

INFORMATION BULLETIN #9

SALES TAX

MAY 2012

(Replaces Bulletin #9 dated August 2008)

DISCLAIMER: Information bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is not consistent with the law, regulations, or court decisions is not binding on either the Department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUBJECT: Agricultural Production Exemptions

REFERENCES: IC 6-2.5-4-5; IC 6-2.5-5-1; IC 6-2.5-5-2; IC 6-2.5-5-5.1; 45 IAC 2.2-5-1; 45 IAC 2.2-5-2; 45 IAC 2.2-5-3; 45 IAC 2.2-5-4; 45 IAC 2.2-5-5; 45 IAC 2.2-5-6; 45 IAC 2.2-5-7

EFFECTIVE DATE: Upon Publication in Indiana Register

I. PURCHASES

The general rule for the application of sales or use tax is that a purchase of tangible personal property to be used in Indiana is subject to tax unless a specific exemption is available.

Indiana law provides several exemptions from sales and use tax relating to agricultural production. The exemptions are limited to purchases of animals, feed, seed, plants, fertilizer, insecticides, fungicides, and other tangible personal property and agricultural machinery, tools, and equipment to be directly used in the direct production of food or commodities that are sold either for human consumption or for further food or commodity production.

The phrase “directly used in direct production” means that the property must be integral and essential to the production process. Property is integral and essential to the production of food or commodities if it is necessary to carry on production and plays a key role in the actual production of the food or commodity (i.e., it must directly affect or be a component of the food or commodity). Some examples of property that are directly used in direct production are discussed later.

A. Animals, Feed, Seeds, and Farm Products

Purchases of animals, animal feed, seeds, fertilizer, plants, insecticides, fungicides, and other similar items of tangible personal property are exempt from sales and use tax if two conditions are met. The person, company, partnership, or corporation acquiring the property must directly use the property in the direct production of food or commodities for sale, and the person must be occupationally engaged in the production of food or commodities sold for human or animal consumption or for further use in food or commodity production.

To be occupationally engaged in the production of food or commodities, a person, company, partnership, or corporation must be regularly engaged in commercial production for the sale of vegetables, fruits, crops, livestock, poultry, and other food or agricultural products. Persons, companies, partnerships, or corporations who do not intend to operate at a profit or who produce food or agricultural commodities for sale as a hobby are not occupationally engaged in the production of food or agricultural commodities. (Generally, evidence that individual taxpayers are “occupationally engaged” in farming is presented by the filing of federal Schedule F with the 1040.)

The term “feed” includes salt, grains, tankage, oyster shells, mineral supplements, vitamins, and other generally recognized animal feed. “Fertilizer” means any commodity that contains one or more substances to increase the available plant food content of the growing medium. Generally, the contents of the fertilizer must become part of the plants grown and must be used as a fertilizer.

Examples:

1. Bob Jones plants 600 acres of soybeans. He intends to sell the soybeans at a profit. He buys insecticide to spray on the soybeans. The insecticide fails, and his crop is eventually ruined. The purchase of the insecticide is exempt. The fact that the crop was not sold does not make the purchase of the insecticide taxable.
2. Same facts as in example 1, except Bob uses the insecticide to protect his prize rhododendrons. The plants are not sold, nor does Bob intend to sell them. The insecticide is taxable because in this example the insecticide is not being directly used in the direct production of agricultural products for sale.
3. Lab Animals Corporation raises animals to be used in research. The animals are not sold to be eaten by humans. The research is to develop medicines to be used to

prevent or cure human and animal diseases. Lab Animals Corporation cannot purchase animal feed exempt from tax under the agricultural exemptions.

4. Ride-A-Horse, Inc., purchases 20 horses to be used as riding animals. The horses would be taxable because the animals are not directly used in the direct production of food or agricultural commodities.
5. Ride-A-Horse, Inc., purchases 1,000 bales of hay to feed the horses used as riding animals. The hay is taxable because the feed is not used to feed animals directly used in the direct production of food.

B. Agricultural Machinery, Tools, Equipment, and Buildings Used Directly in Direct Production

The purchases of agricultural machinery, tools, and equipment are exempt from sales and use tax if the machinery, tools, and equipment 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. The exemption includes safety clothing or equipment that is required to allow a worker to participate in a production process without injury or to prevent contamination of the product during production, as well as machinery, tools, and equipment used:

1. To feed exempt animals, plant seeds, fertilize crops, and apply insecticides and fungicides;
2. To move a crop from the field where it was grown and harvested to equipment for *temporary* storage for further processing;
3. To move exempt items such as seeds, plants, fertilizers, insecticides, and fungicides from *temporary* storage to a location where such will be used in an exempt process; and
4. By the purchaser directly in feeding exempt animals.

Note: This exemption does not extend to machinery, equipment, and tools used for the handling, movement, transportation, or storage of feed *prior* to the actual feeding process, such as delivery to a *temporary* storage unit.

If the machinery or equipment is not directly used in the direct production of agricultural commodities but is designed for use in the gathering, moving, or spreading of animal waste, the machinery or equipment may be exempt if the following conditions are met:

1. The person acquiring the equipment acquires it for use in conjunction with the production of food or commodities for sale;

2. The person acquiring the machinery or equipment is occupationally engaged in the production of food or commodities that are sold for human or animal consumption or that are used for further food or commodity production; and
3. The machinery or equipment is designed for use in the gathering, moving, or spreading of animal waste.

Confinement buildings that confine animals in order to (1) maintain physical integrity of the product; (2) create and control the environment to facilitate production; and (3) function in conjunction with exempt machinery such as fans, thermostats, vents, and cooling and heating systems are exempt. To qualify for the exemption, the confinement building must serve a breeding, gestation, farrowing, 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.

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.

Examples:

1. Fencing used to confine exempt animals during breeding, gestation, farrowing, calving/birthing, nursing, growing, feeding, and finishing (“fattening”) is exempt from tax. For example, finishing includes fencing used to confine cattle in a grazing operation. Fencing used to segregate animals for medical treatment, sorting, and transport is also exempt. 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.
2. John Doe, a cattle rancher, purchases needles, syringes, and vaccine pumps to inoculate his herd to prevent various cattle diseases. The equipment is exempt from tax because it is essential and integral to the raising of cattle.

3. Sam Johnson owns 800 acres and grows wheat to be sold to a corporate bakery. Sam purchased lumber, nails, concrete, and tools to build a silo used exclusively to house his grain-drying operation. The lumber and other building materials are exempt from tax; the silo is exempt from tax because the grain-drying operation is integral and essential to the processing of the grain. The grain cannot be sold to Sam's customer until it is dried, thus the silo is necessary and plays a key role in the processing of the grain. The tools used to build the silo are taxable because the tools are not used in the processing of the grain.
4. Sam Johnson buys lumber, nails, and concrete to build a silo to store grain after it has dried. Sam sells the grain to his customers after the grain is dried without further processing. The materials used to build the silo are taxable. Once the grain has dried, no further processing takes place before the grain is sold; thus the processing of the grain is complete after drying. A silo used to store dried grain may be necessary, but it does not play a key role in the processing of the grain because the processing of the grain is finished.

If the storage silo were used half of the time to dry grain and the other half to store dried grain, then the silo would be 50% exempt and 50% taxable.

If Sam (as the same legal entity) also operated a mill where the grain was ground, then the dried grain storage silo would be exempt from tax. The silo would be exempt because the silo would be a *temporary* storage place for work in process.

5. Corporation C is engaged in the business of selling agricultural chemicals and fertilizers to farmers. Corporation C purchases an applicator that will be used to spread the chemicals and fertilizer on its customers' fields. The purchase of the applicator is taxable because Corporation C is not occupationally engaged in the production of agricultural commodities or food.
6. When used by entities occupationally engaged in agricultural production, fertilizer and seed tenders are exempt because these specially outfitted trucks are used to move fertilizer and seed from *temporary* storage locations to the field where exempt items will be used as an essential and integrated part of an exempt process.
7. When used by entities occupationally engaged in agricultural production, shuttle tanks and pumps for crop protection products are exempt because these items are used during the planting process to mix and move exempt items from *temporary* locations directly to the field where they will be used as an essential and integrated part of an exempt process. In most cases, these items are carried by trucks that may have alternative uses that are taxable.
8. When used by entities occupationally engaged in agricultural production, blending and loading equipment used for plant food and crop protection products is exempt because this item consists of various dedicated equipment that facilitates the moving of exempt items from *temporary* storage locations to the location where they will be

used. This would include loaders, scales, conveyors, pumps, *temporary* tankage, and the associated plumbing.

9. A grain and cattle farmer uses an all-terrain vehicle (ATV) to transport exempt items, such as fencing and feed. It is also used to aid in movement of livestock and for soil sampling and analysis. The ATV would be exempt to the extent it is being used to move exempt items from *temporary* storage to the location where such will be used in an exempt process. It is important to note that use of the ATV for general farm maintenance, such as an aid in picking up rocks and other debris, movement of livestock, or for soil sampling and analysis, would be taxable.

If a piece of equipment is used for both exempt and nonexempt purposes, please refer to Department Form AGQ-100 (attached to this bulletin), which provides a list of activities to determine the percentage of use that is exempt.

10. A dairy farmer uses a front-end loader on the farm to remove manure from buildings. This loader is exempt because it is used to gather and move animal manure.
11. A swine finishing building has several feed bins that are connected to the feed system. The bins automatically dispense feed into the system when activated. Because these bins are directly connected to the feed system that delivers feed to the animals, they are part of the actual feeding process and are therefore exempt. Bins that store feed only prior to introduction to the feeding process are taxable.
12. Corporation A runs a large hog farm operation where pigs are bred, raised, slaughtered, and packaged to be sold to wholesale grocers. The pigs are kept in confinement buildings. The confinement buildings maintain the integrity of the product and control the animals' growth environment to facilitate the raising process. Any property directly used in the process of raising the pigs, such as heat exchangers, fans, thermostats, heat pumps, roof vents, and the confinement stalls or porches, would be eligible for exemption. These materials are exempt because if a person occupationally engaged in producing food for human consumption chooses to raise livestock in confinement buildings, these materials are both essential and integral to the production process.
13. ABC Dairy uses the following materials to repair and make improvements to its milking parlor and freestall, heifer, and calving barns: lumber; concrete; metal for roofing; backup generators; materials for curtains; and other technologies to control dust, odor, and air emissions. The lumber, concrete, and roofing materials are exempt because the materials are being used for construction or repair of an exempt building. The curtain materials and other equipment installed to maintain the proper air quality are exempt because they are critical to creating and controlling the environment to facilitate production. The backup generator similarly serves to control the environment and also functions in conjunction with exempt machinery.

14. Smith Farm Adventure is an agritourism operation that has a year-round freezer beef business. It wants to purchase a new refrigerated display counter for on-farm sales of its beef products. This equipment would be taxable because it is not used directly in direct production.
15. Greg, a grain farmer, uses computers, GPS units, computer software, and yield monitors to achieve precision agricultural practices, such as fertilizer application with variable rate nutrient application. This equipment is exempt because it has a direct impact on the grain produced. However, it is important to note that the exemption does not apply to computers and software used for farm management and administration, including maintenance of production records.

C. Utilities

Under certain circumstances, Indiana law provides an exemption from sales tax for the purchase of the following utilities: electrical energy, natural and artificial gas, water, and steam and steam heat. The utilities listed here are exempt from tax if they are directly used in the direct production of agricultural commodities. Thus, if a person occupationally engaged in the production of agricultural commodities purchases electricity to dry grain, the electricity would be exempt because drying grain is integral and essential to the production of grain. The purchase of electricity to run a fan to ventilate a dried grain storage silo would be taxable because the farmer purchasing the electricity is not going to subject the dried grain to further processing.

If a person engaged in agricultural production buys utilities from a public utility and predominantly uses the utilities directly in the direct production of agricultural commodities, the utility is not required to collect tax on the purchase of the utilities. Each meter measuring the consumption of a utility is treated separately for purposes of determining whether a utility is predominantly used in production. Further, a utility is predominantly used in agricultural production when more than 50% of the utility is being directly used in direct agricultural production.

Before utilities can be purchased tax exempt from a public utility, an application for a predominant use exclusion must be filed with the Department of Revenue on Form ST-200. If the application is approved, the Department will mail an exemption certificate, ST-109, to the exempt entity, which the exempt entity must then forward to the utility provider. If a person is entitled to an exemption for only a percentage of utilities purchased, all of the tax must be paid and a refund claimed for the exempt percentage. Utilities purchased from a source other than a public utility may be purchased exempt using an exemption certificate. See Section II, "Exemption Certificates."

Example:

1. Grow, Inc., has two meters for electricity and buys natural gas directly from the wellhead. One of the meters measures electricity used to dry grain. Fifty-five percent of the electricity measured by the meter operates drying equipment used to dry grain. The other meter measures electricity used to heat the chicken coop

and power the egg incubators. Forty-nine percent of the electricity measured by the meter is used for the incubators. Fifty-one percent is used for general heating. The natural gas is used to heat the farmhouse and dry grain that is harvested during periods of high humidity. Sixty percent of the natural gas dries grain.

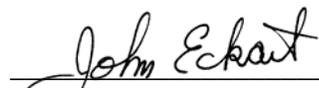
The electricity meter for the grain silos is not taxable because the electricity is predominantly used directly in the direct processing of grain. Drying grain is integral and essential to the processing of grain. The electricity for the chicken coops is not predominantly used in the direct production because only 49% of the electricity is used for the incubators. Therefore, Grow, Inc., is entitled to an exemption for only 49% of the cost of the electricity. The natural gas, though predominantly used in direct production, is only 60% exempt from tax because the gas was not purchased from a public utility.

To purchase the electricity for the silos tax exempt, an ST-200 application must be filed with and approved by the Department of Revenue. The sales tax charged for the chicken coop electricity must be paid to the utility and a claim for refund (Form GA-110L) should be filed with the Department to recover the exempt percentage. Tax should be paid for the purchase of the natural gas, and a claim for refund should be filed to recover the tax paid for the exempt percentage. The Department realizes that the percentage of exempt use changes from year to year. Thus, the Department may request a new application to be filed if the Department believes the percentage of exempt consumption has changed.

II. EXEMPTION CERTIFICATES

Two types of exemption certificates can be used to purchase exempt agricultural-use property. Form ST-105 Indiana general sales tax exemption certificate allows property to be purchased exempt from tax if the property fits under one of the agricultural exemptions provided by Indiana law. Form F0003 (SSTGB Exemption Certificate) is an exemption certificate used by states participating in the Streamlined Sales and Use Tax Agreement. This form should be accepted by Indiana retailers and can be used by nonresident purchasers. The form is available at.

The purchaser does not need a certificate for each item purchased, but the purchaser must complete the form for each purchase before the exemption will be allowed, unless the purchaser checks the “blanket exemption” box, in which case the retail merchant may keep the exemption certificate on file for future purchases.



John Eckart
Commissioner