

**UT 18-01**

**Tax Type: Use Tax**

**Tax Issue: Aircraft Use Tax; Machinery & Manufacturing Equipment Exemption  
(Agricultural)**

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

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

v.

**XYZ BUSINESS INC.,  
Taxpayer**

**No. XX-ST-XXX  
Account ID XXXXX  
Letter ID XXXXX  
Period 9/17/12**

**Ted Sherrod  
Administrative Law  
Judge**

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**RECOMMENDATION FOR DISPOSITION**

**Appearances: Daniel Edelstein, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue; Barry Roy Bartlett, Esq. of Bartlett Associates, LLC on behalf of XYZ BUSINESS INC.**

**Synopsis:**

This matter is before this administrative tribunal as the result of a timely protest filed by XYZ BUSINESS INC. (“Taxpayer”) of Notice of Tax Liability number XXXXX issued by the Illinois Department of Revenue (“Department”) for use tax due on the purchase of a 1990 Beech F33A aircraft by the Taxpayer on September 17, 2012. Taxpayer contends that this aircraft is exempt under section 105/3-5(11) of the Use Tax

Act which exempts farm machinery and equipment because it is used in connection with the Taxpayer's timberland management operations.

A hearing on this matter was held before Administrative Law Judge Kenneth Galvin on April 17, 2017.<sup>1</sup> During the hearing, both the Department and the Taxpayer introduced documentary evidence and the testimony of witnesses into the record. After reviewing the testimony and exhibits of record, it is recommended that the Notice of Tax Liability at issue in this case be affirmed and finalized as issued.

**Findings of Fact:**

1. XYZ BUSINESS INC. D/B/A ABC, INC.<sup>2</sup>, an Illinois domiciled corporation having its principal place of business in CITY, Illinois, is engaged in the business of construction contracting and timberland management. Tr. p. 41. It is owned and operated by JOHN DOE ("DOE"). Tr. pp. 41, 42, 47. XYZ BUSINESS INC. D/B/A ABC, INC. ("Taxpayer") along with DOE, holds an ownership interest in 18.5 acres of forested timberland located in XXXXXX County, Illinois. Tr. p. 10; Taxpayer's Ex. 1.<sup>3</sup>
2. On September 17, 2012, Taxpayer purchased a 1990 Beech 33 airplane ("Beech airplane"), Serial number XXXX from ROY ROGERS. Department Ex. 5.

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<sup>1</sup> The administrative law judge that heard this case has retired, and the undersigned has been assigned by the Chief Judge of the Department's Office of Administrative Hearings to write the recommendation in this case. The issues in this case concern the interpretation of applicable statutes and the Department's rules and regulations rather than the weight and credibility of witness testimony. Therefore, it is not a requirement that the Administrative Law Judge who heard and took evidence in this matter be the one to make the recommendation. American Welding Supply Co. v. Department of Revenue, 106 Ill. App. 3d 93 (5<sup>th</sup> Dist. 1982).

<sup>2</sup> Both XYZ BUSINESS INC. and ABC, INC. have the same Federal Identification number. Department Ex. 3-5.

<sup>3</sup> During the hearing, the parties stipulated that XYZ BUSINESS INC. is the owner of the timberland. Tr. p. 10.

3. On the RUT-75 Aircraft/Watercraft Use Tax Return documenting this purchase, the Taxpayer indicated that the Beech airplane was exempt as a “[I]tem used primarily in production agriculture [that] qualifies for the farm machinery and equipment exemption.” Tr. pp. 69, 70; Department Ex. 5.
4. Subsequent to the Taxpayer’s filing of its RUT-75 return claiming the farm machinery and equipment exemption, the Department advised the Taxpayer that the Department’s auditor Annette Simmons (“Simmons”) would be reviewing the Taxpayer’s books and records to determine if the Taxpayer’s claim that its purchase of the Beech aircraft qualified for this exemption was correct. Department Ex. 2. This notification was given by letter dated January 6, 2015 from Simmons notifying the Taxpayer that the Department had initiated an audit of its purchase of the Beech airplane. *Id.*
5. Simmons was, at the time she commenced the aforementioned audit, a senior Revenue Auditor, and had conducted hundreds of audits relating to claims to the farm machinery and equipment exemption for aircraft. Tr. pp. 13, 14, 26, 27.
6. At the request of Simmons, the Taxpayer submitted a Department form titled “ST-587 Equipment Exemption Certificate” certifying that the Beech airplane was being used primarily as farm machinery and equipment. Tr. pp. 14, 15; Department Ex. 2.
7. In addition to the Taxpayer’s exemption certificate, Simmons also requested that the following additional information be provided to her for purposes of completing her audit of the Taxpayer’s exemption claim: 1) a completed “Audit Questionnaire for Farm Machinery Equipment Exemption” explaining the use of the Beech airplane;

and 2) “[P]roof the aircraft is being used in production agriculture ... pictures of the aircraft being used ...[.]”). Department Ex. 2.

8. The “Audit Questionnaire for Farm Machinery Equipment” requested the following items of information from the Taxpayer: 1) a description of the Taxpayer’s farming operations; 2) a complete description of the equipment’s use; 3) a list of activities engaged in using the equipment including the percentage of use applicable to each such activity; 4) a list of accessories and/or additional equipment used in conjunction with the equipment; and 5) the Taxpayer’s FEIN number. Department Ex. 3.
9. In response to question 2 on the Audit Questionnaire requesting a “complete description of the items’ use”, the Taxpayer responded that it used the Beech airplane to “[A]ssist in administration and execution of IDNR managed forest ... Selective cut timber harvest.” *Id.*
10. In response to the Audit Questionnaire’s request for information concerning the percentage of usage in each activity for which the Beech aircraft was used, the Taxpayer responded that the Beech aircraft was used 70% of the time in connection with the Taxpayer’s timberland management and 30% of the time for recreation. *Id.* During the hearing Simmons testified that the Taxpayer produced no flight logs of any kind to document these claims. Tr. p. 20.
11. Taxpayer is registered with the Federal Aviation Administration (“FAA”) as the owner of the Beech airplane, having been issued an FAA Certificate as the registered owner on October 16, 2012. Department Ex. 4. On this FAA Certificate, the FAA assigned a “standard” classification to this aircraft. *Id.* During the hearing, Simmons testified that the FAA Certificate classification of the Taxpayer’s Beech airplane did

not support the Taxpayer's exemption claim because aircraft used for agricultural purposes are normally assigned a "pest and agricultural control" certificate classification by the FAA. Tr. pp. 21, 22. See also Federal Aviation Administration Advisory Circular AC 137-1A issued 10/10/07 covering the certification of aircraft engaged in dispensing insecticides and other "activities that directly affect agriculture, horticulture, or forest preservation...[.]"

12. During the hearing, Simmons testified that the Taxpayer provided no evidence that the Beech airplane was used for crop dusting, crop pollination, or GPS mapping of crop fields, activities the Department recognizes as qualifying exempt uses of aircraft for agricultural purposes. Tr. pp. 16-18. She further testified that she was provided with no evidence in the form of pictures of the aircraft being used or equipment necessary for sanctioned exempt uses (e.g. sprayers if used for crop dusting, GPS systems if used for crop mapping) deemed essential by the Department to prove exempt use. Tr. pp. 18, 19.

13. DOE, the owner and operator of the Taxpayer, testified that the Beech airplane was used in connection with timberland management primarily to conduct aerial surveys of the property to determine if it was being impacted by invasive species of plants incompatible with healthy timberland cultivation and development or by flooding or other natural phenomenon making the Taxpayer's timberland less valuable. Tr. pp. 47-54. Simmons testified that this Taxpayer activity is classified by the Department as "crop scouting" which the Department has determined does not constitute a use of aircraft qualifying for the farm machinery and equipment exemption. Tr. pp. 30-32.

14. The Taxpayer participates in a forest management plan supervised by the Illinois Department of Natural Resources. Tr. pp. 43-46; Taxpayer's Ex. 3. The record contains no evidence that this plan is an agricultural crop acreage "set aside" program managed by the State of Illinois or the Federal government.
15. The record indicates that the Taxpayer last sold trees raised on the Taxpayer's timberland in 2010. Taxpayer's Ex. 2 (Forest Management Plan, pp. 2, 3). The record contains no evidence that any of the timberlands owned and managed by the Taxpayer ever resulted in the production of timber that was sold subsequent to the Taxpayer's purchase of the Beech airplane in 2012.
16. After reviewing documentation presented by the Taxpayer in support of its claim to the farm machinery and equipment exemption for its Beech airplane, Simmons determined that its Beech airplane did not qualify for this exemption. Department Ex. 1. Thereafter, the Department issued a "Notice of Tax Liability for Form EDA-128, Auditor-prepared Aircraft/Watercraft Use Tax Report" assessing the Taxpayer tax in the amount of \$7,813, a late payment penalty of \$1,562.65 and a late filing penalty of \$156. *Id.*

**Conclusions of Law:**

On September 17, 2012, the Department issued a Notice of Tax Liability to XYZ BUSINESS INC. D/B/A ABC, INC. ("Taxpayer") assessing Aircraft Use Tax on the purchase of a 1990 Beech 33 airplane, Serial Number XXXX ("Beech airplane") pursuant to 35 ILCS 157/10-15 of the Aircraft Use Tax Law, 35 ILCS 157/10-1 *et seq.* and Department regulation 86 Ill. Admin. Code, ch. I, section 152.101. Department Ex. 1. Section 10-35 of the Aircraft Use Tax Law, 35 ILCS 157/10-35, incorporates all of

the provisions of the Use Tax Act (“UTA”) 35 **ILCS** 105/1 *et seq.* not otherwise inconsistent with any provisions of the Aircraft Use Tax Law.

Section 12 of the UTA, 35 **ILCS** 105/12, incorporates by reference section 4 of the Retailers Occupation Tax Act, 35 **ILCS** 120/1 *et. seq.* Section 4 of the Retailers’ Occupation Tax Act provides that a Notice of Tax Liability issued by the Department is *prima facie* correct and is *prima facie* evidence of the correctness of the amount of tax due. *Id.* at 120/4. Once the Department has established its *prima facie* case by submitting a Notice of Tax Liability into evidence the burden shifts to the taxpayer to overcome the presumption of validity. Clark Oil & Refining v. Johnson, 154 Ill. App. 3d 773 (1<sup>st</sup> Dist. 1987). A taxpayer cannot overcome the Department’s *prima facie* case merely by denying the accuracy of the Department’s assessment. Smith v. Department of Revenue, 143 Ill. App. 3d 607 (5<sup>th</sup> Dist. 1986). Testimony alone is not enough. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill. App. 3d 203 (1<sup>st</sup> Dist. 1991). Documentary proof of tax exempt status is required in order to prevail against an assessment of tax by the Department. Sprague v. Johnson, 195 Ill. App. 3d 798 (4<sup>th</sup> Dist. 1990).

The Taxpayer contends that it does not owe use tax on the purchase of the Beech airplane described above because it qualifies for the farm machinery and equipment exemption. This exemption is prescribed by section 105/3-5(11) of the UTA, which is incorporated into and made part of the Aircraft Use Tax Law pursuant to section 10-35 of that law, 35 **ILCS** 157/10-35, and provides, in part, as follows:

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 ...[.] Farm machinery and equipment shall include precision farming equipment that is installed or purchased to be installed on farm machinery and equipment including, but not limited to, tractors, harvesters, sprayers, planters, seeders, or spreaders...[.].  
35 ILCS 105/3-5(11)

The Taxpayer contends that section 105/3-5(11) provides for two separate and distinct exemptions, one for farm machinery and equipment for use primarily in state or federal agricultural programs, and the other for farm machinery and equipment used primarily for “production agriculture.” Tr. p. 7.

**TAXPAYER’S EXEMPTION CLAIM BASED UPON USE OF THE BEECH AIRPLANE IN A STATE OR FEDERAL AGRICULTURAL PROGRAM**

The Taxpayer’s principal contention is that the Beech airplane at issue constituted machinery and equipment used primarily in a state or federal agricultural program. The record indicates that the Taxpayer owned an 18.5 acre tract of timberland located in JoDaviess County, Illinois and that this tract was certified for participation in a forest management plan governed by rules promulgated by the Illinois Department of Natural Resources. Tr. pp. 40, 43, 45; Taxpayer’s Ex. 1-4. The Taxpayer’s argument presumes that a forest management plan supervised by the Illinois Department of Natural Resources requiring compliance with that agency’s rules constitutes a “state or federal agricultural program” for purposes of section 105/3-5(11) of the UTA.

An exemption identical to the exemption enumerated in section 105/3-5(11) is contained in the Retailers’ Occupation Tax, the Service Occupation Tax and the Service Use Tax. See 35 ILCS 120/2-5 (Retailers’ Occupation Tax), 35 ILCS 115/3-5 (Service

Occupation Tax) and 35 ILCS 110/3-5 (Service Use Tax). In 1989, the Illinois legislature enacted P.A. 86-244 (H.B. 2209) to extend the agricultural machinery and equipment exemption from taxation for farm machinery and equipment contained in the Retailers' Occupation Tax, Use Tax, Service Occupation Tax and Service Use Tax to such machinery and equipment used in Illinois or Federal agricultural programs. This legislative change was announced in Illinois Department of Revenue Information Bulletin No. FY 90-14, 1/1/90 as follows:

Changes in sales and miscellaneous taxes ...

Farm Machinery and Equipment Exemption expanded. Effective August 15, 1989, taxpayers who purchase farm machinery and equipment to use in federal and state agricultural programs are exempt from paying sales tax on that machinery. Previously the exemption was good only for farm machinery and equipment used primarily in production agriculture.

The meaning of the term "state or federal agricultural programs" for purposes of the expanded farm machinery and equipment exemption announced in Information Bulletin FY 90-14 has been enumerated in two Department Private Letter rulings and a Department General Information Bulletin, which are discussed below. While not precedent, and not binding upon any court, interpretations by an agency charged with administering a statute are entitled to respect and deference from a reviewing court. Craftmasters, Inc. v. Department of Revenue, 269 Ill. App. 3d 934, 940-41 (4<sup>th</sup> Dist. 1995).

In Private Letter Ruling No. ST 90-0795-PLR (11/20/90), the Department states "the reference to State or Federal Agricultural Programs" in [P.A. 86-244] is a reference to the programs commonly known as 'set aside' programs, administered by the State or

Federal authorities.” See also ST 96-0090-GIL issued February 26, 1996. A “set aside” program is a government administered program pursuant to which, in exchange for a yearly rental payment from the government, farmers enrolled in the program agree to remove land from agricultural production. See United States Department of Agriculture Fact Sheet dated 12/15 at <http://www.fsa.usda.gov>. Descriptions of programs constituting government “set aside” programs are enumerated in Private Letter Ruling No. ST 87-08661-PLR (12/1/87) which describes two such programs as follows:

(In 1987) there (were) two distinct federal “Set Aside” programs.

- A) A Conservation Resource Program that allows farmers to bid in land for long term conservation of 10 year periods. These require establishment of ground cover and ground maintenance (mowing). ...
- B) The most utilized (was) the 1 year “Set Aside” program that allows farmers to lay fallow normally planted wheat, milo and corn acreage.

In General Information Letter No. ST 98-0134-GIL (4/29/98), the Department elaborates upon its earlier explanation of the meaning of the term “state or federal agricultural program” exempt under the farm machinery and equipment exemption stating as follows:

Please be advised that notwithstanding certain statements in letter No. 90-0795, State or federal agricultural programs are not limited by statute or regulation to crop acreage “set aside” programs. The “State or federal agricultural programs” contained in 35 **ILCS** 120/2-5(2) [the Retailers’ Occupation Tax provision identical to 35 **ILCS** 105/3-5(11) also enacted by P.A. 86-244] can include agricultural programs administered by the U.S.D.A. or state agencies (e.g. Illinois Department of Agriculture) under which government cost-share funds are provided to agricultural producers for expenditure for land treatment structures or devices such as terraces or ground waterways.

Based on the descriptions of a “state or federal agricultural program” noted in the above Department pronouncements, not all programs involving the propagation of crops or other plants that are regulated by a government agency fall within the category of “state or federal agricultural programs” as this term is used in section 105/3-5(11) of the UTA. Were this category defined in such a broad manner, the farm machinery and equipment exemption could be claimed whenever a taxpayer could show that it was governed by a state or Federal regulatory scheme. Rather, to come within this category as described by the Department, the state or federal program in which farm equipment and machinery is used must constitute a state or federal crop acreage “set aside” program or “cost share” program involving government oversight of “cost share funds” provided to program participants by the State or Federal government.

As previously noted, the Taxpayer participates in a forest management plan run by the Illinois Department of Natural Resources. Tr. pp. 43-46; Taxpayer’s Ex. 1-4. The plan in which the Taxpayer participates is authorized pursuant to the Illinois Forestry Development Act, 525 ILCS 15/1 *et seq.* This Act also authorizes the Illinois Department of Natural Resources to establish a “cost share program.” 525 ILCS 15/4, 15/5. A perusal of the Taxpayer’s plan indicates that it authorizes government “cost share” funding assistance which is to be made available on a “first come, first served basis, as funds are available” and must be applied for. Taxpayer’s Ex. 1.

The record in this case contains no evidence that “cost share” funding or any other government funding was ever applied for or received by the Taxpayer. The signature feature of programs classified as “state or federal agricultural programs” for purposes of section 105/3-5(11) as described in the above Private Letter and General Information

Letter rulings is Federal or state oversight of government subsidies or “cost share” funds used to compensate farmers for keeping crop acreage fallow or for land treatment structures or devices such as terraces and waterways. The forest management plan approved by the Illinois Department of Natural Resources in which the Taxpayer participates does not evidence the principal feature of a “state or federal agricultural program” recognized as falling within section 105/3-5(11) of the UTA by the aforementioned Department rulings construing the scope of this exempt category, which is Federal or State oversight of subsidies or other funds. For this reason, I conclude that the Taxpayer’s forest management plan is not a “state or federal agricultural program” for purposes of the exemption contained in section 105/3-5(11). Since the Taxpayer’s claim of exemption rests upon his use of the Beech airplane in the forest management plan indicated in the record, and this plan does not involve a government “set aside” program or a program requiring government oversight of “cost share” funds from the government dispensed to the Taxpayer, I find that the Taxpayer cannot claim exemption based upon its participation in a “state or federal agricultural program” pursuant to section 105/3-5(11) of the UTA for this aircraft.

Even if the Taxpayer’s forest management plan constituted a “state or federal agricultural program”, I find that the Taxpayer would be unable to avail itself of this exemption based upon the evidence contained in the record. Machinery and equipment must be used “primarily” in such programs to qualify for exemption. During the hearing, the Taxpayer attempted to prove that its Beech airplane was “primarily” used in connection with its forest management plan through testimony and unsubstantiated written testimonial assertions that the aircraft was used 70% of the time in connection

with this plan. Tr. p. 72; Department Ex. 3. The Taxpayer produced no flight logs and no other books and records of any kind to substantiate these testimonial assertions. Tr. p. 20.

As previously noted a Notice of Tax Liability issued by the Department is *prima facie* correct and is *prima facie* evidence of the correctness of the amount of tax due. 35 ILCS 120/4. Once the Department has established its *prima facie* case by submitting a Notice of Tax Liability into evidence the burden shifts to the taxpayer to overcome the presumption of validity. Clark Oil & Refining, *supra*. A taxpayer cannot overcome the Department's *prima facie* case merely by denying the accuracy of the Department's assessment. Smith, *supra*. Testimony alone is not enough. Mel-Park Drugs, Inc., *supra*. Documentary proof of tax exempt status is required in order to prevail against an assessment of tax by the Department. Even if the Taxpayer's forest management plan was a "state or federal agricultural program" the Taxpayer's claim to this exemption cannot be approved because the Taxpayer has presented no such documentary evidence to substantiate its claim that the Beech airplane was "primarily" used in connection with this plan.

While, for the reasons enumerated above, I find that the Taxpayer's use of the Beech airplane does not fall within the category of use exempt pursuant to the above discussed provisions of section 105/3-5(11) exempting farm machinery and equipment primarily used in state and federal agricultural programs, the parties have, nevertheless stipulated on the record that "if qualifying use of the aircraft is shown here, ... then the forest stewardship plan that was approved by the Illinois Department of Natural Resources for Taxpayer's timberland here would be an example of a state agricultural

program.” Tr. p. 9. Given this stipulation, the dispositive issue in this case is whether the Beech airplane at issue has been used in a manner qualifying for exemption as machinery and equipment primarily used in “production agriculture” which section 105/3-5(11) also exempts.

**TAXPAYER’S EXEMPTION CLAIM BASED UPON USE OF THE BEECH AIRPLANE IN “PRODUCTION AGRICULTURE”**

In addition to exempting farm machinery and equipment primarily used in “state or federal agricultural programs”, Section 105/3-5(11) also exempts such machinery and equipment if primarily used in “production agriculture.” Section 105/3-35 of the UTA defines the term “production agriculture” as follows:

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 from propagation of seed grains and 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

The applicability of the “production agriculture” exemption pursuant to section 105/3-5(11) to forestry and timber production is by no means self evident from the language of section 105/3-35 noted above. See Department of Revenue General Information Letter No. ST 16-0022-GIL, 6/2/16 (“Timber harvesting is not included in the Farm Machinery and Equipment ... tax code, therefore causing confusion and misinformation amongst ...industry and business ...[.]”). However, Department of Revenue letter rulings noted below have sanctioned the application of this exemption to

forestry harvesting and timber operations. It is well known that, “normally private letter rulings have no precedential effect.” Union Electric Co. v. Department of Revenue, 136 Ill. 2d 385, 400 (1990). However, while not precedent setting, private letter rulings offer guidance as they disclose the Department’s interpretation of its regulations. *Id.* Moreover, as previously noted, these rulings, while not precedent, and not binding upon any court, constitute interpretations by an agency charged with administering the UTA and are, therefore, entitled to respect and deference from a reviewing court. Craftmasters, Inc., supra.

In Private Letter Ruling ST 92-0189-PLR (4/7/92), the Department responded to a ruling request concerning “Off-road equipment used primarily in forestry harvesting and timber operations.” In response, the Department opined as follows:

Off-road equipment used primarily in forestry harvesting and timber operations can qualify for the exemption extended to farm machinery and equipment used primarily in production agriculture. In order to claim this exemption, you must provide the seller with an exemption certificate stating 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.

General Information Letter No. ST 94-0432-GIL (10/6/94) was written in response to a request for a ruling regarding “skidders” i.e. machinery and equipment used to pick up and move logs after trees are felled in preparation for being turned into lumber. In response to this ruling request, the Department opines that “[T]o the extent that the skidders are used primarily in production agriculture to gather the trees after cutting the equipment may qualify for the [farm machinery and equipment] exemption.” This ruling states that a certificate must be obtained by the seller from the purchaser certifying that

the equipment is being used for agricultural production.<sup>4</sup> These rulings provide a legal basis for claiming the “production agriculture” farm machinery and equipment exemption for machinery and equipment used in timber and forestry operations.

However, a careful reading of the Department’s letter rulings that provide a legal basis for the application of the “production agriculture” exemption to forestry and timber propagation indicates an important limitation on the applicability of this exemption to logging and forestry activities. Specifically, in General Information Letter ruling number ST 99-0150-GIL the Department states, with respect to such activities, the following:

We have also enclosed 86 Ill. Admin. Code 130.305, the regulation covering the ... use tax exemption afforded machinery and equipment used primarily in production agriculture. This exemption can include machinery and equipment used primarily in floriculture or horticulture. See 86 Ill. Admin. Code 130.305(b-d).

However, please note that for the use of machinery to qualify in these businesses, the plants, nursery stock, shrubs, etc. must be produced for sale. Therefore, if the primary usage of machinery or equipment is to produce plants, flowers, trees, etc. that will not be put on the market ...then purchasers cannot claim the exemption.

See also to this effect General Information Letter ruling number ST 02-0215-GIL (9/27/02) and General Information Letter ruling number ST 96-0466-GIL (11/18/96).

During the hearing in this case, DOE, the Taxpayer’s owner, testified as follows:

Q. So since realizing its value, which you said you ...became aware of ...in 2002, 2003, you have done your best to preserve that value in the years since?

A. Yes. Consistent with the management plan.

Tr. pp. 62, 63

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<sup>4</sup> See also General Information Letter No. ST 94-0376-GIL (9/2/94) which is identical to General Information Letter No. 94-0432-GIL (10/6/94), noted above.

From this testimony I conclude that the Taxpayer's principal objective in managing the timberland it owned has been to preserve the timberland rather than to raise timber for logging, harvesting and sale.

Consistent with the Taxpayer's principal objective, the record in this case indicates that the Taxpayer's last sale of timber harvested from the timberlands it owns was in 2010, and involved the sale of a small number of trees harvested primarily to preserve the health and well being of the forest. See Taxpayer's Ex. 2 (Forest Management Plan pp. 2, 3). The record in this case does not indicate that the Taxpayer sold any of its timber from its timberland cultivation of which its exemption claim is based subsequent to 2010. Since the Beech airplane for which the farm machinery and equipment exemption is sought was not purchased until September, 2012 (Department Ex. 5), this aircraft could not have been used in the cultivation and propagation of timber for sale which must be shown in order for the exemption for use of farm machinery and equipment in "production agriculture" involving timberlands to apply pursuant to Department rulings ST 99-0150-GIL, ST 02-0215-GIL and ST 96-0466-GIL discussed previously.

Because the Taxpayer did not use the Beech airplane to engage in raising trees for harvesting, logging and sale, this aircraft does not meet the requirements for the application of the farm machinery and equipment exemption indicated in the aforementioned letter rulings that its equipment be used in the production of trees for sale rather than for other purposes. For this reason, I find that the Department's letter rulings, while authorizing the classification of timberland development and forestry as types of "agriculture" do not afford a basis for the Taxpayer's exemption claim because the

Taxpayer has not been shown to have used the Beech airplane to engage in the cultivation and propagation of timber for sale.

Even if the nature of the Taxpayer's forestry operations (specifically its failure to show that it cultivated and produced trees for sale after 2010) did not preclude qualification of the Beech airplane for the production agriculture exemption, I also find the exemption inapplicable in the instant case because the Taxpayer has failed to prove that the activities it used its Beech airplane to perform were "production agriculture" or that its primary use of the Beech airplane was for such purposes. During the hearing, DOE, the owner of the Taxpayer, testified that he used the Beech airplane primarily to conduct aerial surveys of the property to determine if it was being impacted by invasive species incompatible with healthy timberland cultivation and development, or by flooding or other natural phenomenon making the Taxpayer's timberland less valuable. Tr. pp. 47-54. Specifically, DOE testified regarding the use of the Beech airplane as follows:

Q. So a typical flight to the area, what would that typical flight look like? If you were going to the property, and what would be the, what would be your goal on any particular flight?

A. So flying on the property would be a low and slow flight over the property, looking at, you know, looking at a variety of things: Ground conditions. Area flights, to identify invasive species nearby and migration of invasive species. Also, looking at the area and other timberland conditions which speaks to the value. For example, flooded timberland that's inaccessible to standing timber buyers would push my value up in that area.

So that's generally it. Some photography, marking on sectional and low altitude and route maps, any notes of anything that I see.

The invasive species are very visible from the air on properties in the area that wouldn't be visible any other way, because I wouldn't have access to them.

Tr. pp. 47, 48.

DOE posited no other use of the Beech aircraft in connection with the Taxpayer's forestry management other than the foregoing during the hearing in this case.

The Department has previously ruled on at least two occasions that the uses described by O'Hara during his testimony constitute "crop scouting" and field maintenance activities that do not constitute "production agriculture" under section 105/3-35 of the UTA. See Private Letter Ruling ST 16-0060-GIL, 11/2/16 (holding that use of an aircraft to "keep detailed records of crop progress and land conditions" did not constitute its use in "production agriculture"); General Information Letter No. ST 09-0126-GIL, 9/28/09 (refusing to sanction the use of a helicopter to conduct aerial surveillance of crop lands to identify problem areas arising from excessive weed areas, wind damage, wildlife damage and insect damage as being for "production agriculture").<sup>5</sup>

The Taxpayer also sought to prove that its Beech aircraft was "primarily" used for "production agriculture" through testimony and unsubstantiated written testimonial assertions that the aircraft was used 70% of the time in connection with the Taxpayer's timberland maintenance operations. Tr. p. 72; Department Ex. 3. As previously noted, during the hearing the Taxpayer produced no flight logs and no other books and records of any kind to substantiate these testimonial assertions. Tr. p. 20.

As noted previously, a Notice of Tax Liability issued by the Department is *prima facie* correct and is *prima facie* evidence of the correctness of the amount of tax due. 35 **ILCS** 120/4. Once the Department has established its *prima facie* case by submitting a

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<sup>5</sup> The Department's classification of the Beech airplane as engaged in activities other than "production agriculture" is supported by the "standard" Federal Aviation Administration ("FAA") certification issued to this aircraft. Department Ex. 4. Aircraft used for purposes that directly affect agriculture are normally issued an "agricultural aircraft operating certificate" by the FAA. See FAA Circular AC 137-1A issued 10/10/07.

Notice of Tax Liability into evidence, the burden shifts to the taxpayer to overcome the presumption of validity, and a taxpayer must present documentary proof of tax exempt status to rebut the Department's assessment. Clark Oil & Refining, *supra*; Smith, *supra*; Mel-Park Drugs, *supra*; Sprague, *supra*.

In sum, the Taxpayer's sole legal basis for its claim that its Beech airplane is exempt under the farm machinery and equipment exemption because it is used in "production agriculture" are the letter rulings indicating that forestry and timberland cultivation qualify for exemption which are noted above. Having determined that these letter rulings classifying forestry and timber production as "production agriculture" are inapplicable to the facts enumerated in the instant case, and finding no other legal basis for the classification of forestry and timber production as "production agriculture" aside from these rulings, I conclude that the Taxpayer has failed to rebut the Department's *prima facie* correct determination that the farm machinery and equipment exemption for equipment and machinery used primarily in "production agriculture" is not applicable to the Taxpayer's purchase of the Beech airplane for which exemption is being sought by the Taxpayer in the instant case. I further find that the Taxpayer has failed to prove that it is entitled to this exemption by failing to indicate any use of the Beech airplane that constitutes an activity recognized as "production agriculture" by the Department and by failing to provide any documentary evidence to substantiate the Taxpayer's claim that the Beech airplane was "primarily" used for production agriculture.

**WHETHER PENALTIES SHOULD BE ABATED FOR REASONABLE CAUSE**

The Taxpayer has not presented any argument that the late filing and late payment penalties that have been assessed in this case pursuant to section 3-3 of the Uniform Penalty and Interest Act, 35 ILCS 735/3-3, should be abated for reasonable cause.

The imposition of penalties for late filing and late payment is governed by the Uniform Penalties and Interest Act (“UPIA”), 35 ILCS 735/3-1 *et. seq.* Section 3-8 of the UPIA provides:

§3-8. No penalties if reasonable cause exists. The penalties imposed under the provisions of Section 3-3, 3-4, 3-5, and 3-7.5 of this Act shall not apply if the taxpayer shows that his failure to file a return or pay tax at the required time was due to reasonable cause. Reasonable cause shall be determined in each situation in accordance with the rules and regulations promulgated by the Department.  
35 ILCS 735/3-8.

The UPIA’s regulation on reasonable cause provides, in pertinent part:

b) The determination of whether a taxpayer acted with reasonable cause shall be made on a case by case basis taking into account all pertinent facts and circumstances. The most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine his proper tax liability and to file and pay his proper liability in a timely fashion.

c) A taxpayer will be considered to have made a good faith effort to determine and file and pay his proper tax liability if he exercised ordinary business care and prudence in doing so. A determination of whether a taxpayer exercised ordinary care and prudence is dependent upon the clarity of the law or its interpretation and the taxpayer’s experience, knowledge, and education. Accordingly, reliance on the advice of a professional does not necessarily establish that the taxpayer

exercised ordinary business care and prudence, nor does reliance on incorrect facts such as an erroneous information return.  
86 Ill. Admin. Code, ch. I, section 700.400(b)-(c)

In the absence of the presentation of any evidence or argument contesting the imposition of penalties, I find that the Taxpayer has failed to rebut the Department's *prima facie* correct determination that such penalties are properly applicable and do not qualify for abatement based upon "reasonable cause" as outlined in section 3-8 of the UPIA and in Department regulation 700.400, noted above.

**RECOMMENDATION**

**WHEREFORE**, for the reasons stated above, it is my recommendation that the Department's Notice of Tax Liability at issue be affirmed and finalized as issued.



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**Ted Sherrod**  
**Administrative Law Judge**

**Date: September 8, 2017**