

**New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau**

TSB-H-80(262)S
Sales Tax
January 6, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S800716A

On July 16, 1980, a Petition for Advisory Opinion was received from Marshall Research Animals, Inc., R.R. Box 91, North Rose, New York 14516.

The issues raised are (1) whether the commercial raising and feeding of dogs and ferrets for sale to laboratories and as pets constitutes farming for purposes of the exemption from State sales and use taxes (imposed under Article 28 of the Tax Law) provided for under section 1115 (a)(6) of the Tax Law and (2) whether the purchase by Petitioner of items which are fed to and consumed by animals in the course of the raising and feeding of such animals, where such animals are sold either as pets or laboratory animals, constitutes a purchase for resale so as to exclude it from the class of sales the receipts from which are subject to tax under Article 28 of the Tax Law.

Section 1105(a) of the Tax Law imposes a tax on the ". . . receipts from every retail sale of tangible personal property" Section 1115(a)(6) of the Tax Law exempts from the operation of such tax the sale of "Tangible personal property... for use or consumption directly and predominantly in the production for sale of tangible personal property by farming" Petitioner contends that its operations constitute farming and that the foregoing exemption is therefore applicable to its purchases of feed for the dogs and ferrets. This position, however, is not tenable in the face of section 528.7(b) of the Sales and Use Tax Regulations which provides, in relevant part, as follows:

"(b) Farming. The term "farming" means raising stock, dairy, poultry, or fur bearing animals, fruit and truck farming, operating ranches, nurseries, greenhouses, or other similar structures used primarily for the raising of agricultural, horticultural or floriculture commodities and operating orchards.

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 2: The breeding of dogs, cats and other pets or laboratory animals is not farming." 20NYCRR528.7(b)

It will be seen from the above definition that "farming" does not include the raising and feeding of pets and laboratory animals, but only of ranch animals and animals used for food or fur. This principle is elucidated in Examples 1 and 2. Contrary to Petitioner's assertions, the fact that Example 1 refers to "breeding, raising and feeding" while Example 2 refers merely to "breeding" is of no consequence with respect to the present question. Petitioner's application of the technical rules of statutory construction to the Examples, as opposed to the definition itself, is inappropriate and unpersuasive. An Example contained in the Regulations represents only a single instance of the application of a general rule; it is not in itself a comprehensive statement of principle.

Petitioner also inquires whether the animal feed purchased by it is purchased for resale. Section 1101(a)(4) of the Tax Law excludes from the definition of retail sale (viz., the type of sale the receipts from which are subject to sales tax) sales of tangible personal property ". . .for resale as such or as a physical component part of tangible personal property. . . ." Petitioner's contention is that the feed is resold to its customers as a "physical component part" of the animals sold . This position does not represent a proper interpretation of the Tax Law. For an item of tangible personal property to constitute a "physical component part" of property sold it is required that detectable amounts of the item be found in the property sold and that the item ". . .retain a physical identity in products offered for resale." Finch, Pruyn & Co., Inc. v. Tully, 69 AD2d 192(1979). It is clear that when food is metabolized by the animal which ingests it, it ceases to retain its physical identity as food. It follows, therefore, that the items in question are not purchased for resale either". . . as such or as a physical component part of tangible personal property. . . ."

Accordingly, receipts from the sale of animal feed to Petitioner are subject to the 4% State sales tax imposed under Article 28 of the Tax Law, as well as any applicable local sales tax.

DATED: December 18, 1980

s/Louis Etlinger
Deputy Director
Technical Services Bureau