

UT 12-06

Tax Type: Use Tax

Tax Issue: Agricultural Machinery/Feed/Products/Exemptions

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

v.

JOHN DOE

Taxpayer

Docket # XXXXX
Acct ID: XXXXX
Letter ID: XXXXX

RECOMMENDATION FOR DISPOSITION

Appearances: Matthew Crain, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; John Doe, *pro se*

Synopsis:

On December 22, 2009, John Doe (“taxpayer”) purchased a forklift for use in the State of Illinois. The taxpayer did not pay use tax on the purchase. The Department of Revenue (“Department”) issued a Notice of Tax Liability (“NTL”) to the taxpayer alleging that he owes use tax, plus interest and penalties, on the purchase of the forklift. The taxpayer timely protested the NTL. The parties filed a Stipulation of Facts and Motion for Judgment on Filings with attached exhibits and requested that the matter be decided based on the written submissions. The sole issue presented is whether the purchase of the forklift qualifies for the farm machinery and equipment exemption pursuant to section 3-5(11) of the Use Tax Act (35 ILCS 105/1 *et seq.*). The taxpayer argues that it qualifies for the exemption because the forklift is used primarily for

production agriculture. After reviewing the documents, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:¹

1. On December 22, 2009, the taxpayer purchased a forklift for use in the State of Illinois.

(Stip. #1)

2. It is not in dispute that the taxpayer uses the forklift as follows:

- | | |
|---|-----|
| a. Unload seed corn and beans into shed | 35% |
| b. Load out seed from shed for planting | 35% |
| c. Unload cattle feed/minerals and put into storage | 10% |
| d. Load out cattle feed/minerals from storage | 10% |
| e. Used during routine maintenance | 10% |

(Stip. #2)

3. On or about December 5, 2011, the Department issued Notice of Tax Liability for Form EDA-94, Auditor-prepared Use Tax Report, Letter ID XXXXX (a true and correct copy is attached hereto and marked as Exhibit 1) in the amount of \$XXXXX. (Stip. #3)

4. On or about February 2, 2012, the taxpayer protested said Notice of Tax Liability (a true and correct copy is attached hereto and marked as Exhibit 2).

5. The taxpayer's protest reflects his position that the forklift is exempt from sales tax due to its use in agricultural production. (Stip. #5)

6. The parties request that the Administrative Law Judge enter a ruling based on this Stipulation of Facts and Motion for Judgment on the Filings. The parties expressly waive their right to a hearing on the issues in this case, and consent to entry of a decision without such hearing. (Stip. #6)

¹ The Findings of Fact are a verbatim reproduction of the Stipulation of Facts.

CONCLUSIONS OF LAW:

Under the Use Tax Act (“Act”), Illinois imposes a tax upon the privilege of using in Illinois tangible personal property purchased at retail from a retailer. 35 ILCS 105/3. The use tax is a corollary to the retailers’ occupation tax (“ROT”), which is a tax on persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2. The use tax is imposed at the same rate as the ROT. 35 ILCS 105/3-10; 120/2-10. The purpose of the use tax is to prevent avoidance of the ROT by people who make purchases in states that do not impose the ROT and to protect Illinois merchants from the diversion of business to retailers outside Illinois. Brown’s Furniture, Inc. v. Wagner, 171 Ill. 2d 410, 418 (1996). If the person who uses the property does not pay the use tax to the retailer, it must be paid directly to the Department. 35 ILCS 105/3-45.

Section 12 of the Act incorporates by reference section 5 of the Retailers' Occupation Tax Act (“ROTA”) (35 ILCS 120/1 *et seq.*), which provides that if the taxpayer fails to file a return, the Department shall determine the amount of tax due “according to its best judgment and information.” 35 ILCS 105/12; 120/5. A certified copy of the Department’s determination of the amount of tax due “shall, without further proof, be admitted into evidence... and shall be prima facie proof of the correctness of the amount of tax due, as shown therein.” *Id.* Once the Department has established its *prima facie* case by submitting the certified copy of the Department’s determination into evidence, the burden shifts to the taxpayer to overcome this presumption of validity. Clark Oil & Refining Corp. v. Johnson, 154 Ill. App. 3d 773, 783 (1st Dist. 1987). To prove his case, a taxpayer must present more than testimony denying the Department's assessment. Sprague v. Johnson, 195 Ill. App. 3d 798, 804 (4th Dist. 1990). The

taxpayer must present sufficient documentary evidence to support his claim. *Id.*; Balla v. Department of Revenue, 96 Ill. App. 3d 293, 295 (1st Dist. 1981).

It is well-settled that tax exemption provisions are strictly construed in favor of taxation. Heller v. Fergus Ford, Inc., 59 Ill. 2d 576, 579 (1975). The party claiming the exemption has the burden of clearly proving that he is entitled to the exemption, and all doubts are resolved in favor of taxation. *Id.*

Section 3-5 of the Act provides a list of items that are exempt from the use tax and provides, in relevant part, as follows:

Sec. 3-5. Exemptions. Use of the following tangible personal property is exempt from the tax imposed by this Act:

...

(11) Farm machinery and equipment, both new and used, including that manufactured on special order, certified by the purchaser to be used *primarily for production agriculture* ... Emphasis added; 35 ILCS 105/3-5(11).

Section 3-35 of the Act defines “production agriculture” and provides as follows:

Sec. 3-35. Production agriculture. For purposes of this Act, ‘production agriculture’ means the raising of or the propagation of livestock; crops for sale for human consumption; crops for livestock consumption; and production seed stock grown for the propagation of feed grains and the husbandry of animals or for the purpose of providing a food product, including the husbandry of blood stock as a main source of providing a food product. ‘Production agriculture’ also means animal husbandry, floriculture, aquaculture, horticulture, and viticulture. 35 ILCS 105/3-35.

The Department’s Use Tax Regulations incorporate by reference the Department’s Retailers’ Occupation Tax Regulations. 86 Ill. Admin. Code §150.1201. Section 130.305 of the Retailers’ Occupation Tax Regulations concerns Farm Machinery and Equipment, and subsection (b) of that section provides the same definition of “production agriculture” that is included in section 3-35 of the Act. In addition, subsection (f) of that section provides, in relevant part, as follows:

Production Agriculture, with respect to crops, is limited to activities necessary in tilling the soil, planting, irrigating, cultivating, applying herbicide, insecticide or fertilizer, harvesting and drying of crops. ... Activities such as the clearing of land, mowing of fence rows, creation of ponds or drainage facilities are not included, *nor are the operations involved in the storing or transporting of crops and produce.* ... Emphasis added; 86 Ill. Admin. Code §130.305(f).

Subsection (h) of this section of the Department's regulations explains the exemption in greater detail and provides, in relevant part, as follows:

Farm machinery and equipment. The exemption applies only to items of farm machinery and equipment, either new or used, certified by the purchaser to be used primarily for production agriculture ... All-terrain vehicles (ATVs) may qualify if they are used primarily in production agriculture activities such as pulling sprayers while they apply chemicals to fields or collecting and mapping soil samples. The use of ATVs for farm transportation or recreation purposes does not constitute production agriculture. When ATVs are used in both production agriculture and nonqualifying activities, the primary use will determine if they qualify for exemption. 86 Ill. Admin. Code §130.305(h).

Subsection (k) of this section explains the meaning of "equipment" and provides, in relevant part, as follows:

Equipment means any independent device or apparatus separate from any machinery, but essential to production agriculture. ... Equipment used in farm management such as radios and office equipment, in repair and servicing of equipment, in security and fire protection, is not farm equipment; *nor does the exemption apply to equipment used in farm maintenance,* administration, selling, marketing or the exhibition of products. The exemption does include hand-operated equipment such as wheelbarrows, hoes, rakes, pitchforks and shovels so long as they are used in production agriculture as that term is defined in subsection (b) of this Section. Hand tools used in maintenance activities, such as wrenches, pliers, wire stretchers, grease guns, hammers and screwdrivers, are not used in production and do not qualify for the exemption. Supplies, such as baling wire, baling twine, work gloves, boots, overshoes and chemicals for effluent systems are not exempt. Emphasis added; 86 Ill. Admin. Code §130.305(k).

As the statute and regulation indicate, the taxpayer's forklift must be used primarily for production agriculture in order to qualify for the exemption. Production agriculture is limited to activities that are necessary for the actual farming process. Operations that do not involve production but involve storing or transportation are specifically excluded from the definition of

production agriculture. 86 Ill. Admin. Code §130.305(f); see also ST 06-0045 GIL² (4/13/2006) (equipment used as a means of transportation does not qualify for the farm machinery and equipment exemption). In addition, equipment that is used for farm maintenance does not qualify for the exemption. 86 Ill. Admin. Code §130.305(k). If the taxpayer's forklift is used primarily in the actual farming production, then it would qualify for the exemption.

From the facts presented, the taxpayer has failed to meet his burden of clearly proving that the forklift is used primarily for production agriculture. The taxpayer uses the forklift 10% of the time for farm maintenance, which does not qualify for the exemption. The taxpayer also uses it 10% of the time to unload cattle feed/minerals to put into storage, and 10% of the time to load out cattle feed/minerals from storage. These operations involve storing and, therefore, do not qualify for the exemption. Furthermore, the remaining 70% of the use is divided equally between unloading seed corn and beans into the shed and loading out seed from the shed. These operations also concern storage. From the facts presented, there is no indication that the forklift is used in the actual production process; the forklift is used primarily to put things in and out of storage. This use does not qualify for the exemption; the taxpayer's request for an exemption must, therefore, be denied.

Recommendation:

For the foregoing reasons, it is recommended that the Department's determination be upheld.

Linda Olivero
Administrative Law Judge

Enter: November 1, 2012

² This is a General Information Letter issued by the Department.