



North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

January 12, 2018

[REDACTED]

Re: Private Letter Ruling
Account #: [REDACTED]
FEIN: [REDACTED]

Dear [REDACTED]:

The Department has completed its review of the Form NC-PLR, Request for Private Letter Ruling and attachments for [REDACTED] ("Taxpayer"). The attachments included your letter of February 17, 2017 and the United States Department of Agriculture publication ("USDA Publication") - Waste Storage Facility: Dry Stack Building for Poultry Litter *Alabama Job Sheet No. AL313B*. In making this written determination, the Department has considered the facts and information presented in the written request and the additional information provided to the Department.

This private letter ruling is a written determination issued under N.C. Gen. Stat. § 105-264.2 and applies the tax law to a specific set of existing facts furnished by Taxpayer's representative on behalf of Taxpayer. This written determination is applicable only to the taxpayer addressed herein and as such has no precedential value except to the taxpayer to whom the determination is issued on behalf of the Department.

Overview and Relevant Facts

In your letter you state that, "[p]oultry [l]itter [s]heds are critical to raising healthy birds since they are specifically designed to store poultry manure to prevent run off into ditches and streams until the litter can be applied to crop land" and that they "help prevent wild animals from tracking through the litter and spreading disease." You advise that "[t]he litter is typically spread in late winter, early spring before planting row crops. The top 'cake' of litter must be cleaned out of a poultry house after every flock is cycled out. This practice removes the excessive moisture from the overall bedding. By removing the moisture the environment for raising the bird is improved by:

1. Removing wet litter: Wet litter causes foot pad sores. This creates a problem with raising poultry as it harms growth and performance as it is painful for chickens to walk to feed and water. Foot pad sores also make the feet (paws) unmarketable.
2. Decreases ammonia: Ammonia is greatly reduced by removing the wet top cake layer and moving it to the litter shed. High ammonia causes problems raising birds due to respiratory disease and high ammonia levels can blind birds. Blinded birds cannot find food and water which leads to reduced growth."

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In your letter you provide that, "[t]he official name of the litter shed is a 'Drystack Storage Shed' and most are cost shared under the USDA EQUIP program as a best management practice for environmental protection. These are basically the 'lagoon' of the poultry industry. The cost share program is very specific as to the use of the structure . . . only poultry waste and equipment used in the handling of the poultry waste is permitted under the shed. If this rule is violated, the farmer runs the risk of having to pay back the cost shared amount received by the farmer on the shed. This restriction is for a period of 10 years. After that, the structure may be used for whatever the farmer wishes as the 'debt' is paid."

The USDA Publication provides, in part, the following:

- A pole-barn type structure used to temporarily store poultry litter in an environmentally safe manner.
- Dry stack facilities are engineered to withstand snow and wind loads normally associated with Alabama weather.
- Design features such as post and timber size, post embedment depth, truss design, knee racing, and structural connections are critical to the integrity of the building.
- The Construction Checklist, form AL-ENG-25K, should be reviewed prior to construction so that the landowner and contractor are aware of the required materials, fasteners, and connections.
- All structural wooden components below the roofline of the building and all wood in contact with litter should be pressure treated.
- Posts are specified to have a high level of preservative treatment and may require special order.
- The floor of the dry stack can be compacted soil. However, experience has shown that a concrete floor provides the easiest management of the litter and is often preferred by most operations.

Additionally, the photo of the shed included in the USDA publication gives the appearance that the shed is likely three-sided, has a pitched roof, and the front area is open in the same manner as many traditional sheds found on farmland.

You advise that "[w]e require all farmers purchasing items and claiming exemption from sales tax to complete and sign a North Carolina Form E-595E Streamlined Sales and Use Tax Agreement Certificate of Exemption, and provide their North Carolina farmer's exemption certificate number."

Issue

You ask the following: "[a]ssuming the farmer meets the definition of a 'qualifying farmer' in NC § 105-164.13E(a) and has obtained an exemption certificate number from the Secretary [of the Department of Revenue], would a [p]oultry [l]itter [s]hed used in the poultry farming industry be exempt from sales tax when purchased by a farmer for use in commercial farming" pursuant to N.C. Gen. Stat. § 105-164.13E(a)(8)?

Applicable Statutes and References

Under Article 5 ("Article") of the North Carolina Revenue Act ("Act"), N.C. Gen. Stat. § 105-164.1 *et. seq.*, Subchapter VIII: Local Government Sales and Use Tax, and Chapter 1096 of the 1967 Session Laws, State, local, and applicable transit sales and use taxes are imposed on a retailer engaged in business in the State on the retailer's net taxable sales or gross receipts of tangible personal property, certain digital property, and certain services at the percentage rates listed in N.C. Gen. Stat. § 105-164.4(a). N.C. Gen. Stat. §§ 105-164.3(24), 105-164.3(35), 105-164.3(46), 105-164.4, 105-164.8, 105-467, 105-468, 105-483, 105-498, 105-507.2, 105-509.1, and 105-537.

N.C. Gen. Stat. § 105-164.13E(a) provides that certain "tangible personal property, digital property, and services are exempt from sales and use tax if purchased by a qualifying farmer and for use by the farming operations." For purposes of N.C. Gen. Stat. § 105-164.13E, "an item is used by a farmer for farming operations if it is used for the planting, cultivating, harvesting, or curing of farm crops or in the production

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of dairy products, eggs, or animals." More specifically, N.C. Gen. Stat. § 105-164.13E(a)(8) allows a sales and use tax exemption for "[a]ny of the following items concerning housing, raising, or feeding of animals:

- a. A commercially manufactured facility to be used for commercial purposes for *housing, raising, or feeding animals or for housing equipment necessary for these commercial activities* [emphasis added]. The exemption also applies to commercially manufactured equipment, and parts and accessories for the equipment, used in the facility.
- b. Building materials, supplies, fixtures, and equipment that become a part of and are used in the construction, repair, or improvement of an enclosure or a structure specifically designed, constructed, and *used for housing, raising, or feeding animals or for housing equipment necessary for one of these commercial activities* [emphasis added]. The exemption also applies to commercially manufactured equipment, and parts and accessories for the equipment, used in the enclosure or a structure."

N.C. Gen. Stat. § 105-164.13E(c) provides, in part, that "[a] qualifying item listed in [N.C. Gen. Stat. § 105-164.13E(a)](8) . . . purchased to fulfill a contract with a person who holds a qualifying farmer exemption certificate or a conditional farmer exemption certificate . . . is exempt from sales and use tax to the same extent as if purchased directly by the person who holds the exemption certificate."

The granting of an exemption from taxation is never presumed, Sale v. Johnson, 258 N.C. 749, 129 S.E.2d 465 (1963). Moreover, provisions in a tax statute granting exemptions from the tax thereby imposed are to be strictly construed in favor of the imposition of the tax and against the claim of exemption, Hatteras Yacht Co. v. High, 265 N.C. 653, 144 S.E.2d 821 (1965).

Ruling

Since the statute is strictly construed, the Department must determine whether a poultry litter shed purchased by a qualifying farmer would be exempt from sales and use tax. The sales and use tax exemption provided in N.C. Gen. Stat. § 105-164.13E(a)(8) strictly applies to the housing, raising, or feeding of animals or for housing equipment necessary for one of these activities. Since the dry stack storage sheds referenced in your letter are used to store poultry manure rather than animals or equipment necessary for the housing, raising, or feeding of animals, the exemption provided in N.C. Gen. Stat. § 105-164.13E(a)(8) is not applicable, therefore, tangible personal property sold or purchased to build a poultry litter shed are subject to the general State, applicable local, and applicable transit rates of sales and use tax in accordance with N.C. Gen. Stat. § 105-164.4H, no matter that a shed may be for use by a qualifying farmer for purposes discussed herein.

This ruling is based solely on the facts submitted to the Department of Revenue for consideration of the transactions described. If the facts and circumstances given are not accurate, or if they change, then the taxpayer requesting this ruling may not rely on it. If a taxpayer relies on this letter ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material aspect from the facts and circumstances given in this letter ruling, the letter ruling will not afford the taxpayer any protection. It should be noted that this letter ruling is not to be cited as precedent and that a change in statute, a regulation, or case law could void this ruling.

Issued on behalf of the Secretary of Revenue
By the Sales and Use Tax Division