

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

TSB-A-17(13)S
Sales Tax
July 31, 2017

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION PETITION NO. S170313A

The Department of Taxation and Finance received a Petition for an Advisory Opinion from [REDACTED] [REDACTED] (“Petitioner”). Petitioner asks whether a pellet gun to be used exclusively “to control varmints on a working farm” may be purchased exempt from sales tax. We conclude, based on the facts provided, that such a purchase would be exempt from sales tax.

Facts

Petitioner advises that it operates a “working farm” in New York State. According to its petition, Petitioner will be purchasing a .25 caliber pellet gun “to use 100% of the time to control varmints on [the] farm in the production of tangible personal property for sale by farming.” Specifically, Petitioner indicates that this gun will be used, like other tools used by farmers, to control “pests” and protect crops and/or livestock on the farm.

Analysis

Tax Law § 1105(a) imposes sales tax on the retail sale, except for resale, of tangible personal property (TPP). However, Tax Law § 1115(a)(6)(A) exempts such purchases from sales tax when the TPP is purchased for use “predominantly” in the production of TPP for sale by farming. “Predominantly” means that the TPP must be used or consumed more than 50 percent of the time in the production for sale of tangible personal property by farming. *See* 20 NYCRR 528.7(d)(1). *See also* TSB-A-14(10)S; TSB-M-00(6)S. TPP is defined as “[c]orporeal personal property of any nature.” Tax Law § 1101(b)(6).

As noted above, Petitioner indicates that it will be purchasing a pellet gun for use on its “working farm,” and that this gun will be used “100% of the time to control varmints on [its] farm in the production of [TPP] for sale by farming.” A pellet gun is TPP and thus subject to sales tax per Tax Law § 1105(a). However, based upon Petitioner’s representations that (a) it operates a farm, (b) that this farm produces TPP for sale, and (c) that the gun being purchased will be used exclusively in the production of this TPP,

we find that Petitioner may purchase this gun exempt from sales tax pursuant to Tax Law § 1115(a)(6)(A). Petitioner may claim this exemption by timely providing the vendor of the pellet gun with a properly completed Form ST-125, *Farmers and Commercial Horse Boarding Operator's Exemption Certificate*.

DATED: July 31, 2017

/S/

DEBORAH R. LIEBMAN
Deputy Counsel

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.