

CASE NO. A06-1645

STATE OF MINNESOTA

IN SUPREME COURT

Custom Ag Service of Montevideo, Inc,)
)
 Relator,)
)
 v.)
)
 Commissioner of Revenue,)
)
 Respondent.)
)
)

RELATOR'S REPLY BRIEF

ATTORNEY FOR RELATOR:

ATTORNEY FOR RESPONDENT:

PEMBERTON, SORLIE, RUFER
& KERSHNER, P.L.L.P

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I. Use tax was improperly assessed on Custom Ag Services of Montevideo, Inc. because the wet holding component and conditioning component are farm machinery under Minnesota Statutes § 297A.01, Subd. 15.

The Commissioner of Revenue's (hereinafter "Commissioner") "use tax" argument is a red herring because it is not applicable to this case because sales and use tax tax the same items. See Morton Bldgs., Inc. v. Comm'r of Revenue, 488 N.W.2d 254, 257 (Minn. 1992). Use tax was not properly assessed on Custom Ag Services of Montevideo, Inc.'s (hereinafter "Custom Ag") purchase of the materials to construct the grain drying systems because the grain drying systems are farm machinery. The only reason that the use tax issue is brought up in this case is because Custom Ag purchased the materials to construct the grain drying system from out of state. Moreover, the Commissioner's reliance on Morton Buildings, Inc. is not applicable to the instant case because Morton Buildings, Inc., did not involve farm machinery, whereas this case involves farm machinery that was improperly taxed by the Commissioner.

Farm machinery is exempt from the taxes imposed by section 297A of the Minnesota Statutes and use tax is included in section 297A. See Minn. Stat. §§ 297A.69, subd. 1 & 3 (2000) and 297A.14 (2000). Consequently, farm machinery is exempt from use tax. See Minn. Stat. §§ 297A.14 (2000) and 297A.69 subd. 1 & 3 (2000).

Black's Law Dictionary states that use tax is "commonly designed to discourage people from going out of state and purchasing goods which are not subject to sales tax at the point of purchase." Black's Law Dictionary (5th ed. 1979). Use tax and sales tax apply to the same items but the distinction between the two is where the item is

purchased. See Minn. Stat. § 297A.14, Subd. 1 (2000). If the item is purchased in Minnesota, it is subject to sales tax unless specifically exempted. If it is purchased outside the state, it is subject to use tax unless specifically exempted. See Minn. Stat. § 297A.14 (2000). Farm machinery is specifically exempted and is not subject to use tax. See Minn. Stat. § 297A.69, Subd. 1 & 4 (2000).

The grain drying systems are not subject to either use tax or sales tax because they are farm machinery. See Minn. Stat. §§ 297A.69, Subd. 1 & 3 (2000) and 297A.14 (2000). The Commissioner would like this Court to uphold the tax imposed by the Commissioner on the individual component parts of the farm machinery sold by Custom Ag without looking at the function and purpose of the wet holding component and conditioning component. Each piece of farm machinery begins its useful life as something other than farm machinery. Whether it is the steel that forms the shell of a tractor or the steel that comprises the valves of an irrigation system, the steel is not “farm machinery” when it begins its useful life. Only later is it transformed into farm machinery because it is one component part of the farm machinery. Each piece of farm machinery can be broken down into taxable items if each component part is looked at individually and not as a component piece of the farm machinery.

The wet holding component and conditioning component sold by Custom Ag are farm machinery because they are integral parts of the grain drying system, they do not store grain, are used in the harvesting of agricultural products and are used directly and principally in the production for sale of agricultural crops. (See Hellevang Report, A-000081 and Anderson Affidavit, ¶8, A-000018). Consequently, they are farm machinery

and not subject to use tax. See Minn. Stat. §§297A.01, subd. 15 (2000); 297A.14 (2000) and 297A.69, subd. 1 & 3 (2000).

II. Minnesota Statutes § 297A.01, subd. 15 is clear and unambiguous.

It is not Custom Ag's contention that § 297A.01, subd. 15 (2000) is unclear and ambiguous. The statute states that grain bins are taxable. See Minn. Stat. § 297A.01, subd. 15 (2000). However, Custom Ag did not sell grain bins, they sold grain drying systems. (See Anderson Aff. ¶¶ 2, 7 & 8, A-000018-19). Because of this, the Court must apply section 297A.01, Sub. 15 to determine whether the wet holding component and conditioning component are farm machinery. It is Custom Ag's contention that this Court should not apply the statute blindly, without looking at the function and purpose of bins that are used in the wet holding component and conditioning component.

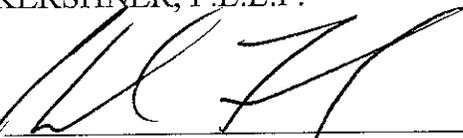
This issue raises the old adage to "not judge a book by its cover." The wet holding component and conditioning component look like grain bins but do not function like grain bins. They do not store grain but do play an integral part of the grain drying process. (See Hellevang Report A-000081).

The Commissioner states that "[t]he periodic, item-specific revisions to the 'farm machinery' definition confirm that the Legislature has been aware of the equipment choices it has made." Commissioner of Revenue's Brief p. 11. This analysis is wrong. The Commissioner also incorrectly states that "the Legislature either named the system ('automatic feeding systems'), or it listed the specific items that were included within the exempt system...." Commissioner of Revenue's Brief p. 12.

The Legislature was aware of the equipment choices it made but it also left the door open for other equipment to be defined as farm machinery under section 297A.01, subd. 15. There are numerous examples of farm machinery that are not listed in section 297A.01, Sub. 15 but are still classified as farm machinery such as tractors, combines, planters, sprayers, etc. Those items are still classified as farm machinery because they are used in seeding, threshing, and production for sale. The farm machinery listed in section 297A.01, Subd. 15 is not exhaustive. If a piece of equipment, machinery, implement, contrivance or accessory is used directly and principally in the production for sale, it is classified as farm machinery. See Minn. Stat. § 297A.01, Sub. 15 (2000).

Respectfully submitted,

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AFFIDAVIT OF MAILING

The undersigned, being first duly sworn, says that two copies of the attached RELATOR'S REPLY BRIEF were served upon:

Ms. Rita Coyle De Meules
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by enclosing the same in an envelope addressed to such party at the above address with postage fully prepaid and by depositing said envelope in the United States Post Office in the City of Fergus Falls, Minnesota, on the 14th day of November, 2006.

Barbara K. McClellan

Subscribed and sworn to before me
this 14th day of November, 2006.

Karel J. Odegard
Notary Public

CRF:mn
2005-4007

