



CLAUGUS FAMILY FARM LP, (et.
 al.),)
)
 Appellant(s),)
)
 vs.)
)
 PATRICIA HARRIS, TAX)
 COMMISSIONER OF OHIO, (et.)
 al.),)
)
 Appellee(s).)

CASE NO(S). 2020-740

 (SALES TAX)
 DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CLAUGUS FAMILY FARM LP
 Represented by:
 DAMION M. CLIFFORD
 ARNOLD & CLIFFORD LLP
 115 W. MAIN STREET
 SUITE 400
 COLUMBUS, OH 43215

For the Appellee(s) - PATRICIA HARRIS, TAX COMMISSIONER OF OHIO
 Represented by:
 CHRISTINE T. MESIROW
 ASSISTANT ATTORNEY GENERAL
 OFFICE OF OHIO ATTORNEY GENERAL
 30 EAST BROAD STREET, 15TH FLOOR
 COLUMBUS, OH 43215

PATRICIA HARRIS, TAX COMMISSIONER OF OHIO
 Represented by:
 RAINA M. NAHRA BOULOS
 ASSISTANT ATTORNEY GENERAL
 OHIO ATTORNEY GENERAL
 30 EAST BROAD STREET, 25TH FLOOR
 COLUMBUS, OH 43215

Entered Tuesday, May 21, 2024

Ms. Clements and Ms. Allison concur. Mr. Harbarger not participating.

The appellant, Claugus Family Farm LP (“CFF”), appeals from a final determination of the Tax Commissioner affirming a use tax assessment issued for the purchase of a 2015 Mercedes-Benz utility vehicle. We decide the matter upon the notice of appeal, the transcript certified by the Commissioner pursuant to R.C. 5717.02, this Board’s hearing record, and any written arguments.

BACKGROUND

The Commissioner assessed use tax on CFF's purchase of a Mercedes-Benz utility vehicle. CFF did not pay sales tax on the transaction at the time of purchase and contended that the vehicle was exempt from taxation because it was directly used in farming. Upon review of the purchase, the Department of Taxation performed an audit and ultimately assessed the use tax. Dissatisfied with the result, the taxpayer filed a petition for reassessment with the Commissioner. CFF waived its hearing and provided documentation purporting to demonstrate its use. After reviewing the documentation CFF provided, the Department concluded that the taxpayer did not prove the exempt status of the vehicle and assessed use tax.

In her final determination, the Commissioner concluded that the taxpayer had not provided sufficient evidence that the Mercedes-Benz was used primarily in the business of farming in accordance with R.C. 5739.02(B)(42)(n). On appeal to this Board, the taxpayer argued the Mercedes-Benz is primarily used for farming operations. At the hearing before this Board, Alexander Kindler testified that he works as a consultant forester for CFF and advises how it should manage its forests and timber business. Bruce Claugus, Managing General Partner of CFF, testified as to the use of the Mercedes-Benz. He alleged that the vehicle was a modified version of a military vehicle. Mr. Claugus asserted that the Mercedes-Benz was used to allow people to cross the terrain of the farm to complete activities such as monitoring trees for health and parasites, treating trees with pesticides, and maintaining equipment. He asserted that the Mercedes-Benz was used to pull a chipper or mower and could carry equipment such as chemicals, chainsaws, and marking paint. Mr. Claugus testified that the vehicle was used in farming 95% percent of the time and for non-farming 5% of the time. The taxpayer submitted many exhibits, including copies of its I.R.S. Form 1040 Schedule F (Profit or Loss from Farming) for 2005 through 2018, copies of its

initial applications for Current Agricultural Use Valuation (CAUV) and renewals for various years, Forest Management Plans prepared in 2015 and 2019, handwritten notes regarding past harvests, maps of the farm, and photographs of the Mercedes-Benz.

STANDARD OF REVIEW

In an appeal of the Commissioner's final determination, the Ohio Supreme Court has held that the Commissioner's factual findings are presumptively valid, and a taxpayer challenging such findings must rebut the presumption by establishing a clear right to the requested relief. *Alcan Aluminum Corp. v. Limbach*, 42 Ohio St.3d 121, 537 N.E.2d 1302 (1989); *Belgrade Gardens, Inc. v. Kosydar*, 38 Ohio St.2d 135, 311 N.E.2d 1 (1974). A taxpayer must present credible evidence establishing in what manner and to what extent the Commissioner's determination is in error. *Federated Dept. Stores, Inc. v. Lindley*, 5 Ohio St.3d 213, 450 N.E.2d 687 (1983); *see also Kern v. Tracy*, 72 Ohio St.3d 347, 650 N.E.2d 428 (1995). When no competent and probative evidence is presented by the appellant to show that the Commissioner's findings are incorrect, this Board must affirm the Commissioner's findings. *Hatchadorian v. Lindley*, 21 Ohio St.3d 66, 488 N.E.2d 145 (1986).

ANALYSIS

Pursuant to R.C. 5739.02, an excise tax is levied upon all retail sales made in Ohio. By virtue of R.C. 5741.02, a corresponding tax is imposed upon the storage, use, or consumption in this state of any tangible personal property or the benefits realized in this state of services provided, with it being the obligation of the user to file a return and remit tax on the purchase of such items when tax was not paid to a seller. R.C. 5741.12.; *see also Quinter v. McClain*, BTA No. 2022-431, 2022 Ohio Tax LEXIS 2370 (Oct. 24, 2022). The legislature has also provided numerous exemptions and exceptions to the collection of sales tax, and, through R.C. 5741.02(C)(2), has mandated that if the acquisition of an item within the state would not be subject to tax, then the item's use is correspondingly not subject to tax. *See Quinter*.

The farming exemption set forth in R.C. 5739.02(B)(42)(n) is not a status exemption. Further it is not automatic to persons or entities that own farmland, acreage, crops, or livestock. In order for a vehicle to be eligible for the farming exemption, three prerequisites must be met. *See* R.C. 5739.02(B)(42)(n) and Ohio Adm.Code 5703-9-23. First, the person or entity must farm as a “business” as defined by R.C. 5739.01(F). Second, the person must demonstrate that the vehicle or trailer is used directly for specific farming activities, such as growing crops or raising livestock. Third, these farming activities must account for the primary use of the vehicle.

The first requirement for exemption is that a taxpayer be engaged in the business of farming. The Final Determination stated that CFF was not engaged in business, because it has not made any sales or reported any income since tax year 2011. Beginning in 2012, CFF indicated that it did not materially participate in the operation of the business on its Profit or Loss from Farming Schedule F forms. Exhibit 10. CFF asserts that it is normal for a timber farm to go several years between sales, as trees take time to mature.

For the second and third factors, the CFF must demonstrate that the vehicle is used directly for specific farming activities and that the activities account for the primary use of the vehicle. Bruce Claugus testified that the Mercedes-Benz is used to drive individuals and supplies around the farm so the individuals can complete tasks such as monitoring the forest, applying chemicals, repairing equipment, and completing other tasks. Additionally, he asserted that the vehicle is used to drag a chipper and mower to areas of the property. This Board has previously held that the use of vehicles for transportation around a farm, as well as general uses such as delivering parts and cutting and hauling of wood and brush, do not constitute direct farming activities. *Topola v. Levin*, BTA No. 2011-K-4549, 2012 Ohio Tax LEXIS 5444 (Nov. 13, 2012). This Board has further found that if an item’s primary use is transportation, it is not exempt under R.C. 5739.02(B)(42)(n). The Mercedes-Benz is used primarily for these purposes and not directly in farming.

Finally, and most crucially, CFF did not submit documentation such as use logs or mileage logs to support Mr. Claugus' testimony regarding how often and for what purpose the vehicle was used. Mr. Claugus alleged the vehicle was used at the farm but did not specify how often it was used. CFF did not provide sufficient evidence to support the claim that the Mercedes-Benz qualified for exemption. Therefore, we find the taxpayer failed to provide probative and credible evidence supporting the exemption.

CONCLUSION

For the foregoing reasons, this Board finds that the appellant has failed to overcome the presumption in favor of the Commissioner's determination. Accordingly, the Commissioner's decision must be, and hereby is, affirmed.

BOARD OF TAX APPEALS		
RESULT OF VOTE	YES	NO
Mr. Harbarger		
Ms. Clements	<i>AC</i>	
Ms. Allison	<i>KLA</i>	

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.



Kathleen M. Crowley, Board Secretary