

ST 95-37

Tax Type: SALES TAX

Issue: Agricultural Machinery/Feed/Products Exemption

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

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CLAIMANT,                               ) CLAIM FOR CREDIT
                                Taxpayer ) Case No.
                                v.       ) Reg. No.
                                )
THE DEPARTMENT OF REVENUE             ) John E. White,
OF THE STATE OF ILLINOIS             ) Administrative Law Judge
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RECOMMENDED DECISION

APPEARANCES: Attorney, appeared for taxpayer. Alan Osheff, Special Assistant Attorney General, 100 West. Randolph Level 7-900, Chicago, Illinois 60601, appeared for the Department.

SYNOPSIS: Claimant ("taxpayer") filed a combined claim to obtain credits for Retailers' Occupation Tax ("ROT"), see 35 ILCS 120/1 et seq. (formerly Ill.Rev.Stat. ch. 120, 440 et seq. (1991)), previously assessed by the Department of Revenue ("Department"), and paid, under protest, by taxpayer. The tax was assessed against receipts taxpayer had reported on returns as deductions from its taxable gross receipts. Taxpayer asserted at hearing that the tangible personal property it sold was farm equipment purchased for use primarily in production agriculture, and that the receipts it received from such sales were not taxable pursuant to 35 ILCS 120/2-5(2) and 35 ILCS 120/2-35 (formerly Ill.Rev.Stat. ch. 120, 441-5, 441-35 (1991), respectively).

At hearing, which was held on July 17, 1995, taxpayer presented documentary and testimonial evidence through taxpayer's owner and employee, XXXXX. I have considered the evidence adduced at that hearing, and I am including in this recommendation specific findings of fact and conclusions of law. I recommend that the issue be resolved in favor of taxpayer.

FINDINGS OF FACT:

1. Taxpayer is an Illinois retailer of tangible personal property, registered with the Department for purposes of the Retailers' Occupation Tax Act ("ROTA"), 35 ILCS 120/1 et seq. (1994). See Department Exhibit Number ("Dept. Ex. No.") 1.

2. The Department conducted an audit of taxpayer's business, during which it reviewed annual returns taxpayer filed for consecutive periods beginning 1/1/89 through and including 12/31/89, and 1/1/90 through and including 12/31/90. See Dept. Ex. Nos. 1, 3; Hearing Transcript ("Tr.") p. 8.

3. After that audit, the Department determined that certain receipts taxpayer had identified on returns as deductions from its taxable gross receipts were taxable, and the Department thereafter made taxpayer aware of that determination. See Dept. Ex. Nos. 1, 3; Hearing Transcript ("Tr.") p. 8.

4. The tax assessed for each audit period was based on receipts taxpayer received for its sales of "Taxpayer forklifts". See Tr. pp. 11, 17-18.

5. At the time of the audit, taxpayer did not have in its possession certificates conforming to the Department's regulation regarding the Farm Machinery and Equipment exemption. Tr. pp. 17-18, 37; 86 Ill. Admin. Code 130.305 (m)(1991); see also 35 ILCS 120/2-5.

6. After paying the tax assessed, taxpayer filed a combined claim for credit. See Dept. Ex. No. 1; Taxpayer Ex. No. 2.

7. When taxpayer filed its claim, it attached copies of certificates it had obtained from the purchasers of the Taxpayer forklifts taxpayer sold during the audit period. Taxpayer Ex. No. 2; Dept. Ex. Nos. 1, 3.

8. The exemption certificates attached to taxpayer's claim identify the name and address of the purchaser and the seller, and contain the

purchaser's signed statement that the property purchased from taxpayer would be used primarily in production agriculture. See Taxpayer Ex. No. 2; Tr. pp. 30-32.

9. The Department denied taxpayer's claim. Dept. Ex. Nos. 2-5.

10. The Department acknowledged at hearing that the purchaser's exemption certificates attached to taxpayer's claim related to the sales receipts on which tax was assessed. See Tr. p. 31.

11. Taxpayer's owner developed the Taxpayer forklift specifically for field use in the process of harvesting sod (Tr. pp 15-16), and he personally held a 40% interest in the patent for the Taxpayer forklift. Tr. p. 40.

CONCLUSIONS OF LAW: Section 2-5 of the ROTA provides:

Gross receipts from the sale of the following tangible personal property are exempt from the tax imposed by this Act:

* * *

(2) 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 or State or federal agricultural programs, including individual replacement parts for the machinery and equipment, and including machinery and equipment purchased for lease, but excluding motor vehicles required to be registered under the Illinois Vehicle Code.

35 ILCS 120/2-5(2). The Department's regulations detail the form and sufficiency of certifications required by section 2-5(2) of the ROTA. Subsection (m) of the Department's Farm Machinery and Equipment regulation provides:

Exemption certifications must be executed by the purchaser. The certificate must include the seller's name and address, the purchaser's name and address and a statement that the property purchased will be used primarily in production agriculture or in State or Federal agriculture programs. Retailers may accept blanket certificates but have the responsibility to obtain and must maintain the certificates as a part of their books and records. Retailers are required to exercise good faith in accepting exemption certificates. If, however, a retailer reasonably believes that the purchaser will use farm machinery or

equipment in production agriculture or in State or Federal agriculture programs and accepts the certificate in good faith and the purchaser does not, in fact use the machinery or equipment in production agriculture or in State or Federal agriculture programs, the purchaser will be liable for the tax.

86 Ill. Admin. Code 130.305(m) (1991).

Section 7 of the ROTA provides, in part:

To support deductions made on the tax return form, or authorized under this Act, on account of receipts . . . from any . . . kind of transaction that is not taxable under this Act, entries in any books, records or other pertinent papers or documents of the taxpayer in relation thereto shall be in detail sufficient to show the name and address of the taxpayer's customer in each transaction, the character of every such transaction the date of every such transaction, the amount of receipts realized from every such transaction and such other information as may be necessary to establish the non-taxable character of such transaction under this Act

* * *

It shall be presumed that all sales of tangible personal property are subject to tax under this Act until the contrary is established, and the burden of proving that a transaction is not taxable hereunder shall be upon the person who would be required to remit the tax to the Department if such transaction is taxable.

35 ILCS 120/7 (formerly Ill.Rev.Stat. ch. 120, 446 (1991)).

At the time of the audit, taxpayer did not have in its possession the purchaser's certificates required by section 2-5(2) of the ROTA. The Department auditor's determination that taxpayer had not supported the deductions claimed on its annual returns was proper at that time, based on the statutory presumption that all sales are subject to tax unless the contrary is established. 35 ILCS 120/7. Taxpayer, however, later obtained certificates which conformed to the applicable statute and regulation, and it submitted those certificates with its claim.

I conclude that the statutory presumption of taxability was rebutted once taxpayer submitted to the Department its purchaser's certifications that conformed to section 2-5(2) of the ROTA and Department rule 130.305(m). 35 ILCS 120/2-5(2); 86 Ill. Admin. Code 130.305(m). At that time, taxpayer had provided the Department with prima facie proof that the

receipts on which tax was assessed and paid were sales of farm equipment for use primarily in production agriculture.

The Department does not dispute that the certifications attached to taxpayer's claim were tied to the sales, the receipts from which were, in fact, subjected to tax. See Tr. p. 31. Its only objection appears to be that, since the certifications were acquired after the dates of the sales (or after the audit), taxpayer must prove that the property it sold was actually used by the purchasers primarily in production agriculture.¹

The Department's own rules fail to support such a position. Department rule 130.305(m) provides that the certificates required by 2-5(2) be signed by the purchaser, identify the name and address of the seller and purchaser, and include a statement that the property is being purchased for use primarily in production agriculture or in a State or Federal agricultural program. 86 Ill. Admin. Code 130.305(m). While section 7 of the ROTA requires that a taxpayer's books and records identify the dates of transactions claimed to be non-taxable, there is absolutely no positive authority which requires the exemption certificates required by 2-5(2) to be executed before or at the time of the transaction to which they relate. *Id.*; 35 ILCS 120/2-5(2).

This matter is analogous to an issue addressed in *Rock Island Tobacco v. Department of Revenue*, 87 Ill. App. 3d 476, 409 N.E.2d 136 (1980). In that case, the Department assessed ROT on receipts the retailer/taxpayer received from sales for which it later produced resale certificates. After taxpayer turned over its purchaser's signed resale certificates regarding the receipts on which ROT was assessed, the Department refused to accept them, arguing that it did not believe that the property sold by taxpayer was, in fact, being resold by the purchasers. The court, relying on the plain language of the statute, held that when the Department was confronted with proper and authentic resale certificates, it was to consider such

resale certificates prima facie proof that the sales covered by the certificates were for resale. Rock Island, 86 Ill. App. 3d at 479.

Here, the language of section 2-5(2) of the ROTA is plain and unambiguous. Despite that statutory language, the Department denied taxpayer's combined claims. Those denials were improper. Like the taxpayer in the Rock Island case, this taxpayer need not prove the truth of its purchaser's certifications in order to show that the receipts from such sales were not taxable. Taxpayer has satisfied its statutory burden of proof, and the Department, having offered no evidence whatever that the Taxpayer forklifts were not being used primarily in the process of harvesting sod, cannot require that it do more.²

Guided by the plain language of 2-5(2) of the ROTA, I conclude that taxpayer has shown prima facie proof that the receipts it realized from sales of the Taxpayer forklifts during the audit period were sales of farm equipment purchased for use primarily in production agriculture. The Department's exhibits, and its mere argument that the tangible personal property taxpayer sold was not used primarily in production agriculture (see Tr. p. 6), do not rebut that evidence. Therefore, I recommend that the Notices of Tentative Determination of Claim previously issued by the Department be withdrawn or cancelled, and that taxpayer's combined claims be granted.

Administrative Law Judge

Date Issued

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1. Department regulation 130.305(m) provides that if "a retailer reasonably believes that the purchaser will use farm machinery or equipment in production agriculture . . . and accepts the certificate in good faith and the purchaser does not, in fact use the machinery or equipment in production agriculture or in State or Federal agriculture programs, the purchaser will be liable for the tax." 86 Ill. Admin. Code 130.305(m) (emphasis added).

While the argument was never articulated, the Department's position

may have been that taxpayer could not have accepted the exemption certificates in good faith because it already knew that Department audit section personnel did not consider the Taxpayer forklifts subject to the exemption. See e.g., Dept. Ex. No. 3, 6/5/91 letter from Department Revenue Audit Supervisor Scott Cochrane to taxpayer's President, XXXXX. XXXXX's testimony at hearing, however, presented sufficient evidence showing taxpayer's reasonableness in accepting its purchaser's certifications that the Taxpayer forklifts would be used by them primarily for production agriculture. XXXXX developed the Taxpayer forklift specifically for field use in sod harvesting, and the company he started sold them to purchasers who were, by name or reputation, sod farmers. See Tr. pp. 15-16, 24. XXXXX's demeanor was forthright and sincere, his hearing testimony was credible, and his testimony is supported by taxpayer's books and records. See Taxpayer Ex. Nos. 1 (includes taxpayer's invoices), 2 (includes Department audit schedules).

2. To the extent the Department seeks to assess a tax liability by looking beyond the four corners of the exemption certificates produced by this taxpayer, the Department's own rules direct that it proceed against the purchasers of the property, and not against taxpayer here. 86 Ill. Admin. Code 130.305(m).