

**New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit**

TSB-A-13(14)S
Sales Tax
May 24, 2013

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S120620C

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner, a commercial dog breeder, asks whether the dog food that he feeds to his breeding dogs and their puppies is exempt from sales tax.

We conclude that the dog food fed to breeding dogs and puppies is not exempt from sales tax imposed under Tax Law Section 1105(a) because the exemptions under sections 1105-B and 1115(a)(6)(A) of the Tax Law do not apply to dog breeding.

Facts

Petitioner submits the following facts: Petitioner is a commercial dog breeder who owns and operates a commercial dog breeding kennel in New York. Petitioner purchases dog food to feed to his breeding dogs and their offspring puppies. The puppies are later sold to the general public at retail prices and to dealers at wholesale prices.

Analysis

Tax Law section 1105(a) imposes a sales tax on “the receipts from every retail sale of tangible personal property, except as otherwise provided in this article.” Tax Law section 1105-B exempts from sales tax “supplies” used or consumed directly and predominantly in the production of tangible personal property for sale “by manufacturing, processing, generating, assembling, refining, mining or extracting . . .” However, Tax Law section 1105-B is quite clear as to the types of production activities that qualify for the exemption; the breeding or raising of animals is not encompassed in those enumerated activities. Accordingly, the purchase of dog food by Petitioner that is used to feed breeding dogs and their offspring puppies is not exempt from sales tax under section 1105-B of the Tax Law.

Tax Law section 1115(a)(6)(A) exempts from sales tax retail sales of tangible personal property used or consumed predominantly in the production for sale of tangible personal property by farming. Section 528.7(b) of the Sales and Use Tax Regulations specifically lists in Example 2 that “[t]he breeding of dogs, cats and other pets or laboratory animals is not farming.” Petitioner’s purchase of dog food to feed his breeding dogs and their puppies is not exempt from sales tax under section 1115(a)(6)(A) of the Tax

Law. Furthermore, we conclude that no other exemption applies to the purchase of dog food described here. Accordingly, Petitioner's purchase of such dog food is subject to sales tax.

DATED: May 24, 2013

/S/

DEBORAH R. LIEBMAN
Deputy Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.