



Iowa Department of Revenue

Director: Mark R. Schuling
Hoover State Office Building
Des Moines, Iowa 50319
www.state.ia.us/tax

October 5, 2009

Tom Junge
Iowa Field Director
Iowa-Nebraska Equipment Distributors (I-NED)
1311 50th Street
West Des Moines, IA 50266

Dear Mr. Junge:

Re: Machinery and equipment used in agricultural production and construction.

I am sending you this letter to correct certain inaccurate statements set out in a letter from me to you dated July 2, 2009. I apologize for any consternation or difficulty which those inaccuracies may have caused you.

Iowa Code, § 423.3(8), (2009) exempts from tax the sales price of machinery and equipment "directly and primarily used in production of agricultural products." One matter to note, the rules interpreting and explaining the various agricultural exemptions are now set out in Chapter 226 of the Department's rules. In almost all circumstances, it is preferable to rely on Chapter 226 and not the rules relating to agriculture set out in Chapters 17 and 18. The Department's rules have the force of law and are presumed to be valid, Richards v. Iowa Department of Revenue, 360 N.W.2d 830, 833 (Iowa 1985) and cases cited therein.

Concerning the items of machinery and equipment about which your letter inquires: It has long been established Department policy that a tractor or backhoe used to repair tile or tile drainage is not be used in agricultural production; see the list set out in subrule 701 IAC 222.19(4) "tiling machinery and equipment." An excavator or bulldozer used to remove trees from a fence line would be equipment used in agricultural production, but only if this work were done on a fence line which was already in existence. An excavator used to remove trees under any other circumstances would most likely be involved in activity occurring prior to agricultural produc-

October 5, 2009

Tom Junge

Page 2

tion, an activity of the type not exempted by the statute and rule under study.

Concerning an excavator used to straighten a creek, a bulldozer used to construct or repair a waterway, a box scraper used to repair a waterway, or a bulldozer used to repair or construct a terrace, all these activities would involve work done prior to the beginning of agricultural production or work only indirectly related to agricultural production. An excavator used to straighten a creek, a bulldozer used to construct a waterway, and a bulldozer used to construct a terrace would all be doing work in advance of the beginning of agricultural production. This would be true even if, somehow, the creek or waterway were directly used in agricultural production. A bulldozer or box scraper used to repair a waterway, or a bulldozer used to repair an existing terrace, would not be used directly in agricultural production but only indirectly. The Department's position on this matter is similar to its long-standing position that repairs to production-line equipment used by a manufacturer are not services "directly" used in processing but are one step removed from that activity, and thus their sales price is not exempt from tax.

Before I answer your two additional questions, recall that the School Infrastructure Local Option Tax (SILO) no longer exists. It was essentially "folded" into the state sales tax by way of a one percent increase in that tax. The rental of equipment to contractors for use on or connected with new construction, reconstruction, alteration, expansion, or remodeling, is exempted from state sales tax by § 423.3(27) of the Code and from local option sales tax (LOST) by § 423B.5 of the Code. The standard is "on or connected with," not "directly and primarily." The sales price of rental equipment not used in new construction, etc., if not otherwise exempted from tax, is subject to a six percent rate for state sales tax, and, where applicable, a one percent rate for local option sales tax.

In closing, I must issue my usual warning. Please be advised that this letter is an informal opinion and is only applicable to the factual situation referenced and to the statutes in existence at the time of issuance. Because of this, the Department

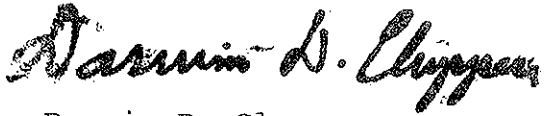
October 5, 2009

Tom Junge

Page 3

could, in the future, take a position contrary to that stated in the letter.

Sincerely,

A handwritten signature in black ink that reads "Darwin D. Clupper". The signature is written in a cursive style with a large, prominent initial "D".

Darwin D. Clupper
Tax Specialist, Policy Section
Compliance Division
515-281-3670