directly produce crops, and that it therefore qualifies for the exemption found at IC § 6-2.5-5-2(a). Taxpayer argues that there is a "direct relationship between subterranean drainage and increased crop production...." To that end, after the hearing, Taxpayer submitted an additional letter outlining its argument regarding the impact of field tile on crop yield.

Taxpayer also argues that field tile should be seen as analogous to the examples, such as fencing, used in Sales Tax Information Bulletin 9 (August 2008), 20080827 Ind. Reg. 045080655NRA. Despite Taxpayer's argument, the Department again notes the fact that "Field tile" is one of the items specifically listed under "Taxable Transactions" in 45 IAC 2.2-5-4(c). Thus, by extension, the drainage plows that are used to install field tile are taxable. The Department also notes that it finds the drainage plows at issue to be dissimilar to the examples cited by Taxpayer from Sales Tax Information Bulletin 9.

Taxpayer additionally states that its "product is essentially a plow and can be used to rip the soil down deeper than conventional plows[,]" and that "[s]ome of Taxpayer's customers use the equipment to rip heavily compacted soil at broad intervals prior to returning with conventional plows...." However, the Audit Report stated, "The [plow] is marketed as a drainage plow used to install field tile[,]" and that "No alternate uses of the product are discussed or demonstrated in any of the marketing materials." Even if, for the sake of argument, the drainage plow has an alternate use, Taxpayer does not have exemption certificates for the sales at issue. Thus any alternate use of the drainage plows, potentially made by Taxpayer's customers, is speculation on the Taxpayer's part.

The Department also notes that Taxpayer argues that the proposed assessment notices were not received by Taxpayer "at the same time as the 'Summary.'" Taxpayer states it "did not obtain the notices until [Taxpayer] contacted the Department... asking for copies of the notices." Taxpayer contends its representative was "prejudiced by the abbreviated time afforded... to prepare the Protest." Taxpayer's protest was filed in October of 2010, the hearing was held in February of 2011. Taxpayer was also given time after the hearing to submit additional materials to the Department. Thus from the date of the protest, to the date of the hearing, Taxpayer and its representative had ample time to prepare for the protest hearing.

Finally, Taxpayer makes an argument that "[s]hortly after [Taxpayer] commenced operations... [Taxpayer] obtained a letter from the Indiana Department of Revenue advising [Taxpayer] that retail sales of [] company's product, i.e. equipment for installing farm drainage tile, were exempt from imposition of Indiana sales tax." Taxpayer states that "a fire and several moves have intervened" and that Taxpayer "no longer has that letter among its corporate records."

As Taxpayer noted, it did not provide the Department a copy of the letter, and the Department does not show any record of the letter. Taxpayer also argues that it was previously audited "and the only claim made by the Department at that time [was] for unpaid retail sales tax related to out of state credit assessment...." Taxpayer concludes, "Due to prior action by the Indiana Department of Revenue, Taxpayer should not be subjected to any penalty in connection with the results of this latest audit." The Audit Summary and the Proposed Assessments provided show that the Department did not impose a penalty. Since there was no penalty imposed, there is no penalty portion to protest.

In conclusion, Taxpayer has not met the burden of proving the proposed assessments wrong, as required by IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is respectfully denied.

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