

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-02(2)S
Sales Tax
April 3, 2002

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S010130A

On January 30, 2001, the Department of Taxation and Finance received a Petition for Advisory Opinion from Leslie C. Armstrong, 936 Hervey Sunside Road, Cornwallville, New York 12418.

The issue raised by Petitioner, Leslie C. Armstrong, is whether the purchase of an elk squeeze handling facility, as described below, is exempt from sales and use tax under Section 1115(a)(6) of the Tax Law.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner operates a commercial elk farm in New York. Petitioner breeds and raises elk in order to harvest antler velvet from their antlers. The antler velvet is sold by Petitioner at wholesale in raw form. In 1999, Petitioner purchased a hydraulic elk squeeze, together with the component parts for a related handling system. The handling system consists of free-standing modular partitions and swinging or sliding doors assembled to create holding pens and chutes. These items were delivered to Petitioner's farm in New York. The elk squeeze is a large metal apparatus resembling a cage or pen, approximately 5' 6" in width and over 8' high, which is equipped with padded restraining stocks. The elk squeeze is designed to immobilize an elk by holding the elk between the padded stocks.

Petitioner uses the elk squeeze to immobilize elk while performing artificial insemination and semen collection. The elk squeeze is also used by Petitioner in antler velvet removal and annual tuberculosis testing as required by the State. The elk squeeze is not permanently installed to the realty and can be moved if necessary. The modular accessories that comprise the rest of the handling system are used to guide the elk into the elk squeeze with maximum efficiency, minimize the amount of stress to the animal, and prevent injury to the animal and the technician who performs the various operations on the animal.

Applicable Law

Section 1101(b) of the Tax Law, as amended effective September 1, 2000, provides, in part:

When used in this article for the purposes of the taxes imposed by subdivisions (a), (b), (c) and (d) of section eleven hundred five and by section eleven hundred ten, the following terms shall mean:

* * *

(19) Farming. The term “farming” includes agriculture, floriculture, horticulture, aquaculture and silviculture; stock, dairy, poultry, fruit, fur bearing animal, graping, truck and tree farming; ranching; operating nurseries, greenhouses, vineyard trellises or other similar structures used primarily for the raising of agricultural, horticultural, vinicultural, viticultural, floricultural or silvicultural commodities; operating orchards; raising, growing and harvesting crops, livestock and livestock products, as defined in subdivision two of section three hundred one of the agriculture and markets law; and raising, growing and harvesting woodland products, including, but not limited to, timber, logs, lumber, pulpwood, posts and firewood.

Section 1115(a) of the Tax Law, as amended effective September 1, 2000, provides, in part:

Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

* * *

(6)(A) Tangible personal property, whether or not incorporated in a building or structure, for use or consumption predominantly . . . in the production for sale of tangible personal property by farming. . . .

Prior to September 1, 2000, Section 1115(a)(6) of the Tax Law provided an exemption from tax as follows:

Tangible personal property, except property incorporated in a building or structure . . . for use or consumption directly and predominantly in the production for sale of tangible personal property by farming, including stock, dairy, poultry, fruit, fur bearing animal, graping and truck farming. The term farming shall also include ranching, operating nurseries, greenhouses, vineyard trellises or other similar structures used primarily for the raising of agricultural, horticultural, vinicultural, viticultural or floricultural commodities, and operating orchards. . . .

Section 528.7 of the Sales and Use Tax Regulations provides, in part:

(b) Farming. The term farming means and includes the following types of farming and activities:

(1) raising stock, poultry or furbearing animals;

* * *

(4) operating ranches, nurseries, orchards or vineyards. . . .

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.

* * *

(d)(2) Predominantly means that tangible personal property must be used more than 50 percent of the time directly in the production phase of farming.

Opinion

Petitioner's elk squeeze and related handling system (together the "elk handling system") are used for artificial insemination, health testing, and harvesting of antler velvet for sale. The elk handling system is therefore used directly in the production of tangible personal property for sale by farming. If the elk handling system is used more than 50 percent of the time for these purposes, it is used directly and predominantly in the production of tangible personal property for sale by farming. The elk handling system is not permanently attached to a building or structure. The elk handling system purchased by Petitioner in 1999, therefore, qualified for exemption from sales and use tax pursuant to the provisions of Section 1115(a)(6) of the Tax Law as in effect prior to September 1, 2000, provided the elk handling system was used predominantly for the purposes described above. It should be noted that the purchase of an elk handling system for use predominantly in the manner described in this Advisory Opinion is also exempt under Section 1115(a)(6) as amended effective September 1, 2000.

DATED: April 3, 2002

/s/
Jonathan Pessen
Tax Regulations Specialist IV
Technical Services Division

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.