IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

FARMERS COOPERATIVE, a cooperative corporation organized under the laws of the State of Nebraska, Petitioner, vs. STATE OF NEBRASKA, DEPARTMENT OF REVENUE, and LEONARD J. SLOUP, ACTING TAX COMISSIONER OF THE STATE OF NEBRASKA Respondents.	)	Case No. CI 15-1238 **ORDER**

INTRODUCTION

This matter came on for hearing on September 2, 2015, on the appeal of the Petitioner Farmers Cooperative ("Cooperative"), from the March 4, 2015 and March 18, 2015 decisions of Respondent Leonard J. Sloup ("Sloup"), Acting Tax Commissioner of the State of Nebraska, denying Cooperative's requests for redetermination of certain sales and use taxes assessed by Respondent, the Nebraska Department of Revenue ("Department"). Attorney Thomas E. Jeffers appeared for Petitioner. Assistant Attorney General L. Jay Bartel appeared for Sloup and Department. Petitioner did not request a formal hearing, so no proceedings were conducted by Department and there is no bill of exceptions or hearing transcripts. The Court did receive, as part of the record, invoices for the items that Cooperative claims should have been subject to the sales and use tax refund. Arguments were heard, briefs submitted, and the matter was taken under advisement. Being fully advised in the premises, the Court now finds and orders as follows:

FACTS

Cooperative is a cooperative corporation organized under the laws of the State of Nebraska, with its principal place of business located at 208 W. Depot, Dorchester, Nebraska 68343. Cooperative is engaged in the business of buying and selling agricultural products and

inputs, including the purchasing, selling, and storage of grain. Cooperative is also engaged in the business of providing on-farm services and products. (Compl. ¶ 1, Answer ¶ 1).

Department is the agency whose action is at issue in the current case. Further, Department is located at 301 Centennial Mall South, P.O. Box 94818, Lincoln, Nebraska 68509. Sloup is the Acting Tax Commissioner of the State of Nebraska charged with supervising Department. Sloup and Department will collectively be referred to as "Department." (Compl. ¶ 2).

Cooperative alleges that it submitted two refund claims to Department, Refund 1 and Refund 2. With respect to Refund 1, Cooperative alleges it sought refunds for the overpayment of sales and use taxes in connection with numerous purchases of repairs and parts to its agricultural machinery and equipment pursuant to NEB. REV. STAT. § 77-2708.01 (Reissue 2009). Refund 1 was submitted to the Department using Form 7AG-1. The Cooperative also submitted numerous invoices with Refund 1. (Compl. ¶¶ 3, 5). The invoices submitted by Cooperative illustrate Cooperative sought refunds for sales and use tax paid for numerous repair parts for its fleet of Terragators/Floaters ("Floaters"). A Floater is a self-propelled vehicle that is equipped with tanks and nozzles and is used in commercial agricultural for the purpose of applying chemicals and nutrients to crops or the fields in which crops are grown. (Compl. ¶¶ 3-7). Cooperative also sought a refund relating to sales and use taxes paid to repair NH3 (anhydrous) tank trailers ("tank trailers"). Tank trailers are pulled behind tractors during the process of applying nutrients to crops/fields during commercial agriculture. (Comp. ¶ 7).

With respect to Refund 2, Cooperative alleges the Department incorrectly categorized tank trailers as ineligible "motor vehicles," and failed to refund sales taxes Cooperative paid to purchase tank trailers pursuant to NEB. REV. STAT. § 77-2704.36 (Reissue 2009). Specifically, Department stated tank trailers were licensable and thus, were considered motor vehicles. Department denied the refund for sales and use tax Cooperative paid on the purchase of nine tank trailers. (Compl. ¶ 7). (Department's Brief, p. 4).

Cooperative alleges that the sales and use tax it paid to repair its Floaters and tank trailers and to buy tank trailers should be refunded pursuant to NEB. REV. STAT. §§ 77-2708.01, 77-2704.36, 77-101, 77-109, and 77-119 (Reissue 2009). Cooperative further alleges the denial was

invalid because Department failed to identify and incorporate into its final decision which items it approved and disapproved for refunds. (Compl. ¶¶ 5, 8-9).

Conversely, Department alleges the partial denials were done in accordance with the relevant statutes and that Cooperative's interpretation of the relevant statutes is incorrect. Department alleges under the correct interpretation, Cooperative's refund claims were properly denied. Department also states it specifically informed Cooperative that a copy of Cooperative's depreciation schedule was necessary to process Cooperative's refunds. (T36). Cooperative did not provide any depreciation schedules or personal property tax returns to Department.

STANDARD OF REVIEW

This is an appeal pursuant to NEB. REV. STAT. §§ 77-27,127, 77-27,128 (Reissue 2009), and 84-917 (Cum. Supp. 2012). When reviewing the final decision of an administrative agency, the district court conducts the review without a jury de novo on the record of the agency. NEB. REV. STAT. § 84-917(5) (a) (Cum. Supp. 2012); *Betterman v. State of Neb. Dep't of Motor Vehicles*, 273 Neb. 178, 191, 728 N.W.2d 570, 584 (2007). In a review de novo on the record, the district court is required to make independent factual determinations based upon the record, and the court reaches its own independent conclusions with respect to the matters at issue. *Schwarting v. Nebraska Liquor Control Comm'n*, 271 Neb. 346, 351, 711 N.W.2d 556, 561 (2006). To the extent the interpretation of statutes and regulations is involved, questions of law are presented, in connection with which an appellate court has an obligation to reach an independent conclusion irrespective of the decision made below, according deference to an agency's interpretation of its own regulations, unless plainly erroneous or inconsistent. *Utelcom, Inc. v. Egr*, 264 Neb. 1004, 1007, 653 N.W.2d 846, 850 (2002). The district court may affirm, reverse, or modify the decision of the agency or remand the case for further proceedings. NEB. REV. STAT. § 84-917(6) (b).

ANALYSIS

1. Refund 1

With respect to Refund 1, the Court affirms the decision of the Department. The central issue raised by Cooperative's appeal of Refund 1 is the interpretation of NEB. REV. STAT. § 77-2708.01, which provides:

> (1) Any purchaser of **depreciable repairs or parts** for agricultural machinery or equipment used in commercial agriculture may apply for a refund of all of the

> Nebraska sales or use taxes and all of the local option sales or use taxes paid prior to October 1, 2014, on the repairs or parts.
> (2) The purchaser shall file a claim within three years after the date of purchase with the Tax Commissioner pursuant to section 77-2708. The information provided on a tax refund claim allowed under this section may be disclosed to any other tax official of this state.

Id. (emphasis added). Specifically, both parties argue what constitutes "depreciable repairs or parts." This is a case of first impression in Nebraska. Moreover, there is no relevant case law discussing the interpretation of the disputed phrase in § 77-2708.01.

Statutory language is to be given its plain and ordinary meaning, and an appellate court will not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous. In discerning the meaning of a statute, a court determines and gives effect to the purpose and intent of the Legislature as ascertained from the entire language of the statute considered in its plain, ordinary, and popular sense. If the language of a statute is clear, the words of such statute are the end of any judicial inquiry regarding its meaning. A court will construe statutes relating to the same subject matter together so as to maintain a consistent and sensible scheme, giving effect to every provision. *Archer Daniels Midland Co. v. State*, 290 Neb. 780, 788, 861 N.W.2d 733, 739-40 (2015) (internal citations omitted).

Moreover, an appellate court can examine an act's legislative history if a statute is ambiguous or requires interpretation. *Dean v. State*, 288 Neb. 530, 538, 849 N.W.2d 138, 147 (2014). In construing a statute, "a court looks to the statutory objective to be accomplished...A court must then reasonably or liberally construe the statute to achieve the statute's purpose, rather than construing it in a manner that defeats the statutory purpose." *Dean*, Neb. at 538, 849 N.W.2d at 146-47 (internal citations omitted). The fundamental objective of statutory interpretation is to ascertain and carry out the Legislature's intent. An interpretation that is contrary to a clear legislative intent will be rejected. *Id.*

Cooperative argues that the plain and ordinary meaning of "depreciable repairs or parts" within § 77-2708.01 means any repairs or parts that have a determinable life of longer than one year and are applied to agricultural machinery or equipment. Cooperative argues this interpretation is correct when read in the context of Chapter 77. Specifically, Cooperative relies on NEB. REV. STAT. § 77-119 which defines depreciable tangible personal property as, "tangible personal property which is used in a trade or business or used for the production of

income and which has a determinable life of longer than one year." *Id.* Cooperative notes that Department uses this definition to define the phrase "depreciable agricultural machinery and equipment" in NEB. REV. STAT. § 77-2704.36. § 77-2704.36 reads:

> Sales and use tax shall not be imposed on the gross receipts from the sale, lease, or rental of **depreciable agricultural machinery and equipment** purchased, leased, or rented on or after January 1, 1993, for use in commercial agriculture. For purposes of this section, agricultural machinery and equipment excludes any current tractor model as defined in section 2-2701.01 not permitted for sale in Nebraska pursuant to sections 2-2701 to 2-2711.

Id. (emphasis added). Therefore, depreciable, as it applies to agricultural machinery or equipment, means any machinery or equipment that has a determinable life longer than one year. Moreover, Cooperative notes that NEB. REV. STAT. § 77-101 states, "[f]or purposes of Chapter 77 and any statutes dealing with taxation, unless the context otherwise requires, the definitions found in sections §§ 77-102 to 77-132 shall be used." *Id.* Thus, Cooperative argues because § 77-101 requires § 77-119 to be used if possible and § 77-119 is used to define depreciable as it relates to agricultural equipment and machinery, § 77-119 should also be used to define what depreciable means as it applies to repairs or parts. Cooperative argues any repairs or parts that have a determinable life of more than one year that have been applied to agricultural machinery or equipment should qualify for a refund. Therefore, Cooperative argues the invoices, showing receipts of repair parts and services, is enough to entitle Cooperative to a full refund of its three refund claims. The Court disagrees.

While Cooperative is correct that § 77-119 is used to define what depreciable means as it applies to machinery and equipment, the Court notes that § 77-119 defines "tangible" personal property. Because agricultural machinery and equipment are "tangible" personal property, it follows § 77-119 can be used to define the phrase "depreciable agricultural machinery and equipment." However, repairs, such as labor and services, are not tangible property. Though § 77-119 could potentially apply to parts, it cannot apply to repairs. Applying § 77-119 to only half of the phrase "depreciable repairs or parts" creates confusion and ambiguity within the statute and is not logical. Moreover, § 77-101 states that the definitions in §§ 77-102 through 77-132 apply to the taxation statutes, "unless the context otherwise requires." Clearly, § 77-119 cannot define the entire phrase "depreciable repairs or parts," meaning the context of § 77-2708.01 requires a different definition of the disputed phrase.

Having determined § 77-119 cannot apply, the Court must now examine the meaning of "depreciable repairs of parts" in the context of a tax refund. The Court notes that the disputed phrase is not defined in Chapter 77, nor is it specifically defined in § 77-2708.01. Dictionaries are often used to ascertain a word's plain and ordinary meaning. *Black's Law Dictionary* does not define depreciable or depreciate, but does define depreciation as, "a reduction in the value or price of something...a decline in an asset's value because of use, wear, obsolesce, or age." *Black Law's Dictionary*, 535 (10th ed. 2014). Moreover, *Black's Law Dictionary* defines depreciable as the adjective form of depreciate. *Id.* Further, depreciation method is defined as "a set formula used in estimating an assets use, wear...[etc., and] [t]his method is useful in calculating the allowable annual tax deduction for depreciation." *Id.* Merriam-Webster's online dictionary defines depreciate as "to lower the price or estimated value of... [or] to deduct from taxable income a portion of the original cost of (a business asset) over several years as the value of the asset decreases." http://www.merriam-webster.com/dictionary/depreciable.

Department argues that from these definitions and in the context of a tax refund, the plain and ordinary meaning of "depreciable repairs or parts" means repairs or parts that "will appreciably prolong the life of the property, arrest its deterioration, or increase its value of usefulness, and are ordinarily capital expenditures for which a deduction is allowed only through the depreciation recovery allowance." (*Nebraska Agricultural Machinery and Equipment Sale Tax Exemption Information Guide ("Information Guide")*, September 30, 2014, p. 3; T48). Department further argues this definition is logical as it is consistent with the Internal Revenue Service's ("IRS") definition of "depreciable," as it relates to repairs or parts of agricultural equipment and machinery. It is also consistent with how the IRS determines whether those repairs or parts are capital expenses subjecting the machinery and equipment to depreciation, or if the repairs or parts are deductible as current, ordinary business expenses.

In examining the IRS's *Farmer's Tax Guide*, the Court notes that the IRS advises that taxpayers can generally "deduct most expenses for the repair and maintenance of...farm property." *Farmer's Tax Guide,* 2015 IRS. Pub. 225 at 20. However, "repairs to, or overhauls of, depreciable property that substantially prolong the life of the property, increase its value, or adopt it to a different use are capital expenses." *Id.* at 20, 34. Moreover, "capital expenses are generally not deductible, but they may be depreciable...and [r]epairs to machinery, equipment,

trucks and cars that prolong their useful life, increase their value, or adapt them to different use...are capital expenses." *Id.* at 24. Further, one can "generally deduct the cost of repairing...property in the same way as any other business expense...[but], if the cost is for a betterment of the property, restores the property, or adapts it to a new or different use...[one] must treat it as an improvement and depreciate it." *Id.* at 38. Department argues that in the tax context, it is clear repairs or parts are depreciable and refundable only if the repairs or parts prolong the life of the property, arrest its deterioration, or increase its usefulness/value, and are thus treated as capital expenses subject to a deduction as a depreciation allowance. However, repairs or parts that merely keep the agricultural machinery and equipment in its ordinary, operating condition are not refundable, because those repairs or parts are deductible as current business expenses. Department argues this distinction is consistent with the IRS and federal income tax treatment of repairs or parts purchased to maintain property used in agriculture and is the only meaning one could derive from the disputed statutory language.

The Court does not agree that with the aid of the above dictionary definitions, one could determine Department's proposed definition of depreciable as it relates to repairs or parts for agricultural machinery and equipment or know that § 77-2708.01 is adopting the IRS's standard of depreciable. Thus, the Court finds the disputed phrase is somewhat ambiguous and requires more interpretation. As previously stated, an appellate court can examine an act's legislative history if a statute requires interpretation. *Dean,* Neb. at 538, 849 N.W.2d at 147.

Reading the legislative history of § 77-2708.01, the sales tax refund for depreciable repairs or parts for agricultural machinery and equipment was part of L.B. 345, 93rd Leg., 1st Spec. Sess. (Neb. 1993-94). The refund for depreciable repairs or parts was added to the refund provision already in place for depreciable agricultural machinery and equipment. The Legislature intended to allow a refund of sales tax paid on repairs or parts for agricultural machinery and equipment to compensate for a personal property tax that specifically affected farmers and their machinery and equipment. Essentially, farmers were already subject to a personal property tax when a farmer initially purchased agricultural machinery or equipment. Then, if that machinery needed repaired and if the purchased repairs or parts qualified as a capital expense, meaning the repaired machinery was now subject to a depreciation allowance, the agricultural machinery was again subject to a personal property tax. The Legislature was attempting to prevent a farmer from

being subject to double taxation, a sales/use tax for repairs done to agricultural machinery/ equipment and a personal property tax applied to the machinery/ equipment once repaired. Thus, the Legislature only intended the sales and use tax paid on repairs or parts to be refundable under § 77-2708.01, if the repairs resulted in the machinery and equipment being depreciated. Several Senators stated this was the aim of the proposed refund. Senator Elmer, proposer of the amendment of the now disputed statute stated:

> Anytime you purchase a piece of farm machinery, you pay the sales tax...or put it on the depreciation schedule as it started out, and now you don't have to pay the sales tax but you have to pay the personal property tax on the piece of machinery. Now, you have a piece of equipment that needs repair. If it is major in nature, those repairs have to be put on the personal property tax depreciation schedule and you also have to pay sales tax on that. Double taxation like that is not very fair, and we would ask the body's indulgence to allow use to attach this amendment to LB 345.

Floor Debate on LB 345, 93rd Leg., 1st Sess., at 71317-18 (Neb. 1993) (statement of Sen. Elmer). Moreover, Senator Wickersham, another supporter of the amendment, stated:

> The difficulty is that currently repair parts on farm machinery and equipment can be subject to double taxation. They can have both a sales tax and personal property tax applied to them that is unlike the treatment of the primary piece of equipment that might be repaired if it's depreciable. And I want to emphasize, we are only talking about depreciable repair parts. The system that is put in place is a rebate system so that we assured that the property goes on someone's personal property tax schedule.

Id. at 7318 (statement of Sen. Wickersham).

Significantly, the Legislature provided that the sales tax refund apply to depreciable repairs or parts, as opposed to an outright exemption, to ensure that taxpayers had to report and pay a personal property tax on the depreciable repairs or parts for which the sales tax refund was claimed. *See Floor Debate on LB 345*, 93rd Leg., 1st Sess., at 71317-18 (Neb. 1993) (statement of Sen. Wickersham) ("[T]he rebate system [for sales tax on agricultural machinery and equipment] worked from the standpoint of making sure that we had accountable purchases of depreciable personal property...[and is] the same reason why the amendment that you have before you calls for a rebate only on depreciable repair parts because that makes that system accountable and, in fact, it is my belief that, that is the only way to make it accountable, and [we] certainly wish it be accountable); *See Id.* at 7333 (statement of Sen. Wickersham) ("I brought it

as a rebate because it was my view that would only properly account for the repairs, the depreciable repairs if we had a rebate system, and assured that the property went onto tax rolls"); *See Id.* at 7340 (statement of Sen. Elmer) ("The major purchases when originally made on capital machinery are exempt. Repairs of a major nature that go on the depreciation schedules are. All this does is put a reportable paper trail type refund process into place for major depreciable repairs for agricultural machinery").

Further, the history of L.B. 345 illustrates the Legislature intended depreciable repairs or parts to be defined in accordance with the IRS's definition of depreciable repairs or parts. Senator Coordsen stated:

> Bear in mind, this is not all major farm equipment. It relies totally upon the definition in the Internal Revenue Service statutes as it applies to that individual piece of equipment within the individual farming operation. So not all what we might interpret as being major repairs does, in fact, enhance the value of that piece of equipment substantially. Therefore, they would never be required by the person preparing the agriculture's income tax form to be depreciated but rather would be taken as an ordinary expense in the year of purchase. Again, to reiterate, what Senator Wickersham is trying to accomplish is a situation where the parts in a major repair are liable for the sales tax, where the parts and labor involved are then required to be depreciated for a period of time that is reckoned to be the life of that repair.

Id. at 7327-7328 (statement of Sen. Coordsen). Senator Coordsen further emphasized this point by stating:

> I would reiterate that two things have to happen. One, it has to be depreciable in trade or business, and two, and number two, and more importantly that repair and the labor associated with it, must appreciably, and I don't know what the measure is, it takes an Internal Revenue Service audit to determine that, appreciably enhance the value of that piece of equipment that it must be depreciated...It is a very narrow double taxation when viewed for what I believe to the intent of all of our personal property tax...personal property tax string of decisions; that insofar as agriculture was concerned, you either paid sales tax or income or property tax, personal property tax, but not both. And yea, in all of those policy decisions, agriculture was treated differently than all other businesses because agriculture took, and we all recognized that, the big hit on personal property tax.

Id. at 7336 (statement of Sen. Coordsen). Moreover, Senator Withem, an opposer of the Elmer/Wickersham, explained the disputed refund as follows:

> the triggering mechanism is whether the repair part or the repair became part of a product that is, in fact, depreciated, and whether or not the tractor or the blade on

> the tractor would be depreciable property on which the owner of it would pay property tax on its depreciated value. That case then they'd get the rebate back. If it was not depreciated, then they wouldn't get the rebate back.

Id. at 7335 (statement of Sen. Withem). Senator Withem suggested an exemption for repairs or parts rather than a refund, but withdrew his proposal in that same floor debate.

Examining the legislative history of the statute, the Legislature intended the sales tax refund on repairs or parts to be available only where a taxpayer established that the repairs or parts caused the agricultural equipment or machinery repaired to be depreciated, subjecting the machinery or equipment to the personal property tax. Moreover, repairs or parts would only cause machinery/equipment to be depreciated if the repairs or parts appreciably prolonged the life of the property, arrested its deterioration, or increased its value of usefulness, and were ordinarily capital expenditures for which a deduction was allowed only through the depreciation recovery allowance. Thus, purchases of repairs or parts, which kept the machinery and equipment in its ordinary operating or usable condition and deductible as current expenses, were not intended to qualify for the sales tax refund in § 77-2708.01. If the Legislature had intended the sales tax paid on all repairs or parts to qualify for the refund, the Legislature would not have qualified the term repairs or parts, within § 77-2708.01, with the word "depreciable."

The Legislative's intent is further confirmed by other language within the disputed statute. For example, § 77-2708.01(2) provides that "[t]he information provided on a tax refund claim allowed under this section may be disclosed to any other tax official of this state." NEB. REV. STAT. § 77-2708.01(2). This provision permits Department to provide sales tax refund claim information to county assessors to permit the assessors to verify that purchases of repairs or parts for which refunds are claimed have been reported as taxable tangible personal property based on the property's depreciated value. This comports with the Legislature's intent that to qualify for a refund on repairs or parts, the repairs or parts must subject the agricultural machinery or equipment to a personal property tax and be put on a depreciation schedule.

Not only does the statute's own provisions and its Legislative history support Department's interpretation of § 77- 2708.01, but the current construction of Chapter 77 also supports Department's interpretation. Effective October 1, 2014, the refund for depreciable repair or replacement parts for agricultural machinery or equipment was replaced with an exemption for any repair or replacements parts for agricultural machinery or equipment used in

commercial agriculture. 2014 Neb. Laws, LB 96, § 3 (codified as NEB. REV. STAT. § 77-2704.64. (Cum. Supp. 2014)). This new statute no longer requires one to pay sales or uses taxes at the time one purchases repairs or parts for agricultural machinery and equipment, and then to subsequently seek a refund. Instead, § 77-2704.64 creates an exemption that now applies at the time one purchases repairs or parts. Further, the exemption now applies to all repairs or parts, not just depreciable repairs or parts. If the Legislature had intended § 77-2708.01 to allow a refund on all sales and use tax paid on all repairs or parts, the Legislature would not have needed to create § 77-2704.64. Moreover, if § 77-2708.01 allowed a complete refund, the Legislature could have amended § 77-2708.01 to just be an exemption at the time of purchase or could have completely repealed § 77-2708.01 after adopting § 77-2704.64, since both statutes, in a different way, would allow a total refund on all sales and use tax paid on repairs or parts. However, the Legislature did neither of these things, indicating that § 77-2708.01 is a narrower refund for only "depreciable" repairs or parts. Currently, the two statutes co-exist, with § 77-2708.01 applying to all purchases made prior to October 1, 2014 and § 77-2705.64 applying to all purchases made after October 1, 2014. Examining the entirety of Chapter 77, Department's interpretation of § 77-2708.01 is logical when also considering § 77-2704.64. The Court finds Department's interpretation of the phrase "depreciable repairs or parts" is the correct interpretation, because it comports with the Legislature's intent, the statue's own provisions, and is logical under the current construction of Chapter 77. Therefore, repairs or parts are depreciable and subject to the refund if they will appreciably prolong the life of the property, arrest its deterioration, or increase its value of usefulness, and are ordinarily capital expenditures for which a deduction is allowed only through the depreciation recovery allowance.

Having determined the applicable definition/standard for the phrase "depreciable repairs or parts" within § 77-2708.01, the Court now turns to Refund 1. Here, Cooperative did not request a formal hearing in connection with its refund claims. Therefore, there is no bill of exceptions or hearing transcripts for this Court to review in relation to Department's findings. Moreover, the Court is not going to remand the matter back to the Department to conduct such findings due to Cooperative's failure to timely request a formal hearing. *See Western Sugar Cooperative Corp. v. Nebraska Dep't of Revenue, et al.*, Case No. CI 13-4376, July 14, 2014 Order. (County District Court Order denying remand of tax refund issue to Department where

Plaintiff failed to request a hearing and holding that this does not violate tax payer's procedural due process since tax payer had the opportunity to request the hearing but chose not to request such hearing).

Further, Cooperative alleges Department was wrong to deny, pursuant to § 77-2708.01, the sales and use tax it paid on depreciable repairs and parts. The refund allowed in § 77-2708.01 is akin to an exemption. Statutes conferring tax exemptions are strictly construed, and one claiming an exemption from taxation must establish entitlement to the exemption. *Omaha Public Power Dist. v. Nebraska Dep't of Revenue*, 248 Neb. 518, 519, 537 N.W.2d 312, 314 (1995). With respect to Refund 1, Cooperative had the burden to prove entitlement to a refund for each item claimed.

The Court notes that while neither the Legislature passed legislation clarifying the phrase "depreciable repairs or parts," nor did Department define this phrase in its regulations, Department did explain what "depreciable repairs or parts" were subject to the refund in its *Information Guide*. The *Information Guide* reads:

> As a general rule, repair and replacement parts are depreciable if they will appreciably prolong the life of the property, arrest its deterioration, or increase its value or usefulness, and are ordinarily capital expenditures for which a deduction is allowed only through the depreciation/cost recovery allowance. However, incidental repairs that merely keep the property in an ordinary operating or useable condition are deductible as current expenses, and the sales tax paid for these parts is not refundable.

(*Information Guide*, September 30, 2014, p. 3; T49). Department's *Information Guide* comports with the definition adopted by this Court as to what sales and use taxes paid on depreciable repairs or parts are entitled to a refund. Moreover, the *Information Guide* is available to those seeking the disputed refund. Farmers are aware that to be eligible for the disputed refund on repairs or parts, the repairs or parts have to be proven depreciable as defined in the *Information Guide*.

Here, Cooperative did not provide evidence to Department that any of the items for which Cooperative sought a refund were "depreciable repairs or parts" as defined in the *Information Guide*. Department specifically informed Cooperative that a copy of Cooperative's depreciation schedule was necessary to process Refund 1. Cooperative did not provide any depreciation schedules or personal property tax returns to permit Department to verify the items

claimed to be eligible for the refund actually qualified as "depreciable repairs or parts." Instead, Cooperative only submitted bare invoices in support of Refund 1. Despite Cooperative not meeting its burden, Department allowed a refund on sales and use tax on items Department felt qualified as "depreciable repairs or parts." Again, due to Cooperative's decision not to request a formal hearing, there is no bill of exceptions or hearing transcripts for this Court to examine with regards to Department's findings. Moreover, Cooperative has still not provided any evidence it is entitled to the tax refund. The Court cannot, based on only the invoices provided by Cooperative, decipher which repairs or parts are depreciable and entitled to a refund. Therefore, based on the current record before the Court, Department's partial denial of Refund 1 is affirmed in its entirety.

2. Refund 2

With respect to Refund 2, the central issue is whether Department incorrectly categorized tank trailers as motor vehicles, because they are "licensable." Cooperative submitted a claim seeking a refund of $1,117.94 for the sales and use tax paid on the purchase of nine tank trailers. Department denied the entire refund claim on the basis that "[l]incensable trailers do not qualify as agricultural machinery and equipment," and therefore, did not qualify for a tax exemption pursuant to NEB. REV. STAT. § 77-2704.36. Department has reviewed this determination and agrees that Refund 2 should have been allowed as a purchase of depreciable agricultural machinery and equipment refundable under § 77-2704.36. (*See* Department's brief). The Court agrees.

Department is revising its *Information Guide* to eliminate reference to licensable trailers among the types of agricultural machinery and equipment that do not qualify for an exemption from sales tax. Because the Court agrees that tank trailers were incorrectly categorized as motor vehicles, and Department agrees to entry of an order allowing Refund 2 in the amount of $1,117.94, the Court reverses Department's denial of Refund 2.

CONCLUSION

With respect to Refund 1, the Court finds Department's interpretation of the phrase "depreciable repairs or parts," within § 77-2708.01, is the correct interpretation, because it comports with the Legislature's intent, the statue's own provisions, and is logical under the current construction of Chapter 77. Moreover, Cooperative did not request a formal hearing in

connection with its refunds. There is no bill of exceptions or hearing transcripts for this Court to review in relation to Department's findings. Moreover, the Court is not going to remand the matter back to Department to conduct such findings due to Cooperative's failure to request a formal hearing. Finally, Cooperative had the burden to prove it was entitled to Refund 1 and did not produce such evidence to Department or on appeal. Thus, Department's denial of Refund 1 is affirmed. However, Department's denial of Refund 2 is reversed, because Department incorrectly categorized tank trailers as motor vehicles and not exempt to a sales tax under § 77-2704.36.

IT IS THEREFORE ORDERED ADJUDGED AND DECREED that the Court affirms the decision of Department's denial of Refund 1, but reverses the decision of Department's denial of Refund 2.

IT IS FURTHER ORDERED that Department is ordered, with respect to Refund 2, to pay Cooperative $1,117.94.

DATED this 21 day of February, 2016.

BY THE COURT:

ANDREW JACOBSEN
DISTRICT COURT JUDGE