

UT 19-02
TAX TYPE: USE TAX
ISSUE: AGRICULTURAL MACHINERY/FEED/PRODUCTS/EXEMPTIONS

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

THE DEPARTMENT OF REVENUE)	Docket No.	[]
OF THE STATE OF ILLINOIS)	Account No.	[]
v.)	NTL No.	[]
JOHN DOE,)		
Taxpayer)		

DIRECTOR'S DECISION

Appearances: Mr. James Rustik, Special Assistant Attorney General, appeared for the Illinois Department of Revenue; Mr. JOHN DOE appeared *pro se*.

I have carefully reviewed the Administrative Law Judge's (ALJ's) Recommendation for Disposition in this case, and it is my determination that the record does not contain documentary evidence that clearly and convincingly demonstrates that the trailer at issue in this case was primarily used by the Taxpayer for the exempt use that was claimed. Therefore, I reject the ALJ's Recommendation for Disposition and issue the following decision.

Synopsis:

This matter involves the Department's issuance of a Notice of Tax Liability (NTL) to JOHN DOE (Taxpayer) to assess Illinois tax regarding his 2014 retail purchase of a 2014 [] trailer (Trailer), for use in Illinois. Taxpayer timely protested the Department's assessment and requested an administrative hearing. In lieu of a hearing,

the parties submitted an Amended Stipulation of Facts and Other Matters (Stipulation), with stipulated exhibits, and submitted written arguments.

The parties' Stipulation provides that the issues are whether Taxpayer's purchase of the Trailer qualifies for the farm equipment exemption from Illinois use tax, and whether Taxpayer's primary uses of the Trailer were for production agriculture activities. I have determined that the documentary evidence does not clearly and convincingly demonstrates that the Taxpayer's use of the trailer qualifies for the farm machinery and equipment exemption and the NTL should be finalized as issued. In support of this decision, the following findings of fact and conclusions of law were made.

Findings of Fact:

1. Taxpayer owns and operates a breeding farm for the purposes of propagating the blood line of cattle. Stip. p. 2. Almost none of Taxpayer's animals are sold for slaughter. *Id.* Taxpayer's farm sells bull semen, calves, and cow embryos. *Id.* Taxpayer's farm also implants embryos from other farmers in his cows for a fee and then gives the farmer the progeny. *Id.* Taxpayer has three pastures on which his cattle graze. *Id.* Throughout the year, Taxpayer uses the trailer to transport cows from pasture to pasture and to his main barn for insemination, implementation of embryos, and/or veterinarian examinations. *Id.*
2. On or about February 24, 2014, Taxpayer purchased a 2014 [] trailer from RETAILER, a retailer located in Illinois. Stip. pp. 2-3; Stip. Ex. B-2. Taxpayer paid \$XX,XXX for the Trailer. Stip. pp. 2-3; Stip. Ex. B-2.
3. When purchasing the Trailer, Taxpayer claimed a farm machinery exemption, and paid no Illinois use tax to the retailer. Stip. p. 2.

4. In March 2017, the Department began an audit of Taxpayer's purchase and claimed exempt use of the Trailer. Stip. Ex. B-1 (copy of form titled, Notice of Proposed Audit Findings). As part of that audit, Stacy Tatarek, the assigned auditor, sent Taxpayer a form titled, Audit Questionnaire (Questionnaire). Stip. Exs. A-1 (copy of front page of Questionnaire) *Id.*
5. Taxpayer completed the Questionnaire, by handwriting the following responses to the following Questionnaire requests for information:

Please answer all questions as thoroughly as possible in the space provided. If additional space is needed you may attach additional sheets. Send a copy of the U.S. Department of Agriculture Farm Service Agency Report of Acreage and the U.S. 1040 Schedule F for the year the equipment was purchased along with the questionnaire.

We have obtained information that you acquired the item listed below and claimed the farm machinery and equipment exemption.

Year 2014
Make: []
Model: []
VIN: []

1. Please briefly describe your farming operations. Include information on the crops/animals raised, number of acres in production, the start of operations, and any other relevant information. Indicate the percentage of your annual income that is derived from farming operations and describe your other sources of income.

[Taxpayer's handwritten response:]

Our farming operation consists of 1400 acres farmland[,] raising corn & soybeans[.] We also have over 140 registered beef cow herd doin[g] extensive embryo transfer work producing seedstock. Our income is produced 100% from the farming operation.

2. Give a complete description of the item's use.

[Taxpayer's handwritten response:]

The item referenced on your audit was purchased to be used in the production of agriculture defined in section (625 ILCS 5/1-130). It is an implement of husbandry used exclusively in the propagation of livestock. We produce seedstock to sell to other breeders and this trailer is used in the course of business to do that. The trailer does not

meet the definition of a motor vehicle per the Vehicle Code. It clearly falls into Sect. 1-130 and stays under the 36,000 lbs. requirement. We also use the trailer to haul seed to the field during planting as the covered roof provides protection from unexpected weather. During fence repairing and rebuilding we use it to transport supplies to our pastures along with our horses and quad runners to check animals.

3. Complete the activity listing on the back of this form, listing by activity the percentage of use that applies to that activity. Be as complete as possible and make sure that the percentage of use equals 100 percent. You may use additional sheets if necessary.

Stip. Exs. A-1, A-2. (underlining as in original).

6. The Questionnaire also included an Equipment Activity List, which consists of a series of eighteen separate descriptions of uses for equipment, and which further provides six separate lines which permit a taxpayer to describe other uses. Stip. Ex. A-3 (copy of Taxpayer's completed Equipment Activity List).

7. Taxpayer completed the Questionnaire's Equipment Activity List, and handwrote the following percentages of use of the Trailer:

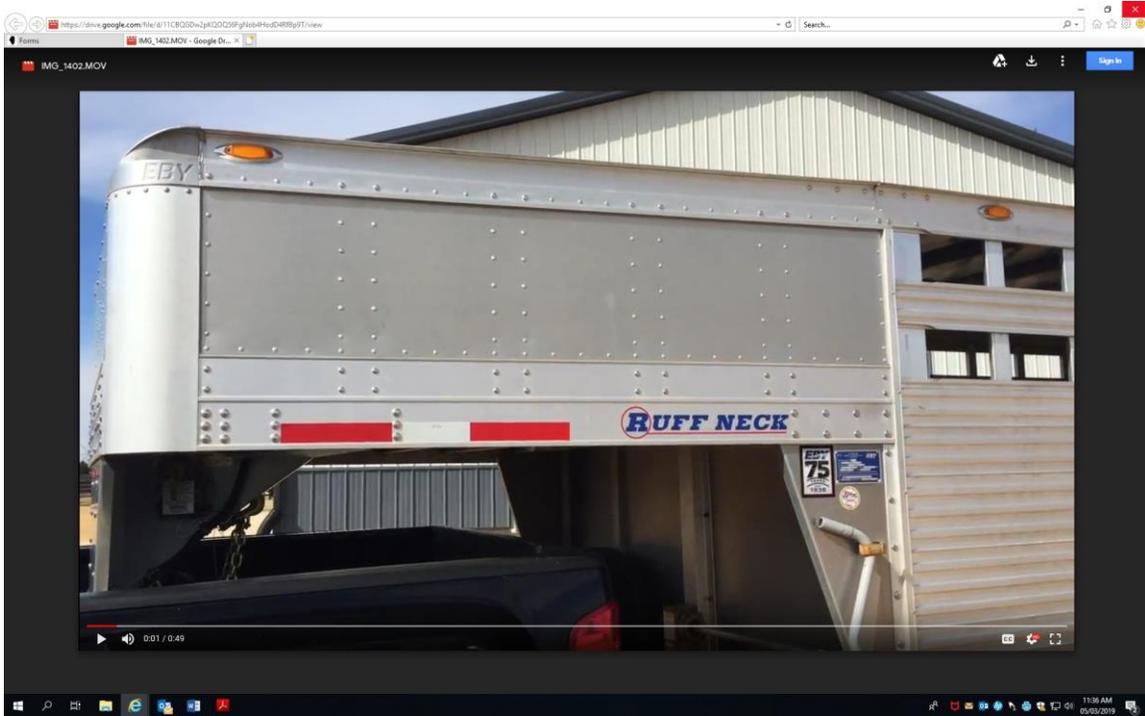
15%	Transporting seed to field
40%	Herding livestock or checking on livestock
25%	Hauling injured or ill livestock or livestock necessities (medication, feed, & water)
15%	Transporting tools to repair fences
5%	Other (must describe): Transporting to sale barn (cull cows/bulls)

Stip., p. 1; Stip. Ex. A-3.

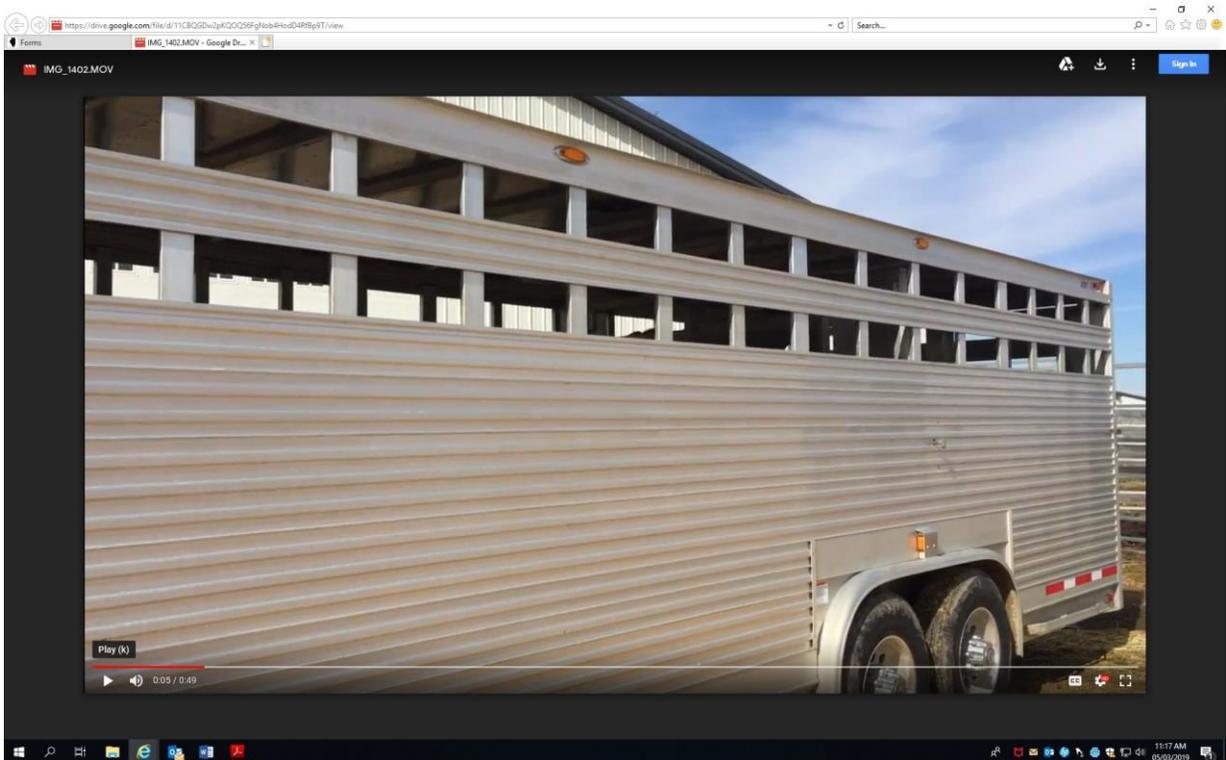
8. Following audit, the Department issued the NTL to Taxpayer, assessing tax in the amount of \$1,679.00, as well as interest. Stip. p. 1; Stip. Ex. C (copy of NTL).

9. Taxpayer neither kept nor offered any regularly kept books and records which documented his actual use of the Trailer, from the date of purchase through the date of hearing. *See Stip., passim.*

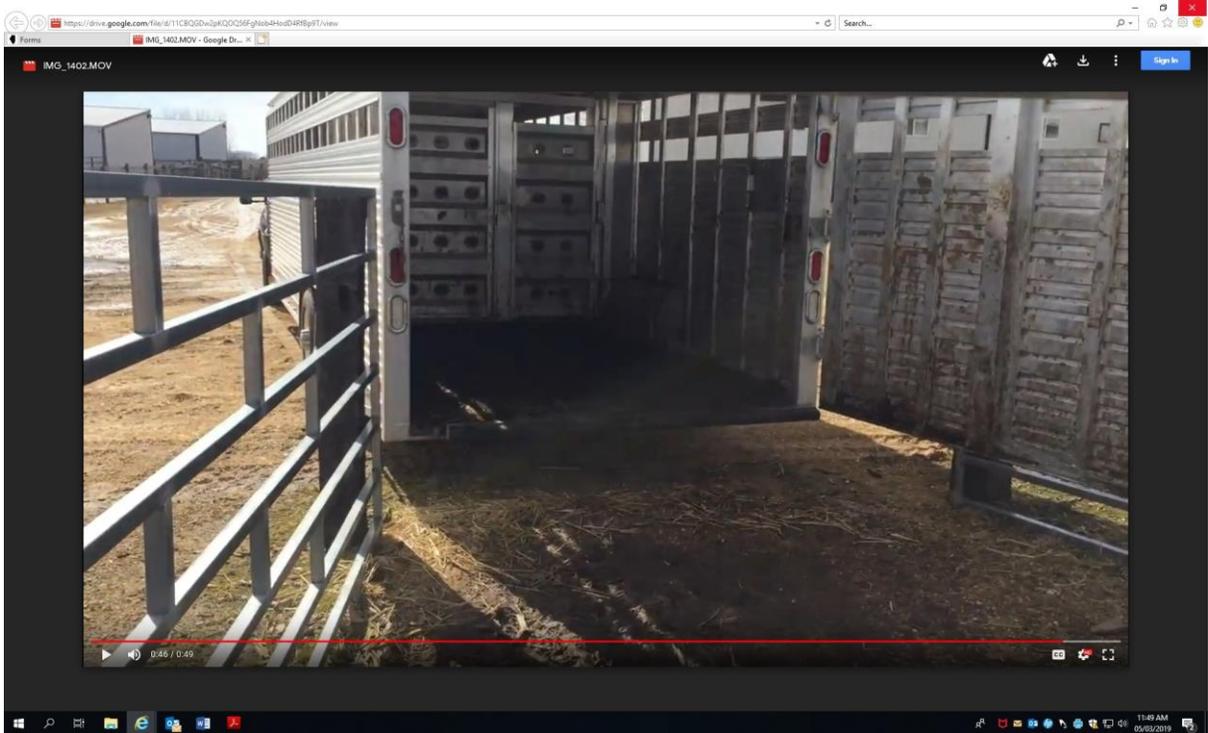
10. When filing his brief, via email, to Department counsel and the ALJ, Taxpayer also attached 3 video files to the email. Thereafter, Department counsel notified the ALJ that he had no objection to the video files being admitted as additional stipulated exhibits. *See* 86 Ill. Admin. Code § 200.155(f). In this agency decision, the video files are referred to as, respectively, Stipulation Exhibits D through F.
11. The first video file begins by showing the front left side of the Trailer, attached to a motor vehicle, and then panning down its length, with the rear door of the Trailer being opened and an animal being unloaded from it. Stip. Ex. D. The second file shows the same animal walking near the Trailer, and then into a barn. Stip. Ex. E. The last shows the Trailer's VIN plate. Stip. Ex. F. All videos were made on October 10, 2018. Stip. Exs. D-F (date of creation taken from each video file's metadata).
12. The following three screen shots from the first video file clearly and convincingly reflect that the Trailer was designed and intended to provide safe transportation of livestock, for which purpose Taxpayer stipulated he used it throughout the year. Stip. Ex. D; Stip. p. 1.



Stip. Ex. D (copy of screen print of first second of first video file).



Stip. Ex. D (copy of screen print of fifth second of first video file).



Stip. Ex. D (copy of screen print of forty-sixth second of first video file).

Conclusions of Law:

Illinois' Use Tax Act (UTA) imposes a tax "upon the privilege of using in this State tangible personal property purchased at retail from a retailer" 35 ILCS 105/3. The Illinois General Assembly incorporated into the UTA certain provisions of the complementary Retailers' Occupation Tax Act (ROTA). 35 ILCS 105/11. Among them is § 4 of the ROTA, which provides that the Department's determination of tax due constitutes prima facie proof that tax is due in the amount determined by the Department. 35 ILCS 105/12; 35 ILCS 120/4. In this case, the Department established its prima facie case when the parties included a copy of the NTL as Stipulation Exhibit C. Stip. Ex. C. That exhibit, without more, constitutes prima facie proof that Taxpayer owes Illinois tax in the amount determined by the Department. 35 ILCS 105/12; 35 ILCS 120/4.

The Department's prima facie case is overcome, and the burden shifts to the Department to prove its case, only after a taxpayer presents evidence that is consistent, probable and identified with its books and records, to show that the Department's determinations were not correct. Copilevitz v. Department of Revenue, 41 Ill. 2d 154, 157-58, 242 N.E.2d 205, 207 (1968). Additionally, when a taxpayer claims that a transaction is exempt from a particular tax, the burden of proof is on the taxpayer. 35 ILCS 105/12; 35 ILCS 120/7; Balla v. Department of Revenue, 96 Ill. App. 3d 293, 296, 421 N.E.2d 236, 238 (1st Dist. 1981) (*citing* Telco Leasing, Inc. v. Allphin, 63 Ill. 2d 305, 347 N.E.2d 729 (1976); Bodine Electric Co. v. Allphin, 81 Ill. 2d 502, 410 N.E.2d 828 (1980)).

Section 3-5 of the UTA provides several different exemptions from use tax based on the nature of the property's use, or based on the nature of the user. 35 ILCS 105/3-5. The exemption claimed by Taxpayer here is one of the exemptions that is based on use, and is set forth in UTA § 3-5(11), which provides:

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, including individual replacement parts for the machinery and equipment, including machinery and equipment purchased for lease, and including implements of husbandry defined in Section 1-130 of the Illinois Vehicle Code, farm machinery and agricultural chemical and fertilizer spreaders, and nurse wagons required to be registered under Section 3-809 of the Illinois Vehicle Code, but excluding other motor vehicles required to be registered under the Illinois Vehicle Code. Horticultural polyhouses or hoop houses used for propagating, growing, or overwintering plants shall be considered farm machinery and equipment under this item (11). Agricultural chemical tender tanks and dry boxes shall include units sold

separately from a motor vehicle required to be licensed and units sold mounted on a motor vehicle required to be licensed if the selling price of the tender is separately stated.

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. Precision farming equipment includes, but is not limited to, soil testing sensors, computers, monitors, software, global positioning and mapping systems, and other such equipment.

Farm machinery and equipment also includes computers, sensors, software, and related equipment used primarily in the computer-assisted operation of production agriculture facilities, equipment, and activities such as, but not limited to, the collection, monitoring, and correlation of animal and crop data for the purpose of formulating animal diets and agricultural chemicals. This item (11) is exempt from the provisions of Section 3-90.

35 ILCS 105/3-5(11). The UTA's statutory farm machinery and equipment exemption is substantively identical to the exemption set forth in § 2-5 of the ROTA. *Compare id. with* 35 ILCS 120/2-5.

Section 3-35 of the UTA defines the term "production agriculture," as follows:

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.

Section 12 of the UTA incorporates several sections of the complementary ROTA. 35 ILCS 105/12. Among the incorporated sections is ROTA § 7, which provides, in pertinent part:

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 105/7.

Regarding the statutory burden of proof set forth in ROTA § 7, and incorporated into the UTA, Illinois courts have held that:

A statute which exempts property or an entity from taxation must be strictly construed in favor of taxation and against exemption; the exemption claimant must prove clearly and conclusively its entitlement. [citations omitted] In analyzing an exemption, all facts are to be construed and all debatable questions resolved in favor of taxation.

Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App. 3d 455, 459, 654 N.E.2d 608, 611 (2d Dist. 1995). “Clear and convincing evidence is defined as the quantum of proof which leaves no reasonable doubt in the mind of the fact finder as to the veracity of the proposition in question.” In re Jones, 285 Ill. App. 3d 8, 13, 673 N.E.2d 703, 706 (1st Dist. 1996). When considering whether a taxpayer has borne its burden to show entitlement to a particular statutory exemption, the taxpayer “must present more than its testimony denying the accuracy of the assessments, but must present sufficient documentary support for its assertions.” Elkay Manufacturing Co. v. Sweet, 202 Ill. App. 3d 466, 472, 559 N.E.2d 1058, 1061 (1st Dist. 1990).

Section 12 of the UTA also incorporates § 12 of the ROTA, which authorizes the Department to make, promulgate and enforce reasonable rules and regulations relating to the administration and enforcement of the provisions of the UTA and ROTA. 35 ILCS 105/12; 35 ILCS 120/12. Pursuant to that authority, the Department has adopted an Illinois retailers’ occupation tax regulation (IROTR) in which it announced how it will administer the farm machinery and equipment exemption. 86 Ill. Admin. Code § 130.305.

That regulation was in effect when Taxpayer purchased the Trailer at issue here, and provides, in pertinent part:

Section 130.305 Farm Machinery and Equipment

a) General: Notwithstanding the fact that the sales may be at retail, the Retailers' Occupation Tax does not apply to sales of machinery and equipment, both new and used and including that manufactured on special order, used or leased for use primarily in production agriculture or for use in State or Federal agricultural programs, including any individual replacement part for such machinery and equipment. A purchaser must certify to the use of the equipment to obtain the exemption.

b) Production Agriculture is *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 includes animal husbandry, floriculture, aquaculture, horticulture and viticulture.* (Section 2-35 of the Act)

f) 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. Specialized food production operations which produce plants under controlled environments in growing media other than soil, qualify as production agriculture. 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. The processing of crops into food or other products is not production agriculture. With respect to the raising of or propagation of livestock and husbandry of animals, the animals must be domestic farm animals raised for profit. The raising of wild animals, game birds and house pets would not be considered to be production agriculture.

g) **The transport, slaughter and processing of animals or animal food products are not considered to be production agriculture.**

h) Farm machinery and equipment. The exemption applies only to items of farm machinery and equipment, either new or used, certified by the purchaser to be used primarily for production agriculture or State or Federal agricultural programs, and including machinery and equipment purchased for lease. Included in this exemption are implements of husbandry defined in Section 1-130 of the Illinois Vehicle Code, fertilizer spreaders, and nurse wagons required to be registered under Section 3-809 of the Illinois Vehicle Code. Excluded from this exemption are other motor vehicles required to be registered pursuant to the Illinois Vehicle Code. **Registered vehicles other than motor vehicles may qualify for**

the exemption if they are used primarily in production agriculture rather than in transportation or other nonexempt activities. Examples of this include implements of husbandry used primarily to supply and apply farm chemicals; trailers and nurse tanks used primarily to supply spreaders in the fields; and aircraft used primarily to apply farm chemicals. All-terrain vehicles (ATVs) may qualify if they are used primarily in production agriculture activities such as pulling sprayers while they apply chemicals to fields or collecting and mapping soil samples. The use of ATVs for farm transportation or recreation purposes does not constitute production agriculture. When ATVs are used in both production agriculture and nonqualifying activities, the primary use will determine if they qualify for exemption. The law exempts only the purchase and use of farm machinery and equipment used in production agriculture or State or Federal agricultural programs. No other type or kind of tangible personal property will qualify for the exemption.

86 Ill. Admin. Code § 130.305 (emphasis added).

Courts apply the same rules in interpreting administrative regulations as in construing statutes. Weyland v. Manning, 309 Ill. App. 3d 542, 547, 723 N.E.2d 387, 391 (2d Dist. 2000). Here, the IROTR plainly provides that “[r]egistered vehicles other than motor vehicles may qualify for the exemption if they are used primarily in production agriculture rather than in transportation or other nonexempt activities.” Regarding this regulatory text, the evidence supports Taxpayer’s argument that the Trailer is a vehicle and not a motor vehicle, as those terms are defined in the IVC. Stip. Ex. D; 625 ILCS 5/1-146 (definition of motor vehicle); 625 ILCS 5/1-217 (definition of vehicle). No evidence, however, was offered to show that the Trailer was registered as an implement of husbandry, or that it was exempt from such registration. *See* Stip. p. 1; 625 ILCS 5/3-402 (Vehicles subject to registration; exceptions); 625 ILCS 5/3-809 (Farm machinery, exempt vehicles and fertilizer spreaders; registration fee).

More importantly, IROTR § 130.305(g) and (h), can be read harmoniously with UTA § 3-5(11), as reflecting the legislature’s manifest intent that an implement of

husbandry shall be exempt when it is actually and primarily used in production agriculture, and not in some other primary use — like transportation. Taxpayer offered no credible, documentary evidence, which showed that he primarily used the Trailer for purposes that did not include transportation of livestock and other property.

Rules adopted by an administrative agency pursuant to statutory authority have the force of law and the administrative agency is bound by its rules. Department of Corrections v. Illinois Civil Service Commission, 187 Ill. App. 3d 304, 308, 543 N.E.2d 190, 194 (1st Dist. 1989). While an administrative regulation does not bind a court charged with reviewing an agency’s application of an administrative regulation to a particular set of facts (*see, e.g., Wesko Plating Inc. v. Department of Revenue*, 222 Ill. App. 3d 422, 584 N.E.2d 162 (1st Dist. 1991)), the plain text of the regulation at issue here governs the question of which activities are included within the statutory phrase, production agriculture, as well as which activities are excluded from that phrase. 86 Ill. Admin. Code § 130.305(f); Department of Corrections, 187 Ill. App. 3d at 308, 543 N.E.2d at 194.

The texts of UTA § 3-5(11) and IROTR § 130.305 are plain and unambiguous. That is why the parties’ reference to a compliance bulletin, which the Department issued in 2016, has no bearing on whether, in this case, Taxpayer has borne his burden to show that he used the Trailer primarily for exempt purposes, after its purchase. Dusthimer v. Bd. of Trustees of University of Illinois, 368 Ill. App. 3d 159, 857 N.E.2d 343 (4th Dist. 2006) (“if a regulation conveys its meaning in plain, unambiguous language, we will refrain from seeking the meaning outside the text. Only ambiguity expands the boundaries of the text.”). Taxpayer makes no claim that he relied on that bulletin when

using the Trailer, or when deciding whether to keep records regarding his use of it, after its purchase. See Taxpayer’s Brief. Finally, Taxpayer has not challenged the validity of any part of IROTR § 130.305. *Id.* It is only the plain text of IROTR § 130.305 — not the 2016 bulletin, and not the litigation positions expressed in the Department’s brief — which comprise the Department’s “interpretation” of UTA § 3-5(11).

This record contains no books and records, made and kept by Taxpayer, which document how he actually used the Trailer, in Illinois, after he purchased it. The closest substitute for such records is Taxpayer’s own written descriptions of how he used the Trailer, after he was asked, years after his purchase and use of it, to respond to the Department’s audit. Stip. Exs. A-2, A-3. In his response, Taxpayer wrote that he used the Trailer in the following percentages:

- ***
- 15% Transporting seed to field
 - 40% Herding livestock or checking on livestock
 - 25% Hauling injured or ill livestock or livestock necessities (medication, feed, & water)
 - 15% Transporting tools to repair fences
 - 5% Other (must describe): Transporting to sale barn (cull cows/bulls)
- ***

Stip. Ex. A-3.

First, Taxpayer himself wrote that three of the Trailer’s five uses were to transport seed, tools and livestock. *Id.* Next, the word “haul” means to carry, or transport. Webster’s Encyclopedic Unabridged Dictionary of the English Language 877 (second definition of “haul” is “to cart or transport; carry: *He hauled freight*”). Thus far, then, 60% of Taxpayer’s admitted use of the Trailer was for transporting livestock and other property. The only remaining described use is the 40% for herding and checking on livestock.

In his Brief, Taxpayer argued that, when he entered that 40% use on his response, he intended “to use this area [of the form to describe] ... moving my animals from pasture to winter feeding areas, to calving facilities, to breeding facilities and any other activities that require the movement of the cattle.” Taxpayer’s Brief, p. 2 (¶ 8). Taxpayer further asserts, in his brief, that he did so only because the Equipment List, itself, did not provide other descriptions. Taxpayer’s Brief, p. 3. This latter argument, of course, is not correct. The form itself lists several places for a responding taxpayer to detail “OTHER” uses to which it put an item claimed to be exempt. Taxpayer’s response left those entries blank. Stip. Ex. A-3.

On the other hand, when comparing Taxpayer’s Questionnaire responses with his explanation in his brief, what makes Taxpayer’s explanation more credible is the manifest unsuitability of the Trailer for the described use of herding or checking on livestock. *Compare* Stip. Ex. A-3 *with* Stip. Ex. D (video of Trailer). “Herding” means to organize, keep, drive or control a group of animals. *See* Webster’s Encyclopedic Unabridged Dictionary of the English Language 894 (definitions of “herd,” “herder,” “herding dog,” and “herdsman”). Commonly, people use dogs, horses, humans, or more recently, small motor vehicles, like motorcycles or ATVs, to keep a herd together, or moving in a desired direction.

The Trailer, however, is a large, heavy implement, and, because it is not a motor vehicle, it cannot be used, by itself, to herd or check on animals. On the other hand, Taxpayer’s explanation that, by making the 40% entry for the described use of “herding ...”, he meant that he used the Trailer to move — that is, to carry or transport — livestock to various places on and off the farm, makes perfect sense, and is also perfectly

consistent with the intended design and function of the Trailer. That said, his written explanation is also patently inconsistent with his claim that he used the Trailer primarily for an exempt purpose that was other than for transportation. In re Cook County Treasurer, 166 Ill. App. 3d 373, 379, 519 N.E.2d 1010, 1014 (1st Dist. 1988) *aff'd* 131 Ill. 2d 541 (1989) (“Contradictory statements of a party constitute substantive evidence against the party of facts stated. [citations omitted] Generally, any statement made by a party or on his behalf which is inconsistent with his position in litigation may be introduced into evidence against him.”).

Here, there is no documentary evidence that Taxpayer used the Trailer as a portable breeding, birthing, or lab room, where he conducted various acts of animal husbandry or the livestock propagation. Instead, Taxpayer’s Questionnaire responses reflect that virtually all his use of the Trailer was to transport livestock and other property. Stip. p. 2; Stip. A-3; Taxpayer’s Brief, p. 3. Transporting livestock is clearly the intended purpose for the Trailer’s design and use, and Taxpayer has stipulated that he used the Trailer for that purpose throughout the year. Stip. p. 2. Under the plain text of IROTR § 130.305(g)-(h), however, transportation is not a use primarily for production agriculture. 86 Ill. Admin. Code § 130.305(g)-(h).

Finally, I address the Department’s counsel’s concession, in its brief, that it considered Taxpayer’s descriptions of his use of the Trailer to transport seed to field, and to transport injured or ill livestock or livestock necessities, to constitute uses for production agriculture. Department’s Brief, pp. 2, 4. The ALJ treated this litigation position as an interpretation of IROTR § 130.305, which, coupled with the Department’s 2016 compliance bulletin, warranted a conclusion that Taxpayer’s description of use for

herding or checking on livestock was also a use for production agriculture. Recommendation for Disposition, pp. 5-9. Adding the described percentages together in Taxpayer's 2017 Questionnaire responses, the ALJ concluded that Taxpayer had rebutted the Department's prima facie determination that Taxpayer was not entitled to the exemption claimed in 2014. *Id.*

While I agree that the act of transporting seed to field for planting and transporting injured or ill livestock or livestock necessities might be considered acts in production agriculture, this case involves a dispute over Taxpayer's primary use of a particular item of tangible personal property. Stip. pp. 1-2. The UTA presumes that all retail purchases of tangible personal property are taxable (35 ILCS 105/12; 35 ILCS 120/7), and that, to rebut that statutory presumption, a taxpayer "must present more than its testimony denying the accuracy of the assessments, but must present sufficient documentary support for its assertions." Elkay Manufacturing Co., 202 Ill. App. 3d at 472, 559 N.E.2d at 1061.

Here, however, Taxpayer has no books and records which document how he actually used the Trailer after its purchase. The best evidence available of Taxpayer's use of the Trailer consists of Taxpayer's unsworn statements, which were made more than three years after he purchased and began to use it. *Compare* Stip. p. 1 *with* Stip. Ex. A-3. Since there is no evidence that Taxpayer kept books and records regarding his use of the Trailer, the inference I draw is that Taxpayer's Questionnaire responses were simply based on his memory. That is, the percentages Taxpayer listed on the Questionnaire responses are Taxpayer's mere conclusions. Balla, 96 Ill. App. 3d at 296-97, 421 N.E.2d at 239 (taxpayer's testimony, which was not corroborated with documentary evidence,

was “at best ... conclusory ...” and was insufficient to show that taxpayer was entitled to claimed exemption). Since they cannot be corroborated by books and records, Taxpayer’s written Questionnaire responses are entitled to no more weight than the arguments he repeatedly presented in his Brief, that he used the Trailer primarily for exempt purposes. *See* Taxpayer’s Brief; Sprague v. Johnson, 195 Ill. App. 3d 798, 804, 552 N.E.2d 436, 440 (4th Dist. 1990) (“documentary proof of tax-exempt status is required to prevail against an assessment of tax deficiency by the Department.”).

The reason why tax statutes like the ROTA and the UTA require taxpayers to make and keep books and records is that no one person can possibly recall, for example, all the different sales a retailer might have made during a period of months or years — let alone which sales might have been exempt. *See* 35 ILCS 105/12; 35 ILCS 120/7. The same is true for a purchaser’s inability accurately to recall the myriad ways in which he, she, or it might have exercised rights and powers over tangible personal property purchased at retail (35 ILCS 105/2 (definition of “use”)) — let alone the relative percentages of exempt versus non-exempt uses. Elkay Manufacturing Co., 202 Ill. App. 3d at 472, 559 N.E.2d at 1061; Sprague, 195 Ill. App. 3d at 804, 552 N.E.2d at 440.

Taxpayer’s Questionnaire responses do not constitute credible evidence which documents how he actually used the Trailer, after its purchase. Taxpayer has not presented evidence which leaves no reasonable doubt that he primarily used the Trailer in production agriculture. In re Jones, 285 Ill. App. 3d at 13, 673 N.E.2d at 706. Therefore, Taxpayer has not rebutted the Department’s prima facie determination that his purchase and use of the Trailer was subject to tax.

Conclusion:

The NTL shall be finalized as issued, with interest to accrue pursuant to statute.

Dated: May 10, 2019

David Harris, Director
Illinois Department of Revenue