

**Document Number:** 21-66  
**Tax Type:** Retail Sales and Use Tax  
**Description:** Lumber Harvesting: Exemption; Forest Product - Used Directly  
**Topic:** Appeals  
**Date Issued:** 05-25-2021  
May 25, 2021

Re: § 58.1-1821 Application: Retail Sales and Use Tax

Dear \*\*\*\*\*:

This is in response to your letter in which you seek correction the retail sales and use tax assessments issued to \*\*\*\*\* (the Taxpayer) as a result of an audit for the period from December 2013 through November 2016. I apologize for the delay in responding to your letter.

### **FACTS**

The Taxpayer is a Virginia company engaged in harvesting forest products, sawmill operations, and farming. The Department conducted a second generation audit, and the auditor found the Taxpayer made tax exempt purchases of lime and two tractors based on the sales and use tax exemption for the harvesting of forest products stated in *Virginia Code* § 58.1-609.2 6 and Title 23 of the Virginia Administrative Code (VAC) 10-210-700. The auditor determined the Taxpayer used the lime and tractors for purposes not included under the statute and regulation. The auditor assessed the use tax on the purchases. The Taxpayer appeals the assessments on the grounds that its purchases of lime and the two tractors were used for reseeding the grounds after harvesting timber, and therefore exempt from the tax.

### **DETERMINATION**

*Virginia Code* § 58.1-609.2 6 provides a retail sales and use tax exemption for:

Machinery or tools and repair parts thereof, fuel, power, energy or supplies, used directly in the harvesting of forest products for sale or for use as a component part of a product to be sold. Harvesting of forest products shall include all operations prior to the transport of the harvested product used for (i) removing timber or other forest products from the harvesting

site, (ii) complying with environmental protection and safety requirements applicable to the harvesting of forest products, (iii) obtaining access to the harvesting site, and (iv) loading cut timber or other forest products onto highway vehicles for transportation to storage or processing facilities.

Furthermore, Title 23 VAC 10-210-700 explains the exemption and the requirement that purchases subject to the exemption be used directly and be indispensable to the harvesting of forest products to be sold. The regulation also states “a harvester’s use of machinery and tools, fuel, power, energy, or supplies indirectly in the harvesting of forest products or in any other activity is subject to the tax.” The regulation authorizes a harvester to prorate any tax due between exempt harvesting activities and non-exempt activities. The Department issued Public Document (P.D.) 17-35 (3/28/2017) in which the Tax Commissioner ruled that a taxpayer’s purchases of equipment for mulching and land clearing in preparation for timber harvesting were not exempt from the tax under the exemption statute due to that taxpayer’s provision of a service to the timber harvesting operation rather than providing a harvested forest product for sale.

The Taxpayer states the lime and tractors are used for the reseeding and remediation process conducted after forest products have been harvested. The statute and regulation do not permit an exemption from the retail sales and use tax for items purchased to reseed and remediate a forest after harvest because such activity and items are not used directly in the harvesting of forest products for sale.

Under the doctrine of strict construction, “Statutes granting tax exemptions are construed strictly against the taxpayer.” See *Commonwealth v. Community Motor Bus Co., Inc.*, 214 Va. 155, 198 S.E.2d 619 (1973). “Exemption from taxation is the exception, and where there is any doubt, the doubt is resolved against the one claiming exemption.” See *Golden Skillet Corp. v. Commonwealth*, 214 Va. 276, 199 S.E.2d 511 (1972).

Based on the information provided by the Taxpayer, the lime and tractors are not used to harvest forest products for sale, and do not qualify for the exemption for the harvesting of forest products authorized under *Virginia Code* § 48.1-609.2 6.

## **CONCLUSION**

The assessments are upheld in accordance with this determination. The outstanding balance should be paid within 60 days of this determination to avoid additional interest charges. If the Taxpayer has a question concerning payment of the assessments or bills, the Taxpayer may contact the Delinquent Collections Unit at (804) 367-8045.

The *Code of Virginia* section, regulation and public document cited are available online at [www.tax.virginia.gov](http://www.tax.virginia.gov) in the Laws, Rules, and Decisions section of the Department’s website. If

you have any questions about this determination, you may contact \*\*\*\*\* in the Department's Office of Tax Policy, Appeals and Rulings, at \*\*\*\*\*.

Sincerely,

Craig M. Burns  
Tax Commissioner

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**Related Documents:**

[17-35](#)

**Last Updated 07/21/2021 14:07**