

UT 13-05

Tax Type: Use Tax

Tax Issue: Machinery & Equipment Exemption – Manufacturing

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

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

v.

**ABC BUSINESS,
Taxpayer**

**No. XXXX
Account ID XXXX
Letter ID XXXX
XXXX
XXXX
Period 1/03-6/08**

**Ted Sherrod
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

Appearances: Michael Coveny, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue; Joseph Bender, Esq. of Edwards Wildman Palmer LLP on behalf of ABC Business

Synopsis:

This matter is before this administrative tribunal as the result of a timely protest by ABC Business to notices of tax liability issued by the Department of Revenue (“Department”) for the period January 1, 2003 through June 30, 2008 for use tax due on the purchase of machinery and equipment used in the taxpayer’s tree cutting and pruning business. The taxpayer contends that this machinery and equipment is exempt under section 105/3-5(11) of the Use Tax Act which exempts farm machinery and equipment, and under section 105/3-5(18) of that Act, which exempts from use tax “[m]anufacturing and assembling machinery and equipment used primarily

in the process of manufacturing or assembling tangible personal property for wholesale or retail sale or lease...[.]”

In lieu of a hearing, the parties filed a “Stipulation As To Facts” and memoranda of law in support of their respective positions. Following a review of all of the stipulated evidence as well as of the briefs filed herein, it is recommended that this matter be resolved in favor of the Department. In support of this recommendation, the following findings of fact and conclusions of law are made.

Findings of Fact:

1. ABC Business (“ABC BUSINESS” or “taxpayer”) is a closely held Illinois corporation having as its sole shareholder John Doe (“John Doe”), a resident of Illinois. Stipulation As To Facts (“Stip.”) 1.
2. In addition to owning ABC BUSINESS, John Doe owns two other affiliated Illinois companies, ABC Care, Inc. and ABC Industries, Inc. As described more fully below, ABC BUSINESS, ABC Care and ABC Industries are engaged in a concerted, multi-stage operation that begins with the process of cutting and trimming trees and converting the lumber to wood chips which are sold in retail transactions. Stip. 2.
3. The role of ABC BUSINESS in the overall process is to trim, cut and remove trees. Its customers include state forest preserve districts, public parks, the Army Corp. of Engineers and independent real estate developers. Stip. 3.
4. In order to conduct its tree cutting and pruning business, ABC BUSINESS purchases large pieces of forestry equipment, including skidders (machines to remove felled trees from a cutting site to the road), feller bunchers (machinery used to stack logs after cutting), and various trucks and other heavy machinery. Stip. 4.

5. During the audit period, ABC BUSINESS's sole source of revenue arose from providing the services of tree trimming and removal. ABC BUSINESS provided services only. It did not sell tangible property at retail or wholesale, nor did it conduct any manufacturing activity. Stip. 5.
6. When ABC BUSINESS is hired by a customer, ABC BUSINESS travels to the customer's location where it will cut down trees and perform any necessary pruning and trimming. ABC BUSINESS removes all tree material (i.e., branches, logs, etc.) that is cut. Stip. 6.
7. One of the two affiliated companies, ABC Care, Inc., is engaged in similar tree cutting and trimming activities, but on a smaller, residential scale. Likewise, ABC Care removes all felled material and processes the tree material identically to ABC BUSINESS, as described below. Stip. 7.
8. After ABC BUSINESS (and ABC Care) cuts and prunes the trees and brush, ABC BUSINESS transports the felled tree material to ABC BUSINESS's Lockport, Illinois facility where ABC Industries takes over. ABC Industries has large wood chippers, and it uses these wood chippers to convert the logs and branches into one of five different types of wood mulch (Nature's Blanket, Hardwood Mulch, ABC's Eco-Blend, Whole Tree Wood Chip Mulch or Color Enchanted Mulch). The majority of the different types of mulch are sold to retailers who sell the mulch under their own brand names. For example, ABC Industries sells much of the mulch to XYZ Company, which bags the mulch and sells the mulch under the XYZ name. ABC Industries also sells some of the mulch directly to real estate developers and landscapers. Stip. 8.

9. Whenever ABC Industries sells the mulch itself to real estate developers and landscapers, ABC Industries charges Illinois Retailers' Occupation Tax. When ABC Industries sells the mulch to other retailers (such as XYZ), ABC Industries obtains a sale for resale exemption certificate. Stip. 9.
10. ABC Industries will also accept branches and lumber from other, unrelated tree cutting companies; it is industry standard that a tree cutting company is required by the customers to remove all felled tree material. One of the ongoing issues facing the tree cutting companies is finding a place to dispose of felled tree material, and ABC Industries provides a service to other tree cutting companies (as well as ABC BUSINESS) by accepting the felled tree material. ABC BUSINESS never pays for felled trees from other tree cutting companies; since the tree cutting companies are obligated to find a place where they can "dump" their truckloads of trees, ABC BUSINESS is in fact providing a service to the tree cutting companies.

Conclusions of Law:

The Use Tax Act, 35 ILCS 105/1 *et seq.* (hereinafter referred to as the "UTA") imposes a tax upon the "privilege of using in this state tangible personal property purchased at retail from a retailer." *Id.* at 105/3. The UTA was passed to complement and prevent evasion of the Retailers' Occupation Tax Act. Needle Co. v. Department of Revenue, 45 Ill. 2d 484 (1970). On March 24, 2011, the Department issued Notices of Tax Liability assessing use tax upon ABC Business for the purchase of forestry equipment including skidders (machinery to remove felled trees from a cutting site to the road), feller bunchers (machinery used to stack logs after cutting), and various trucks and other heavy machinery. 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.*,

which 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 (1st 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 (5th Dist. 1986). Testimony alone is not enough. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill. App. 3d 203 (1st 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 (4th Dist. 1990).

APPLICABILITY OF THE MANUFACTURING AND MACHINERY EQUIPMENT EXEMPTION

In the instant case, ABC Business ("taxpayer") claims that the purchase of forestry equipment described above is exempt from use tax under 35 ILCS 105/3-5(18) which provides an exemption from use tax for "manufacturing and assembling machinery and equipment used primarily in the process of manufacturing or assembling tangible personal property for wholesale or retail sale or lease ...[.]". This is commonly known as the "manufacturing machinery and equipment exemption." The statute is an exemption statute, and, as such, it is an exception to the general rule that property purchased for use in Illinois is taxable. Taxation is the rule; tax exemption is the exception. Rogers Park Post No. 108, American Legion v. Brenza, 8 Ill. 2d 286 (1956). Every presumption is against the intention of the statute to exempt property from taxation and the burden of sustaining the right to an exemption rests upon the party seeking it;

the taxpayer must clearly show that the specific property for which the exemption is claimed is within the contemplation of the statute. Reeser v. Koons, 34 Ill. 2d 29 (1966).

Regulations promulgated by the Department pursuant to the UTA clarify that 35 ILCS 105/3-5(18) exempts from use tax only machinery and equipment used primarily in the manufacturing or assembling of tangible personal property for sale or lease. "Thus, the use of machinery and equipment in any industrial, commercial or business activity which may be distinguished from manufacturing or assembling will not be an exempt use and such machinery and equipment will be subject to tax." 86 Ill. Admin. Code, Ch. I, section 130.330(b)(1).

This case proceeds upon a stipulation of facts entered into by the parties. In paragraph 3 of the stipulation, the taxpayer describes business activities it is engaged by its customers to perform as follows: "to trim, cut and remove trees." In its brief, the taxpayer elaborates upon its description of the activities in which it is engaged describing them as akin to "forestry and logging activities" and activities that are properly classified as "production agriculture." Taxpayer's Brief, section A, 2.¹ As previously noted, the application of the manufacturing machinery and equipment exemption prescribed by section 105/3-5(18) of the UTA is governed by the Department's regulation 130.330, 86 Ill. Admin. Code, ch. I, section 130.330. Subdivision (b) of this regulation expressly enumerates activities that do not constitute manufacturing. With respect to the activities the taxpayer indicates it is engaged in, namely "forestry and logging", subdivision (b) (4) of regulation 130.330 states the following:

Manufacturing does not include extractive industrial activities. Mining, logging and drilling for oil, gas, and water neither produce articles of tangible personal property nor effect any significant or substantial change in the form, use or name of the materials or resources upon which they operate. Emphasis added.

86 Ill. Admin. Code, ch. I, section 130.330(b)(4).

¹ The taxpayer's brief contains unnumbered pages, but is divided into sections. These sections are cited in lieu of page numbers.

The taxpayer also states that it is engaged in "production agriculture." Taxpayer's Brief, section A, 2. With respect to such activities, subdivision (b) (6) of regulation 130.330 states the following:

Agricultural, horticultural, and related, similar or comparable activities, including commercial fishing, bee keeping, production of seedlings or seed corn and the development of hybrid seed, plants or shoots are not manufacturing or assembling and, accordingly, machinery and equipment used in such activities is subject to tax.

86 Ill. Admin. Code, ch. I, section 130.330(b)(6)

As is evident from the foregoing, the express text of the applicable regulation governing the application of the manufacturing machinery and equipment exemption addresses what activities are encompassed by the exemption. This regulation expressly indicates that the activities in which the taxpayer is engaged, namely "logging" and "production agriculture" are not eligible for the exemption. 86 Ill. Admin. Code, ch. I, section 130.330(b)(4), (6). Based upon the foregoing, I conclude that the taxpayer does not qualify for this exemption and, as a consequence, has failed to rebut the Department's presumptively correct determination that the manufacturing machinery and equipment exemption is inapplicable in the instant case.

The taxpayer further contends that its activities constitute manufacturing, even if the taxpayer itself does not produce or manufacture anything because its activities are part of a multi-stage operation involving it and its affiliated corporations that begins with the process of cutting and trimming trees and ends with the conversion of the harvested lumber into wood chips. Taxpayer's Brief, section A, 1. The taxpayer concedes that its sole role in this multi-stage process is to cut and remove trees. Stip. 3. The actual process of converting the lumber into wood chips is handled by ABC Industries, which is an affiliate of the taxpayer. The record indicates that both the taxpayer and ABC Industries are owned by the same individual.

The taxpayer's argument fails to provide a legal basis for the taxpayer's exemption claim under the manufacturing machinery and equipment exemption for several reasons. First, as pointed out by the Department, the exemption prescribed by section 105/3-5(18) is only applicable to manufacturing machinery and equipment "that will be used by the purchaser, or a lessee of the purchaser primarily in the process of manufacturing or assembly of tangible personal property for wholesale or retail sale or lease ...[.]" As pointed out by the Department in its brief:

ABC's use of the Equipment failed to qualify under the express language of the statute. Simply put, ABC was a service provider, not a manufacturer. It neither sold nor manufactured anything. It was paid solely for its services of tree pruning and removal. The fact that affiliated entities may have been involved in manufacturing does not change the result.
Department's Brief at page 4.

In short, the conversion of lumber into wood chips was performed by ABC Industries, and not by the taxpayer. Consequently, to the extent the machinery and equipment the taxpayer purchased was used in a manufacturing process, this use was not undertaken by the taxpayer but by an affiliate of the taxpayer. Since the taxpayer has stipulated that it purchased the machinery and equipment at issue, and has also stipulated that it did not use this machinery and equipment to manufacture anything, the manufacturing machinery and equipment exemption, by its own terms, is inapplicable to the taxpayer's activities.

Implicit in the taxpayer's claim is the unsubstantiated premise that, for purposes of applying the manufacturing machinery and equipment exemption in the instant case, ABC Services, the taxpayer that has been assessed and its affiliated entities should be viewed as a single taxpayer. As previously indicated, the record reveals that ABC Business, ABC Industries and ABC Care, Inc. were all owned by the same individual, John Doe, and were part of a single, integrated production operation. Even assuming that ABC Services and its affiliates constituted

a single integrated business operation to be viewed as a single taxpayer for purposes of applying the manufacturing machinery and equipment exemption, the record in this case is insufficient to support the taxpayer's exemption claim.

The manufacturing machinery and equipment exemption requires that the machinery at issue be used "primarily" in the process of manufacturing. 35 **ILCS** 105/3-5(18). Section (d) of regulation 130.330 entitled "Primary use" recognizes this provision of the statute and provides that:

The law requires that machinery and equipment be used primarily in manufacturing or assembling. Therefore, machinery which is used primarily in an exempt process and partially in a non-exempt manner will qualify for exemption. However, the purchaser must be able to establish through adequate records that the machinery or equipment is used over 50% in an exempt manner in order to claim the deduction.

Id at 130.330(d)(1).

The conclusion that must be drawn from section 35 **ILCS** 105/3-5(18) and regulation 130.330(d)(1) implementing this measure is that in order to claim the exemption, the equipment at issue must be used more than 50% in an "exempt process" such as manufacturing, and not in a non-exempt manner.

As previously noted, as a statutory provision exempting property from taxation, the manufacturing machinery and equipment exemption, 105/3-5(18) of the UTA, must be strictly construed against exemption. Chicago Patrolmen's Association v. Department of Revenue, 171 Ill. 2d 263 (1996). The burden of establishing the right to a tax exemption is on the one claiming the exemption. McMurray College v. Wright, 38 Ill. 2d 272 (1967).

The Department's regulations define the parameters of the "burden" of establishing the right to the manufacturing machinery and equipment exemption for "primary use" of the equipment. The regulation states that the purchaser of the equipment must be able to establish

through adequate records that the machinery and equipment is used over 50% in an exempt manner in order to claim the exemption. 86 Ill. Admin. Code, ch. I, section 130.330(d)(1).

In the instant case, no books, records or other information were offered into evidence to show that any of the tree removal equipment purchased by the taxpayer was used by ABC Industries in the production of wood chips or to show that the production of wood chips was the primary use of this equipment. As a consequence, I find that the record in this case does not contain adequate evidence to show that the machinery and equipment at issue was used over 50% in an exempt manner.

APPLICABILITY OF THE FARM MACHINERY AND EQUIPMENT EXEMPTION

The taxpayer also contends that it does not owe use tax on the purchase of the machinery and equipment 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 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)

Section 105/3-35 of the UTA defines “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 taxpayer's claim to exemption pursuant to section 105/3-5(11), the farm machinery and equipment exemption, is based upon three Department of Revenue letter rulings noted below which address the applicability 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*

In Private Letter Ruling 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 "to 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.² The taxpayer argues that the machinery and equipment at issue in this case is

² General Information Letter No. ST 94-0376 (9/2/94) upon which the taxpayer also relies is identical to General Information Letter No. 94-0432-GIL (10/6/94), noted above.

similar to the equipment addressed in the private letter rulings it has cited and that, accordingly, these rulings provide a legal basis for the taxpayer's exemption claim.

As a threshold matter, it must be noted that section 105/3-5(11) of the UTA and all of the private letter rulings the taxpayer has cited expressly state that the farm machinery equipment exemption is applicable only to farm machinery and equipment that has been "certified by the purchaser to be used primarily for production agriculture or state or federal agricultural programs...[.]" See also 86 Ill. Admin. Code, ch. I, section 130.305(a) which states that: "A purchaser must certify to the use of the equipment to obtain the exemption." The record in this case contains no evidence whatsoever that this prerequisite to the application of the farm machinery and equipment exemption to the taxpayer has been complied with in the instant case. As a consequence, the taxpayer's right to claim the farm machinery and equipment exemption is not supported by the record before me.

Moreover, a careful reading of the private letter rulings upon which the taxpayer seeks to rely indicates that the only item of machinery and equipment expressly addressed in these rulings that is identical to the machinery and equipment at issue claimed as exempt by the taxpayer are "skidders" or equipment used to move logs and trees that have been felled. Consequently, these rulings are not authority for the taxpayer's claim of exemption for its other items of machinery and equipment it purchased.³

Moreover, the private letter rulings the taxpayer has cited must be construed in light of further pronouncements made by the Department concerning the applicability of the farm machinery and equipment exemption to machinery and equipment used in connection with

³ The taxpayer describes some of the machinery and equipment for which exemption is sought as "various trucks." See Stip. 4. These vehicles are not eligible for exemption because regulation section 130.305(h) expressly excludes from exemption motor vehicles required to be registered pursuant to the Illinois Motor Vehicle Code.

logging, forestry and tree removal. 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 02-215-GIL (9/27/02) and General Information Letter ruling number 96-0466-GIL (11/18/96).

The taxpayer and the Department have entered into a stipulation of facts which states that the taxpayer's sole source or revenue arose from providing the services of tree trimming and removal. See Stip. 5. It further states that the taxpayer "provided services only, it did not sell tangible personal property at retail or wholesale ..[.]" *Id.* Because the taxpayer has stipulated that all of its income was from the performance of services, and that it did not engage in the sale of trees or any other horticultural products, the taxpayer 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 and other horticultural products for sale. For this reason, I find that the private letter rulings upon which the taxpayer seeks to rely are inapplicable in the instant case.

The taxpayer's sole legal basis for its claim under the farm machinery and equipment exemption are the private letter rulings noted above. Having determined that these private letter rulings are inapplicable to the facts enumerated in the instant case, and that the taxpayer has not met the prerequisite of section 105/3-5(11) that it certify that the machinery and equipment at

issue is for use in an exempt manner, I find that the taxpayer has failed to rebut the Department's *prima facie* correct determination that the farm machinery exemption is not applicable to the taxpayer's purchases of the machinery and equipment in controversy here.

WHETHER PENALTIES SHOULD BE ABATED FOR REASONABLE CAUSE

The taxpayer also argues 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. See Taxpayer's Brief, subdivision B. Specifically, the taxpayer asserts that its executives "consulted with [the taxpayer's] outside tax accountants, and under the plain language of the exemption for machinery and equipment used in the manufacturing process, both [the taxpayer] and its accountants have concluded that [the taxpayer's] purchases qualify as exempt."

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. Emphasis added.

86 Ill. Admin. Code, ch. I, section 700.400(b)-(c)

Since the promulgation of regulation 130.330 governing the application of the machinery and equipment exemption in 1982 (see 6 Ill. Reg. 15225, December 3, 1982), the law in Illinois has been that equipment used to remove logs and equipment used in “production agriculture” do not qualify for the manufacturing machinery and equipment exemption. 86 Ill. Admin. Code, ch. I, section 130.330(b)(4), (6). Notwithstanding the clarity of the law well preceding, and during the tax period in controversy, the taxpayer suggests that it reasonably believed that the law clearly authorized the exemption the taxpayer has claimed. Taxpayer’s Brief, section B (“under the plain language of the exemption for Machinery and Equipment used in the manufacturing process, both [the taxpayer] and its accountants have concluded that [the taxpayer’s] purchases qualify as exempt.”). However, as noted above, regulation 130.330 expressly denies an exemption for the activities in which the taxpayer states that it is engaged.

In light of the clarity of the language prohibiting the application of the manufacturing machinery and equipment exemption to the very activities the taxpayer claims it undertook during the tax period in controversy, I do not find credible the taxpayer’s claim that its actions were guided by the words and effect of the plain language of the law upon which it claims to have relied. For this reason, I conclude that there could have been no good faith effort to determine the taxpayer’s proper liability according to the pertinent statute and regulations

through a careful review of the law by a competent professional or even based upon a reading of the relevant law by the taxpayer's owner and other executives. Indeed, given the fact that the language in regulation 130.330 noted above directly contradicts the position the taxpayer has taken, I conclude that it is doubtful that the anyone connected with the taxpayer ever read all of the relevant legal authority the taxpayer claims to have relied upon. In light of circumstantial evidence contained in the record that the proper application of the machinery and equipment exemption to the taxpayer was never seriously investigated or considered, I find that the taxpayer has provided no basis for the abatement of the penalties assessed upon the taxpayer for reasonable cause.⁴

RECOMMENDATION

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

Ted Sherrod
Administrative Law Judge

Date: July 12, 2013

⁴ The taxpayer also claims that it properly relied upon various letter rulings, noted above, as a basis for claiming the farm machinery and equipment exemption. However, as noted above, the record contains no evidence that the taxpayer ever certified that the machinery and equipment it purchased was for agricultural use as required by the exemption statute, 35 ILCS 105/3-5(11). This noncompliance with the requirements for exemption constituted a failure to exercise ordinary care and prudence in applying the exemption and negates any finding that the taxpayer had "reasonable cause" for failing to timely file and pay based upon it.