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DEPARTMENT OF STATE REVENUE

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Letter of Findings Number: 04-20100480 Use Tax For Tax Year 2007

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ISSUE

I. Use Tax-Field Tile.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-5-2; IC § 6-8.1-5-1; [45 IAC 2.2-3-4](#); [45 IAC 2.2-5-4](#).

Taxpayer protests the imposition of use tax on his purchase of field tile.

STATEMENT OF FACTS

Taxpayer is an Indiana farmer. In 2007, Taxpayer purchased field tile for use on the farm. After auditing the tile supplier, the Indiana Department of Revenue ("Department") determined that Taxpayer had purchased the field tile without paying sales tax at the time of purchase or paying use tax after the purchase. The Department therefore issued a proposed assessment for use tax, ten percent negligence penalty, and interest. Taxpayer protested the proposed assessment in its entirety. After review, the Department agreed to waive the penalty, but did not waive the use tax and interest. Taxpayer maintained his protest of the remaining amounts and an administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. Use Tax-Field Tile.

Taxpayer protests the imposition of use tax on his purchase of field tile in 2007. The Department determined that the tile was taxable and that sales tax should have been paid at the time of purchase. The

Department therefore assessed use tax on the purchase of the tile. Taxpayer maintains that the tile is eligible for the agricultural exemption from sales and use taxes. 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).

The sales tax 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.

The use tax is imposed under IC § 6-2.5-3-2(a), which states:

(a) An excise tax, known as the use tax, is imposed 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.

Also, [45 IAC 2.2-3-4](#) provides:

Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana state gross retail tax has been collected at the point of purchase.

Therefore, when tangible personal property is acquired in a retail transaction and is stored, used, or consumed in Indiana, Indiana use tax is due if sales tax has not been paid at the point of purchase. In this case, the Department determined that Taxpayer had acquired tangible personal property in retail transactions and used that property in Indiana without paying sales tax at the point of purchase. The Department therefore issued proposed assessments for use tax, as provided by [45 IAC 2.2-3-4](#).

Taxpayer protests that the field tile is eligible for the agricultural exemption. That 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.

Also of relevance is [45 IAC 2.2-5-4](#), which states:

(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.

(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.

(Emphasis added).

Taxpayer believes that the 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 provided substantial analysis and documentation in support of this position.

The Department appreciates that Taxpayer sincerely believes that the tile is directly used in the direct production of crops and that Taxpayer provided a well-prepared and well-presented argument supporting that belief. However, the fact remains that "Field tile" is one of the items directly listed under "Taxable Transactions" in 45 IAC 2.2-5-4(c). Therefore, Taxpayer has not met the burden of proving the proposed assessment wrong, as required by IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is denied.

Posted: 03/23/2011 by Legislative Services Agency

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