

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

TSB-A-85(52)S
Sales Tax
November 8, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S840926A

On September 26, 1984, a Petition for Advisory Opinion was received from Marshall Research Animals, Inc., R.R. Box 91, North Rose, New York 14516.

The issue raised is whether certain items of tangible personal property used or consumed by Petitioner in the operation of its business qualify for exemption from sales and use tax under sections 1105-B, 1115(a)(12) or 1115(c) of the Tax Law.

Petitioner is engaged in the business of raising and selling beagle dogs and ferrets. Petitioner states that the animals are raised in closed colonies, that is, the animals are not purchased outside the colonies but are produced through Petitioner's own breeding program. The animals are all held for resale in the ordinary course of business and are supplied to specific customers at the age, size and of the sex that is requested by the customer.

The items of tangible personal property that Petitioner proposes to exempt from tax are supplies such as food and similar items used by Petitioner in producing the animals.

Section 1105(a) of the Tax Law imposes a sales tax on "The receipts from every retail sale of tangible personal property, except as otherwise provided in this article." Exemptions from this tax are provided for by sections 1105-B, 1115(a)(12) and 1115(c) of the Tax Law.

As of March 1, 1981 section 1105-B of the Tax Law exempts from State 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. . . ."

Section 1115(a)(12) of the Tax Law provides for an exemption from State sales tax for "[m]achinery or equipment for use or consumption directly and predominantly in the production of tangible personal property . . . for sale, by manufacturing. . . ."

Section 1115(c) of the Tax Law provides for an exemption from State sales tax for "[f]uel, gas, electricity. . . and gas . . . [and] electric . . . service. . . for use or consumption directly and exclusively in the production of tangible personal property. . . for sale, by manufacturing. . . ."

Petitioner's inquiry pertains to "supplies" and not machinery, equipment or utilities. Therefore, Tax Law sections 1115(a)(12) and 1115(c) are not germane.

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As to Tax Law section 1105-B, the statute is quite explicit as to the types of production activities that qualify for the exemption; the breeding or raising of animals is not among the enumerated activities. However, Petitioner avers that the raising of animals constitutes a manufacturing process within the meaning of section 1105-B of the Tax Law.

The word "manufacturing" is not defined within the sales and use tax law. However, the ordinary meaning of the word "manufacturing" as contained in Webster's Third New International Dictionary, 1981, is: "1: to make (as raw materials) into a product suitable for use [the wood. . . is manufactured into fine cabinetwork]. . . 2a: to make from raw materials by hand or by machinery. . . b: to produce according to an organized plan and with division of labor. . . ."

Petitioner is not manufacturing beagle dogs or ferrets within the ordinary meaning of "manufacturing". Therefore, its purchases of food and related supplies do not qualify for exemption from tax under section 1105-B of the Tax Law.

Accordingly, receipts from the sale of animal food and similar items to Petitioner are subject to the state sales tax imposed under Article 28 of the Tax Law, as well as any applicable local sales tax.

The issues as to (1) whether the commercial raising and feeding of dogs and ferrets constituted farming and (2) whether the purchase of feed for use in raising such animals qualified for the resale exclusion were addressed in Marshall Research Animals, Inc., State Tax Commission Advisory Opinion, TSB-H-80(262)S.

DATED: August 28, 1985

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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