

A helicopter used primarily in production agriculture may qualify for the farm machinery and equipment exemption. See 86 Ill. Adm. Code 130.305. (This is a GIL.)

September 28, 2009

Dear Xxxxx:

This letter is in response to your letter dated August 28, 2009, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I am requesting a determination for the tax-exempt status of a helicopter for production agriculture. I am using the helicopter for some pollination purposes and also for aerial surveillance. The aerial surveillance is my area of concern, as I cannot find any specific guidance as it applies to production agriculture. I will explain exactly how I use the helicopter for production agriculture.

I will fly either solo or with the agriculture producer. We will fly over the property at a low altitude (less than 500 feet). We will note problem areas within the field. Some examples are wet areas where crops are not growing well, excessive weed areas, wind damage, and wildlife damage, insect damage, etc. After locating these areas, we map and photograph, also with the hovering capabilities of the helicopter we are able to accurately estimate the size of the affected area (this would be difficult with an airplane). The producer can now determine a course of action (i.e. fertilizers, herbicides, pesticides, etc.).

Some additional uses for the helicopter in agriculture production come with new technologies. With pictures of croplands, yields can be determined. Different hybrids can be compared for best varieties. Different fertilizers, herbicides and pesticides can be compared to find the most effective.

A common use for the helicopter is for location of livestock. When livestock breach their confinement, sometimes they can only be located from the air. Also, just locating livestock saves a great deal of time and effort when it becomes necessary to move them from pasture to pasture.

As you can see, the helicopter with its unique capabilities can perform many very essential tasks directly relating to agriculture production. Aerial surveillance for the above mentioned use is the only way to accomplish these tasks.

My question to you is, does aerial surveillance and its associated activities as described above qualify as exempt use of the helicopter in accordance with the production agriculture exemption under the Aircraft/Watercraft Use Tax? I await your ruling.

P.S. While I was writing this letter, a nearby farmer called and asked to fly over his corps so he could evaluated [sic] the wind damage from a recent storm.

DEPARTMENT'S RESPONSE:

In general, the Illinois Retailers' Occupation Tax is imposed upon the total gross receipts received by retailers who make sales of tangible personal property to Illinois end users. Unless the sales are specifically exempted, such retailers incur Retailers' Occupation Tax on those sales. See 86 Ill. Adm. Code 130.101.

In certain cases, the sale of tangible personal property used in production agriculture is not subject to Illinois Retailers' Occupation Tax and Use Tax. Under 86 Ill. Adm. Code 130.305 "Farm Machinery and Equipment", Illinois sales tax does not apply to the sale of machinery and equipment, both new and used and including that manufactured on special order, used or leased for use primarily in production agriculture or for use in State or Federal agricultural programs. The sale of individual replacement parts for such machinery and equipment is also exempt. In order to obtain the exemption, the purchaser must certify to the use primarily in production agriculture of the equipment or machinery. See Section 130.305(a).

Production agriculture is defined under the Retailers' Occupation Tax Act as "the raising of or 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." See 35 ILCS 120/2-35.

Further, 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 or ditches, or creation of ponds or drainage facilities are not included, nor are the operations involved in the storing or transporting of crops and produce, Section 130.305(f).

A helicopter used primarily in production agriculture may qualify for the exemption.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Richard S. Wolters
Associate Counsel

RSW:msk