

UT 20-04

Tax Type: Use Tax

Tax Issue: Agricultural Machinery/Feed/Products/Exemptions

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

**DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

v.

JOHN SMITH

Taxpayer

Docket # XX-XX-XXX
Acct ID: XXXXXXXXX
Letter ID: XXXXXXXXXXXXX

RECOMMENDATION FOR DISPOSITION

Appearances: Matthew Crain, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Richard F. Clough of Clough & Grummel, LLC for John Smith.

Synopsis:

On December 4, 2017, John Smith (“taxpayer”) purchased a John Deere 210 GLC excavator for use on his farm. He did not pay use tax on the purchase because he believed that the excavator qualified 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 Department of Revenue (“Department”) conducted an audit of the purchase and determined that the excavator did not qualify for the exemption. The 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 excavator. The taxpayer timely protested the NTL. The parties have waived their

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right to an evidentiary hearing and asked that the matter be decided based on the documents and stipulations that have been filed in this case. In addition to written arguments, the parties presented oral arguments. After reviewing the stipulations, documents and arguments, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. Taxpayer, John Smith, is the owner of several tracts of farmland real estate in Any County, Illinois, among which is a farm located in Any Township, Any County, Illinois. This farm, when purchased, was 240 acres. This is the farm upon which is located the piece of equipment which is the subject matter of this case. Taxpayer purchased this farm in May, 2009. This farm is used to plant, raise and harvest soybeans and corn on an annual basis. Certain portions of the farm have been and are enrolled in Federal government agricultural programs. (Stipulation #1)
2. This farm is located within the Any Drainage and Any District. Any District has annexed, since the taxpayer's purchase, approximately 20 acres of the farm for use in Drainage District levees and ditches. The Drainage District main levee borders the west side of 2/3rd of the farm. The farm also is adjoined on the remainder by the Any Drainage and Any District. The annual drainage tax assessment paid by the taxpayer is \$XXXX per year, on the average for the last ten years. (Stipulation #2)
3. The Drainage and Levee Districts were formed in the early 1900s for the purpose of creating drainage to allow otherwise perpetual floodplain land adjoining the Illinois River to be farmed. Within the Drainage Districts, large drainage ditches

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- were created and now are maintained to direct water to the Levee District pump station to be pumped into the Illinois River. The whole of the Illinois River Bottoms were altered to have everything flow to the Illinois River. (Stipulation #3)
4. On December 4, 2017, the taxpayer purchased at retail from XYZ Equipment Company, in Anywhere, Illinois, a used John Deere 210 GLC excavator. The cost was \$XXXXXX. The taxpayer certified the use of the equipment to be used in production agriculture and government programs. This excavator was moved directly from Michaels Equipment Company to the farm described at paragraph one. The excavator never has left the farm. (Stipulation #5)
 5. The Drainage and Levee Districts do not create, maintain or manage each farmer's ability to assist in the drainage and removal of water from individual fields to the Levee District ditches. The taxpayer uses the excavator to maintain the ditches for the Drainage and Levee Districts in addition to maintaining the ditches on his farm. (Taxpayer affidavit, ¶7; Oral arguments)
 6. In his affidavit, the taxpayer described the use of the excavator as follows:

Since I purchased the farm described, I have encountered annual problems with timely farming operations due to wetness. I needed to address the issues of better being able to till the soil, plant the crop, cultivate, apply chemicals, fertilizer, herbicides and insecticides and harvest the crop. An excavator, specifically with tracks rather than tires, was required to keep clean and clear all drainage systems upon the farm and to allow the fields to be managed in a timely fashion. The siltation and standing water issues that had persisted and gradually gotten worse since I purchased this farm in 2009 had to be addressed. I finally had decided that if I was going to be able to produce a crop on this farm I needed the equipment to do so, thus the excavator purchase. Even with the excavator, the standing water on this farm in 2019 prevented a crop from even being planted. During the 2020 crop year I have used that

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excavator on over 20 occasions to remove blockages (partly from heavy rain and partly from beaver dams) that were preventing water flow to levee district ditches. Once that debris is removed it must be deposited in an area that precludes it again causing the same problem. There is simply no other piece of equipment suitable to perform that work in a timeframe consistent with planting or saving an already planted crop. Also, to allow the timely application of fertilizer, chemicals and herbicide. I expect continued usage through harvest. (Taxpayer affidavit ¶8)

7. The taxpayer's affidavit also includes the following:

The excavator purchase further was influenced by a standing water issue on land that had been enrolled in a Federal government CRP [Conservation Reserve Program] program. I was told to re-enroll this 30 acres into CRP that I must address keeping water off the ground. The excavator allows removal and maintenance of silt build-ups and I intend to pursue CRP enrollment in 2020. (Taxpayer affidavit, ¶10)

8. On August 5, 2019, the Department issued a Notice of Tax Liability to the taxpayer that assessed tax in the amount of \$XXXX, plus interest, for use tax on the purchase of the excavator. (Dept. Ex. #1, p. 5)

CONCLUSIONS OF LAW:

Under the Use Tax Act ("Act") (35 ILCS 105/1 *et seq.*), Illinois imposes a tax upon the privilege of using in Illinois tangible personal property purchased at retail from a retailer. 35 ILCS 105/3. Section 12 of the Use Tax Act incorporates by reference section 5 of the Retailers' Occupation Tax Act ("ROTA") (35 ILCS 120/1 *et seq.*), which provides that the certified copy of the Department's determination of the amount of tax due is *prima facie* correct and is *prima facie* proof of the correctness of the amount of tax due, as shown therein. 35 ILCS 105/12; 120/5. Once the Department has established its *prima facie* case by submitting the certified copy of the Department's determination into evidence, the

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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 his 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 includes 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* or State or federal agricultural programs,... 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.

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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.* ... With respect to the raising of or propagation of livestock and husbandry of animals, the animals must be domestic farm animals raised for profit. . . . Emphasis added; 86 Ill. Admin. Code §130.305(f).

As the statute and regulation indicate, the taxpayer's primary use of the excavator must fall within this definition of production agriculture to qualify for the exemption.

The taxpayer argues that he uses the excavator for activities that are necessary in production agriculture. The taxpayer states that the excavator could be called another name, such as "crop facilitator." According to the taxpayer, the excavator is used in reshaping fields, filling in ditches, and clearing field ditches; it is also used in removing/cleaning beaver blockage, silt deposits and allowing water flowage necessary from time to time to reach the main Drainage District ditches. The taxpayer claims that the blockages caused by beavers must be addressed numerous times each year, both on the taxpayer's farm and in the Drainage District ditches. The taxpayer maintains his own ditches as well as the Drainage District ditches. The taxpayer believes that nothing less

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than this excavator can remove the blockages in a timely fashion. The taxpayer contends that the excavator's other use activities occur when the soil is being tilled for planting, at planting time, during cultivation and chemical applications, and at the time of harvest. The taxpayer contends that the excavator remains on his farm 100% of the time for immediate use when needed.

The taxpayer states that under the Department's regulation, activities such as creation of drainage facilities are not included in production agriculture, but the taxpayer argues that this excavator is not used in creating drainage facilities. The taxpayer contends that the excavator is "used to allow drainage facilities already created to be better utilized." (Taxpayer argument, p. 3) The taxpayer claims that it is used to allow the fields to be shaped and prepared for the tillage, planting, and harvesting; it allows the taxpayer to plant and harvest the crops in a much more efficient and timely manner. In addition, it is necessary to maintain the ground enrolled or to be enrolled in Federal agricultural programs. According to the taxpayer, field maintenance and agricultural program maintenance are necessary and crucial to the taxpayer's farm. The taxpayer contends that a person does not flippantly spend \$XXXXXX on a piece of equipment if it is not necessary for his or her farming operations.

The Department argues that the Drainage District levees and ditches were created in the early 1900's and were in existence at the time that the legislature created the farm machinery and equipment exemption. The Department contends that the legislature could have specifically included drainage maintenance equipment in the exemption, but it did not. The Department states that its regulation more specifically defines production

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agriculture, and things that are albeit necessary for farming are specifically excluded from the exemption. The Department claims that things such as fencing, clearing of land, shaping of land, drainage maintenance and creation are excluded from the exemption.

The Department argues that the regulation is clearly worded and should be enforced. According to the Department, it is a narrow exemption that only applies to very specific things, and including items for the creation and maintenance of drainage would dramatically expand the scope of the exemption. The Department believes that expanding the exemption to anything that is “necessary” for farming would expand it to include things such as the creation and maintenance of roads that allow access to portions of the farm. It would allow an argument to be made that anything that is necessary for a farmer to get onto his fields and do the farming operations would be exempt. The Department contends that the exemption must be narrowly construed, and the excavator is not exempt.

In response, the taxpayer asserts that the portion of the regulation that refers to “creation of ponds or drainage facilities” is directed to things such as tiling or things that are done on a one-time basis. The taxpayer did not use the excavator only once. The taxpayer states that he uses the excavator throughout the entire farming season every year to shape and contour the fields and do everything that is necessary for his farm on a continual basis.

It must first be noted that in addition to machinery and equipment used primarily in production agriculture, the exemption applies to machinery and equipment used primarily for State or Federal agricultural programs. 35 ILCS 105/3-5(11). The stipulated facts indicate that “[c]ertain portions of the farm have been and are enrolled in Federal

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government agricultural programs.” (Stip. #1) The taxpayer’s affidavit, however, does not indicate that portions of the farm are currently enrolled in Federal agricultural programs. It indicates that the excavator purchase “was influenced by a standing water issue on land that *had been* enrolled in a Federal government CRP program.” (Emphasis added; Taxpayer affidavit, ¶10) The taxpayer then indicated that he intends “to pursue CRP enrollment in 2020.” *Id.*

In other words, the evidence does not support a finding that the excavator was purchased to be used primarily for a Federal agricultural program. The taxpayer’s affidavit indicates that some of his farm was previously enrolled in a Federal agricultural program, but he does not indicate that it is currently enrolled in such a program or that the excavator is primarily used for a such a program. Because the excavator is not primarily used for a Federal agricultural program, the only issue is whether the excavator is primarily used for production agriculture.

The taxpayer’s affidavit sets forth the following activities for which the excavator is used:

- Keep clean and clear all drainage systems upon the farm to allow the fields to be managed in a timely fashion and address the siltation and standing water issues
- Remove blockages (partly from heavy rain and partly from beaver dams) that were preventing water flow to levee district ditches
- Deposit that debris in an area that precludes it from again causing the same problem
- Allow the timely application of fertilizer, chemicals, and herbicide (Taxpayer affidavit ¶8)

These activities essentially involve the same use: cleaning and clearing areas where the water flow has been blocked on the property. Doing so allows the fields to be managed in a timely fashion and allows the timely application of fertilizer, chemicals, and herbicide.

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According to the Department's regulation, activities such as "the clearing of land, mowing of fence rows, creation of ponds or drainage facilities are not included [in production agriculture], . . ." 86 Ill. Admin. Code §130.305(f). The first activity on the list, "clearing of land," is similar to the taxpayer's primary use of his excavator: the clearing of blockages that prevent the water flow on the land. Although the clearing of land may generally be done on a one-time basis and the taxpayer's activity is done more often than that, both activities are not part of the traditional farming activities that are included in the exemption. The taxpayer does not use the excavator for typical farming activities such as tilling the soil, planting, irrigating or cultivating. The taxpayer uses the excavator to clear blockages of the water flow, which may allow the timely application of fertilizer, chemicals, and herbicide, but it is not a use that is necessary for the actual application of these products as required by the Department's regulation.

The definition of production agriculture also excludes the "creation of ponds or drainage facilities," and although the taxpayer claims that his use is different because the excavator is "used to allow drainage facilities already created to be better utilized," this distinction is without merit. Creating drainage facilities encompasses maintaining them, which is essentially the taxpayer's use of the excavator. It must be emphasized that the taxpayer uses the excavator on his farm for the same activity that he uses it for on the property of the Drainage and Levee Districts: maintaining drainage ditches. The Drainage and Levee Districts are not farms and maintaining these ditches cannot be considered production agriculture. Similarly, the taxpayer's use of the excavator on his farm is not production agriculture.

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The taxpayer has argued that a person does not flippantly spend \$XXXXXX on equipment if it is not necessary for his or her farming operations, but whether the equipment is necessary for “farming operations” is not the definition of production agriculture. Under the Department’s regulation, production agriculture “is limited to activities necessary in tilling the soil, planting, irrigating, cultivating, applying herbicide, insecticide or fertilizer, harvesting and drying of crops.” 86 Ill. Admin. Code §130.305(f). As previously explained, the taxpayer does not use the excavator in tilling the soil, planting, irrigating, or cultivating. He also does not use it to apply any chemicals, fertilizer, or herbicide.

As stated earlier, exemption provisions must be strictly construed, and all doubts must be resolved in favor of exemption. Heller, *supra*. The taxpayer has the burden of clearly proving his entitlement to the exemption. *Id.* The taxpayer has failed to meet this burden because the taxpayer uses the excavator to maintain drainage ditches and clear blockages that prevent the water flow; this use does not fall within the definition of production agriculture.

Recommendation:

For the foregoing reasons, it is recommended that the taxpayer’s purchase of the excavator is not entitled to the farm machinery and equipment exemption.

Linda Olivero
Administrative Law Judge

Enter: October 9, 2020