

**New York State Department of Taxation and Finance
Office of Counsel**

TSB-A-16(27)S
Sales Tax
August 26, 2016

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S151005A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (Petitioner). Petitioner asks whether it is engaged in a nontaxable farming activity and therefore, is eligible for the sales and use (sales) tax exemption for its farming-related purchases.

We conclude that Petitioner is engaged in a qualifying farming activity for purposes of the sales tax exemption for farming-related purchases.

Facts

Petitioner has a single location in upstate New York. Petitioner raises chickens to produce fertilized, specific-pathogen free eggs for sale to various vaccine manufacturers and educational and research institutions across the country. The eggs are strictly for research and development and vaccine manufacturing purposes and are never sold for human consumption. However, Petitioner has and may donate excess production to a food pantry on occasion. Petitioner also has made occasional *de minimis* sales of traditional crops (soybeans, corn, and hay). However, it is highly unlikely that Petitioner will make any crop sales in the future.

Because of the specific and exact requirements of its customers, the eggs are produced and processed pursuant to strict environmental and handling protocols. The protocols include, but are not limited to the following: housing the chickens in filtered-air positive-pressure housing units; keeping the chickens on a strict dietary schedule; immediately transferring eggs to environmentally-controlled divisions; robotically grading, weighing and sanitizing the eggs; and performing quality checks to make sure that the eggs are effectively fertilized.

Petitioner contracts with various third-party carriers in order to deliver the fertilized eggs under specific environmental conditions. It does not own or operate any vehicles used to deliver its eggs to customers. Further, it does not employ salespersons, employees, or any other independent contractor or agents outside the State of New York.

Analysis

Tax is imposed on the sale, except for resale, of tangible personal property. *See*, Tax Law §§ 1105(a), 1110(a). The Tax Law exempts from sales tax tangible personal property used

or consumed predominantly in the production for sale of tangible personal property by farming. Tax Law § 1115(a)(6)(A). Farming as used herein “includes agriculture, floriculture, horticulture, aquaculture and silviculture; stock, dairy, poultry, fruit, fur bearing animal, . . . and raising, growing and harvesting crops, livestock and livestock products, as defined by [Agriculture and Markets Law § 301(2)];” See, Tax Law § 1101(b)(19); see also 20 NYCRR § 528.7(b)(1). Agriculture and Markets Law § 301(2) defines livestock and livestock products to include, but not be limited to “cattle, sheep, hogs, goats, horses, poultry, . . . , fur bearing animals, wool bearing animals, such as alpacas and llamas, milk, eggs and furs.” Further, 20 NYCRR § 528.7(b)(1), *Example 1* provides that “[b]reeding, raising and feeding livestock, poultry, or other animals which produce a product for sale or are themselves a food product is farming.” Therefore, the definition of farming is not limited to the production of food for human consumption.

Petitioner’s New York farm, as described, is engaged in the activity of farming for purposes of Tax Law § 1115(a)(6)(A)’s exemption from sales tax for qualifying purchases. Raising and harvesting of poultry and poultry products falls within the ambit of farming under Tax Law § 1115(a)(6)(A) and 20 NYCRR § 528.7. Petitioner’s farm raises and breeds chickens that produce eggs that are sold to various vaccine manufacturers and educational and research institutions. Accordingly, Petitioner’s qualifying purchases for these farming purposes are exempt from sales tax.

DATED: August 26, 2016

/S/

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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.