

04-0505  
Audit  
Signed 09/12/2005

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)		
	)	<b>ORDER</b>	
Petitioner,	)	Appeal No.	04-0505
	)		
v.	)	Account No.	#####
	)		
AUDITING DIVISION	)	Tax Type:	Sales Tax
OF THE UTAH STATE TAX	)		
COMMISSION,	)	Tax Year:	2002
	)		
Respondent.	)	Judge:	Davis

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**Presiding:**

G. Blaine Davis, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER REPRESENTATIVE

For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General  
RESPONDENT REPRESENTATIVE 2, from the Auditing Division  
RESPONDENT REPRESENTATIVE 3, from the Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on January 25, 2005.

At issue in this case is whether the purchase of a Caterpillar 416C backhoe loader qualified for the sales and use tax exemption for sales of tangible personal property used or consumed primarily and directly in farming operations.

The year at issue is 2001.

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PETITIONER ("PETITIONER") or ("Petitioner") is a limited liability company that registered in Utah on September 11, 2001 with its principal address in CITY, Utah.

Petitioner and related companies own approximately 1710 acres of land in CITY Utah spread across several different parcels. Petitioner has developed a separate twenty-two acres into a residential subdivision.

On March 28, 2002, Petitioner purchased a Caterpillar 416C backhoe loader for a price of \$\$\$\$\$. Petitioner presented an exemption certificate to the seller indicating that the equipment was exempt from sales tax based upon the agricultural exemption.

On March 10, 2004, the Auditing Division (Respondent) issued a Statutory Notice to Petitioner for Sales and Use Tax in the amount of \$\$\$\$\$, plus interest, on the purchase of the Caterpillar 416C backhoe loader.

Petitioner claims that the 416C Caterpillar Backhoe Loader has been "solely used for purposes of improving agricultural lands which are used either for raising beef cattle for sale, production of agricultural products raised for sale, or raising nursery trees and shrubs held for future sale to the public." Additionally, "[a]ll of the properties are leased to local cattlemen or farmers who use the property solely for the grazing of cattle, raising of agricultural crops, or the raising of nursery stock." (Feb. 15, 2004 letter.)

Petitioner does not own any cattle, it does not produce an agricultural products for sale, and it does not raise seedlings for future sale. Three acres of Petitioner's property owned by Petitioner are used to grow seedlings owned by COMPANY. Petitioner does not own the seedlings.

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For 2002, the year Petitioner purchased the Caterpillar 416C backhoe loader, the income tax return of Petitioner shows "Equipment Rental Income" of \$\$\$\$\$. For 2003, the income tax return of Petitioner shows "Equipment Rental Income" of \$\$\$\$\$.

In 2001, Petitioner did not report any farm income on its federal or state income tax returns. Those returns state that its principal business activity is investments and its principal product or service is real estate. It did not file a Schedule F (Farm Income and Expense Statement).

In 2002, which is the year at issue, Petitioner did not report any income on its federal income tax return, and it did not file a Schedule F.

In 2003, Petitioner claimed on its federal return that its principal business activity is investments and its principal product or service is real estate. It did file a Schedule F showing income of \$\$\$\$\$ from the sale of farm products, and showing its principal product as crop-sharing.

#### APPLICABLE LAW

Utah Code Ann. §59-12-103(1) imposes sales and use tax and provides in relevant part as follows:

- (1) A tax is imposed on the purchaser as provided in this part for amounts paid or charged for the following transactions:
  - (a) retail sales of tangible personal property made within the state.

Utah Code Ann. §59-12-104(20) provides for an exemption for personal property used or consumed primarily and directly in farming operations, and states in relevant part as follows:

- (20)(a)(i) sales of tangible personal property used or consumed primarily and directly in farming operations, including sales of irrigation equipment and supplies used for agricultural production purposes, whether or not they

become part of real estate and whether or not installed by farmer, contractor, or subcontractor, but not sales of:

(A) machinery, equipment, materials, and supplies used in a manner that is incidental to farming, such as hand tools and maintenance and janitorial equipment and supplies;

(B) tangible personal property used in any activities other than farming, such as office equipment and supplies, equipment and supplies used in sales or distribution of farm products, in research, or in transportation; or

(C) any vehicle required to be registered by the laws of this state, without regard to the use to which the vehicle is put;

Utah Administrative Code Rule R865-19S-49(C) provides as follows:

C. The sales and use tax exemption for sales of tangible personal property used or consumed primarily and directly in farming operations applies only to commercial farming operations, as evidenced by the filing of a federal Farm Income and Expenses Statement (Schedule F) or other similar evidence that the farm is operated as a commercial venture.

#### DISCUSSION

Although Petitioner's representative testified that the Caterpillar 416C backhoe loader was purchased primarily for farming operations, there is very little evidence to support that assertion. Petitioner does lease some or all of its land to others who may be actively engaged in commercial farming operations, that does not mean that Petitioner is engaged in those same commercial farming operations. For 2002, the year the backhoe loader was purchased, the only income shown on the income tax return of Petitioner, was from equipment rentals and the sale of water shares. For 2003, the year after the backhoe loader was purchased, the only income on the tax return was for equipment rental plus \$\$\$\$ from crop-sharing.

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Based upon the income tax returns filed by Petitioner, it appears clear that the primary use of the Caterpillar 416C backhoe loader was to lease it to other persons or businesses. This was just an equipment leasing function.

Petitioner also did not file a federal Farm Income and Expense Statement (Schedule f) as required by the Rule. Petitioner has not presented evidence which persuades the Commission that at the time Petitioner purchased the Caterpillar 416C backhoe loader, the real property was being operated as a commercial venture. Further, Petitioner did not deduct on its federal tax return any expenses related to the Caterpillar 416C backhoe loader, including depreciation expense.

#### DECISION AND ORDER

Based upon the foregoing, the Commission hereby determines that the Caterpillar 416C Backhoe Loader was not purchased for use in commercial farming operations. The audit assessment made by Respondent is therefore affirmed, and the Petition for Redetermination filed by Petitioner is hereby denied. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission  
Appeals Division  
210 North 1950 West  
Salt Lake City, Utah 84134

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Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

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G. Blaine Davis  
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION.

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Palmer DePaulis  
Commissioner

Marc B. Johnson  
Commissioner

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