

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (“Petitioner”). Petitioner asks whether his occupation as a dairy cow hoof trimmer exempts from sales tax the purchase of the following: 1) a hoof trimming truck, 2) supplies and tools used to maintain the truck, 3) supplies and tools used to maintain the truck tilt table and chute, 4) supplies and equipment to keep the truck sanitized, 5) cow treatment tools and supplies, 6) office supplies, 7) a tablet to run reports for dairy farmers, 8) protective clothing, and 9) supplies to maintain the garage and the equipment and supplies necessary to clean protective clothing. We conclude that Petitioner’s costs for items 1 - 8 are not subject to sales tax because they fall under the farming exemption in Tax Law § 1115(a)(6)(A). Supplies to maintain the garage and clean protective clothing fall outside of the production cycle and therefore are subject to sales tax.

Facts

Petitioner performs work as a dairy cattle hoof trimmer. He trims the hoofs of dairy cows used in the production of milk, and his only clients are dairy farmers. Cow hoofs require trimming to prevent and cure lameness so that the animals can stand, walk, and eat properly, allowing them to stay active in the milk production process. Petitioner travels to dairy farms and trims the hoofs of the dairy cows using his own equipment and supplies. Petitioner’s truck is exclusively used for hoof trimming and it has agricultural license plates. The truck is only insured to travel to and from dairy farms and repair shops only.

Petitioner’s equipment is mounted permanently on the back of the truck and consists of a hydraulic tilting table with a hydraulic unit, chute, and gates. The tilting table lifts the dairy cow up on its side to allow Petitioner access to the cow’s hoofs. When not in use, Petitioner’s truck is stored in his garage, which additionally houses tools and equipment used to maintain the rig, such as welding equipment. The equipment mounted on Petitioner’s truck is regularly exposed to dairy cow urine and manure, which is highly corrosive. Maintaining the strength of the equipment is necessary to ensure animal safety. In addition to the welding equipment, the garage is equipped with a pressure washer as the truck needs to be sanitized nightly to prevent the spread of diseases between farms.

Petitioner is required to wear protective clothing necessary for the nature of the work including boots, coveralls, hats, gloves, and face shields, as well as protective garments and

headgear used for welding. Petitioner uses a separate washing machine, laundry soap and supplies solely for work gear. He stocks his garage with maintenance supplies for the garage itself. Petitioner purchases office supplies used for the administrative part of the business, including a computer, accounting software, ink, paper, and miscellaneous office supplies. Petitioner also plans to use a tablet with software that will allow him to access the farmers' databases and send reports directly to the farmers on the trim records for each dairy cow.

Analysis

Tax Law § 1105(a) imposes sales tax on the receipts from every retail sale of tangible personal property, except as otherwise provided. 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. *See* Tax Law § 1115(a)(6)(A). Farming “includes agriculture, floriculture, horticulture, aquaculture and silviculture; stock, dairy, poultry, fruit, fur bearing animals, ... 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 product to include, but not be limited to “cattle, sheep, hogs, goats, horses, poultry.”

20 NYCRR 528.7 provides, in relevant part:

- (b)(1) the term *farming* means and includes the following types of farming and activities.
 - (ii) stock, dairy, poultry, fruit, fur-bearing animal, truck and tree farming;

Example 1. Breeding, raising and feeding livestock, poultry, or other animals, which produce a product for sale or are themselves a food product, is farming.

Example 3. An individual who does not own a farm but does own farm equipment which he uses to perform custom work for a commercial farmer may purchase such equipment tax-free since the equipment will be used in farming.

Activities in farming are classified as administration, production, or distribution, but only farming activities that qualify as farm production are eligible for exemption under Tax Law § 1115(a)(6)(A). *See* 20 NYCRR 528.7(c). Administration includes activities such as sales promotion; general office work; credit and collection; purchasing; maintenance; transporting, receiving, and testing of raw materials; and clerical work in production such as preparation of work production and time records. Tangible personal property used in administrative activities that are related to farm production are considered to be used in farm production. *See* 20 NYCRR 528.7(c)(1)(i).

Farm production in the case of animals begins at the beginning of the life cycle. Production ceases when the product is ready for sale in its natural state. 20 NYCRR 528.7(c)(1)(ii). “Production ceases when cattle will be processed into meat, raw milk into butter, cheese or bottled milk, ... by a related industry, whether such industry is owned by the farmer or another.” 20 NYCRR 528.7(c)(1)(ii) Example 1.

Tangible personal property is exempt only when the property is used or consumed predominantly in farm production. *See* TSB-M-00(8)(S). Dairy farming and the tangible personal property purchased predominantly for use in dairy farming qualify for the Tax Law § 1115(a)(6)(A) exemption. Petitioner provides hoof trimming services solely to dairy cows. Therefore, Petitioner’s services are provided as part of the farm production process.

Petitioner’s hoof trimming truck, tilt table, chute and gates, supplies and tools used to maintain truck, tilt table and chute, and cow treatment tools and supplies are all predominantly used in the production phase of farming. Petitioner states that the truck must be sanitized nightly to ensure that diseases are not spread from farm to farm. Sanitizing the truck therefore provides “a pivotal function during the production process in maintaining a controlled environment necessary for production” and therefore qualifies for the Tax Law § 1115(a)(6)(A) exemption. *See Matter of Costco Wholesale Corporation*, Tax Appeals Tribunal, March 6, 2017.

Office supplies, including computers, tablets, ink, and miscellaneous office supplies fall under farming administration activities. However, the purchase of computers qualifies for exemption from state and local sales and use tax if the computer is used predominantly in farm production. *See* TSB-M-00(8)S. A computer is considered to be in farm production when it is used for running reports on animal records, preparing tags to label farm animals, and performing agricultural research, among other uses. *Id.* As previously discussed, Petitioner’s computer is used in accounting for the hoof trimming business and the tablet is used to prepare reports directly for farmers with trim records for cows serviced by Petitioner. Therefore, these uses would qualify these services for the Tax Law § 1115(a)(6)(A) exemption.

Petitioner’s protective clothing required to perform its services would be exempt from sales tax. Petitioner also asked whether laundering charges for such clothing would be exempt. Petitioner has a separate washing machine solely for work gear with laundry soap and supplies. However, unlike the sanitary equipment for Petitioner’s truck, the connection between laundry equipment and supplies and Petitioner’s performing production activities “is too attenuated” to justify the exemption. *See Matter of Costco Wholesale Corporation*, Tax Appeals Tribunal, March 6, 2017. Therefore, Petitioner’s equipment and supplies used to clean the protective clothing fall outside the production cycle and are therefore subject to sales tax.

Finally, Petitioner asks whether the supplies to maintain the garage where his truck is stored are taxable. Although the garage houses the truck that is used predominantly in farm production, the garage itself is not used in the production process. Therefore, supplies purchased to maintain the garage would not fall under the Tax Law § 1115(a)(6)(A) exemption and remain taxable.

DATED: October 27, 2020

/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.