

Letter Rulings - LR 8152

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LR 8152

Taxation of Hoop Building Sales

June 29, 2021

Dear Applicant:

This is a letter ruling issued by the Director of Revenue under Section 536.021.10, RSMo, and Missouri Code of State Regulations 12 CSR 10-1.020, in response to your letter dated May 13, 2021.

The facts as presented in your letter ruling request and on your company's website are summarized as follows:

Applicant is a corporation located out of state that manufactures and sells various products, including hoop buildings. These are metal structures with a fabric covering and are anchored to the ground using a concrete or wood pony wall foundation. The hoop buildings are sold by Applicant in kits as tangible personal property and are installed by the customer. The hoop buildings are typically intended to be a permanent structure after installation. Applicant offers several different types of hoop buildings of different sizes, each with a different purpose and use. Custom buildings for particular application are also available. Hoop buildings are designed and used for grain, hay, and other commodity storage, feed rations storage, sand, salt and gravel storage, storage of equipment and machinery, and providing shelter and protection in the raising of livestock.

ISSUE 1:

Are Applicant's sales of hoop buildings exempt from sales and use tax as farm machinery and equipment if used exclusively, solely, and directly for raising livestock for ultimate sale at retail?

RESPONSE 1:

Yes. Applicant's sales of hoop buildings are exempt from sales and use tax as farm machinery and equipment if used exclusively, solely, and directly for raising livestock for ultimate sale at retail.

Section 144.020, RSMo, imposes a sales tax on the privilege of making retail sales of tangible personal property or providing certain taxable services in this state. Section 144.610, RSMo, imposes a use tax on the privilege of storing, using, or consuming tangible personal property within this state.

Section 144.030.2(22), RSMo, in the pertinent part, exempts from sales tax "all sales of farm machinery and equipment, other than airplanes, motor vehicles and trailers[.]" The statute defines "farm machinery and equipment" as:

...new or used farm tractors and such other new or used farm machinery and equipment and repair or replacement parts thereon and any accessories for and upgrades to such farm machinery and equipment, rotary mowers used exclusively for agricultural purposes, and supplies and lubricants used exclusively,

solely, and directly for producing crops, raising and feeding livestock, fish, poultry, pheasants, chukar, quail, or for producing milk for ultimate sale at retail, including field drain tile, and one-half of each purchaser's purchase of diesel fuel therefor which is:

- (a) Used exclusively for agricultural purposes;
- (b) Used on land owned or leased for the purpose of producing farm products; and
- (c) Used directly in producing farm products to be sold ultimately in processed form or otherwise at retail or in producing farm products to be fed to livestock or poultry to be sold ultimately in processed form at retail.

Section 144.045.1, RSMo, in the pertinent part, provides that:

The department of revenue shall, for purposes of administrative interpretation, consider as nontaxable any machinery or equipment meeting the definition of "farm machinery" under subdivision (23) of subsection 2 of section 144.030, whether or not such machinery or equipment is attached to a vehicle or real property.

The Missouri Code of State Regulations 12 CSR 10-110.900(2)(A) defines "Equipment" as "[d]evices that have a degree of permanence to the business, contribute to multiple processing cycles over time, and generally constitute fixed assets, other than land and buildings, that are capitalized and depreciated for purposes of business and accounting practices." The Missouri Code of Regulations 12 CSR 10-110.900(1) further provides that:

In general, the purchase of farm machinery, equipment, and repair and replacement parts and supplies and lubricants used exclusively, solely, and directly for producing crops, *raising and feeding livestock*, fish, or poultry, or producing milk for ultimate sale at retail, and motor fuel used for agricultural purposes is exempt from tax.

(Emphasis added)

Applicant sells hoop buildings that are designed and used for livestock production. The buildings are of a permanent nature and can be used in multiple livestock production cycles. If Applicant's customer purchases a hoop building to be used exclusively, solely, and directly for raising livestock for ultimate sale at retail, the hoop building constitutes "farm machinery and equipment" for purposes of Section 144.030.2(22), RSMo. The mere fact that the purchaser ultimately attaches the system to a wood or concrete foundation does not make the hoop building subject to tax because it is equipment rather than building materials. Section 144.045.1, RSMo. Applicant should obtain a completed and signed Missouri Form 149, Sales and Use Tax Exemption Certificate, from each of its customers claiming this agricultural exemption.

ISSUE 2:

Are Applicant's sales of hoop buildings exempt from sales and use tax as farm machinery and equipment if used for other purposes such as grain, hay, and other commodity storage, feed rations storage, sand, salt and gravel storage, storage of equipment and machinery?

RESPONSE 2:

No. Applicant's sales of hoop buildings are not exempt from sales and use tax as farm machinery and equipment if used for other purposes such as grain, hay, and other commodity storage, feed rations storage, sand, salt and gravel storage, and storage of equipment and machinery.

See Response 1. Hoop buildings used for grain are used for storage and not used in the production of those crops. Further, hoop buildings are not grain bins which generally are exempt from sales and use tax if used in the production of grain. See Missouri Code of Regulations 12 CSR 10-110.900(3)(D). Storage of machinery, equipment, and other purposes listed above are not agricultural purposes as set forth in Section 144.030.2(22), RSMo. Therefore, Applicant should collect tax on these sales unless otherwise exempt.

This letter ruling is binding upon the Department of Revenue with respect to the Applicant for three (3) years from the date of this letter and is subject only to statutory changes by the General Assembly and to changes in the interpretation of law by the courts or administrative tribunals. If a change occurs, the taxpayer who relies upon an outdated interpretation may be subject to additional taxes, interest and penalties, which may be imposed prospectively from the date of the change. For this reason, the interpretation set forth above should be reviewed on a regular basis. Please note that any change in or deviation from the facts as presented will render this ruling inapplicable.

Should additional information be needed, please contact Senior Counsel Benjamin C. Slawson, General Counsel's Office, Post Office Box 475, Jefferson City, Missouri 65105-0475 (Telephone (573) 751-0961), or me.

Sincerely,

Ken Zellers