

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 12-22**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

The applicability of the Tennessee sales and use tax to purchases of equipment by a qualified farmer or nurseryman.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the Department by the taxpayer. The rulings herein are binding upon the Department, and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time. Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

FACTS

[TAXPAYER] (the "Taxpayer"), a [NON-TENNESSEE] corporation, grows and packs [PRODUCE]. The Taxpayer is constructing and equipping a facility (the "Facility") in Tennessee to process and pack [PRODUCE] grown in multiple locations throughout the state. The Taxpayer currently holds a Tennessee Agricultural Sales and Use Tax Certificate of Exemption.

The Facility will be equipped with special machinery used to process and pack the harvested [PRODUCE]. The processing of [PRODUCE] is as follows: [PRODUCE] is dumped from the totes in which it was placed at harvest] into one of two stainless steel wash lines. Water chillers and pulse sanitizing instrumentation that are connected to the wash lines maintain the cool temperature of the water and ensure the produce is not contaminated in the process. From the wash lines, the produce is placed upon one of two conveyor belts and then packed into boxes. Once packed, the boxes run along a conveyor belt and through the ice distribution system, which drops a pre-determined amount of ice into each box. The process concludes when the boxes are conveyed through a box closing machine that seals the boxes before they are palletized and placed in cold storage to await pickup and delivery.

Among the items that the Taxpayer will purchase for use in the Facility are: Stainless Steel Wash Lines; Water Chillers; Pulse Sanitizing Instrumentation; Ice Machines; Ice Storage and Distribution System; Racking; and Office Equipment.

The Stainless Steel Wash Lines contain water that is maintained at a temperature between 34 to 36 degrees Fahrenheit by the water chillers. Essentially stainless steel tubes filled with water, the wash lines allow [PRODUCE] to pass through the system prior to being placed in boxes for shipment to customers. Each [PRODUCE] passes through two such wash lines. In all, there are four Stainless Steel Wash Lines. The Stainless Steel Wash Lines are used 100% of the time in the process of readying the [PRODUCE] for market.

The Water Chillers coupled to the Stainless Steel Wash Lines immerse the produce in water chilled to an exact temperature for a specific period of time. Cold water acts as a cleansing agent, washing the product clean of any dirt and debris contained within the [PRODUCE]. Additionally, maintaining the water at a temperature between 34 to 36 degrees Fahrenheit is necessary to remove field heat from the produce to prevent the [PRODUCE] from spoiling. The Water Chillers are used 100% of the time in the process of readying the [PRODUCE] for market.

Pulse Sanitizing Instrumentation is attached to the Stainless Steel Wash Line. The system consists of a pH and ORP control system, chlorine and acid pumps, pressure switch, electrodes, and recirculation pump. Designed to use the water that runs through the wash lines as a disinfecting agent against pathogens and harmful micro-organisms that may contaminate the produce, the Pulse Sanitizing Instrumentation monitors oxidation reduction potential, the pH of the water, and the parts per million of chlorine and other disinfectants. This oxidation reduction potential is the only practical method available to electronically monitor sanitizer effectiveness. The Pulse Sanitizing Instrumentation is used 100% of the time in the process of readying the [PRODUCE] for market.

The Ice Machines produce approximately five tons of ice each day. Ice is accumulated in a sanitary storage facility, which is made of metal panels. These panels snap together using a cam locking system, making the storage facility modular in design. A modular Racking System within the storage facility makes up the distribution system and conveys the ice to two case ice dispensers, one for each of the two packing lines. The case ice dispensers place ice on the top of each box as it passes on the conveyor belt. The Ice Machines and Ice Storage and Distribution System are used 100% of the time in the process of readying the [PRODUCE] for market.

RULING

Is the following equipment, when purchased by the Taxpayer and installed in the Facility, exempt for Tennessee sales and use tax purposes pursuant to TENN. CODE ANN. § 67-6-207 (2011)?

1. Stainless Steel Wash Lines;
2. Water Chillers;
3. Pulse Sanitizing Instrumentation;
4. Ice Machines;
5. Ice Storage and Distribution System;
6. Racking System;
7. Office Equipment.

Ruling:

The following items, when purchased by the Taxpayer and installed in the Facility, are exempt for Tennessee sales and use tax purposes pursuant to TENN. CODE ANN. § 67-6-207 (2011): Stainless Steel Wash Lines; Water Chillers; and Pulse Sanitizing Instrumentation.

The following items, when purchased by the Taxpayer and installed in the Facility, are not exempt for Tennessee sales and use tax purposes pursuant to TENN. CODE ANN. § 67-6-207 (2011): Ice Machines; Ice Storage and Distribution System; Racking; and Office Equipment.

Note that, in order to make tax-exempt purchases as a qualified farmer or nurseryman, a taxpayer must present its vendor with either a Tennessee Agricultural Sales and Use Tax Certificate of Exemption (or a copy of the wallet-sized exemption card provided by the Department) or a fully completed Streamlined Sales Tax Certificate of Exemption, which must include the exemption number appearing on the Agricultural Sales and Use Tax Certificate of Exemption.

ANALYSIS

Under the Retailers' Sales Tax Act, TENN. CODE ANN. §§ 67-6-101 to -907 (2011), the retail sale of tangible personal property in Tennessee is generally subject to the sales and use tax, unless an exemption applies. TENN. CODE ANN. § 67-6-207 (2011) provides various exemptions for sales

to qualified farmers or nurserymen¹ of certain farm equipment, machinery, and other agricultural items.

In particular, TENN. CODE ANN. § 67-6-207(a)(1) exempts “[a]ny appliance used directly and principally for the purpose of producing agricultural products, including nursery products, for sale and use or consumption off the premises, but excluding an automobile, truck, household appliances or property that becomes real property when erected or installed.”

The terms “produce” and “production” are not statutorily defined for purposes of TENN. CODE ANN. § 67-6-207(a)(1). However, Tenn. Op. Att’y Gen. No. 09-57 (April 16, 2009) states that these terms, for purposes of the exemption, are properly considered to mean “to bring forth;” “to create by physical or mental effort;” “to manufacture;” or “to give rise to,” and the “act or process of producing.” Notably, the production of agricultural products is not limited to planting or harvesting. *See, e.g., Essary v. Huddleston*, No. 02A01-9408-CH-00179, 1995 WL 384985 at *3 (Tenn. Ct. App. June 29, 1995) (unpublished) (holding that a tractor was used directly and principally for the purpose of producing timber products where the farmer’s primary use of the tractor was to prevent soil erosion around growing trees). However, transportation of farm commodities to market for sale is not part of the production process because, by the time the products are transported to market for sale, the process of “bringing forth,” “creating,” “manufacturing,” or “giving rise to” the product is already complete. Tenn. Op. Att’y Gen. No. 09-57 at *6. Transportation of farm commodities to storage prior to sale is likewise not part of the production process. *Id.*

Thus, for the Taxpayer’s purchase of a particular piece of equipment to be exempt under TENN. CODE ANN. § 67-6-207(a)(1), the following requirements must be met: 1) the Taxpayer is a qualified farmer or nurseryman; and 2) the equipment is an appliance that is directly and principally used for the purpose of producing agricultural and nursery products for sale and use

¹ TENN. CODE ANN. § 67-6-207(e) provides that the term “qualified farmer or nurseryman” means a person who meets one (1) or more of the following criteria:

(1) The person is the owner or lessee of agricultural land from which one thousand dollars (\$1,000) or more of agricultural products were produced and sold during the year, including payments from government sources;

(2) The person is in the business of providing for-hire custom agricultural services for the plowing, planting, harvesting, growing, raising or processing of agricultural products or for the maintenance of agricultural land;

(3) The person is the owner of land that qualifies for taxation under the Agricultural Forest and Open Space Land Act of 1976, compiled in chapter 5, part 10 of this title;

(4) The person's federal income tax return contains one (1) or more of the following:

(A) Business activity on IRS schedule F, profit or loss from farming; and

(B) Farm rental activity on IRS form 4835, farm rental income and expenses or schedule E, supplemental income and loss; and

(5) The person otherwise establishes to the satisfaction of the commissioner that the person is actively engaged in the business of raising, harvesting or otherwise producing agricultural commodities as defined in § 67-6-301(c)(2).

or consumption off the premises. Additionally, the particular piece of equipment in question must not be an item that is specifically excluded from the scope of the exemption.

It is assumed for purposes of this letter ruling that the Taxpayer will qualify under TENN. CODE ANN. § 67-6-207(e) as a qualified farmer or nurseryman during the tax period(s) in which it makes its purchases.

1. Exempt items

The Taxpayer may purchase the Stainless Steel Wash Lines, Water Chillers, and Pulse Sanitizing Instrumentation exempt from the Tennessee sales and use tax under TENN. CODE ANN. § 67-6-207(a)(1), provided that the Taxpayer presents the required documentation described.

The Stainless Steel Wash Lines, Water Chillers, and Pulse Sanitizing Instrumentation meet the requirement that the item in question be an appliance “used directly and principally for the purpose of producing agricultural products . . . for sale and use or consumption off the premises.” An item is considered to be “used directly and principally” for the purpose of producing agricultural products if it is used more than 50% of the time by a farmer in the production of agricultural products.²

The Stainless Steel Wash Lines contain water that is maintained at a temperature between 34 to 36 degrees Fahrenheit by the water chillers. As stated above, the Wash Lines are essentially stainless steel tubes filled with water, which allow [PRODUCE] to pass through the system prior to being placed in boxes for shipment to customers. [PRODUCE] passes through two such wash lines. In all, there are four Stainless Steel Wash Lines. The Stainless Steel Wash Lines are used 100% of the time in the process of readying the [PRODUCE] for market.

The Water Chillers coupled to the Stainless Steel Wash Lines provide the necessary function of immersing the produce in water chilled to an exact temperature for a specific period of time. Cold water acts as a cleansing agent, washing the product clean of any dirt and debris contained within the [PRODUCE]. Additionally, maintaining the water at a temperature between 34 to 36 degrees Fahrenheit is necessary to remove field heat from the produce to prevent the [PRODUCE] from spoiling. The Water Chillers are used 100% of the time in the process of readying the [PRODUCE] for market.

Pulse Sanitizing Instrumentation is attached to the Stainless Steel Wash Line. The system consists of a pH and ORP control system, chlorine and acid pumps, pressure switch, electrodes, and recirculation pump. Designed to use the water that runs through the wash lines as a disinfecting agent against pathogens and harmful micro-organisms that may contaminate the produce, the Pulse Sanitizing Instrumentation monitors oxidation reduction potential, the pH of the water, and the parts per million of chlorine and other disinfectants. This oxidation reduction potential is the only practical method available to electronically monitor sanitizer effectiveness. The Pulse Sanitizing Instrumentation is used 100% of the time in the process of readying the [PRODUCE] for market.

² See *Tennessee Farmers’ Coop. v. State ex rel. Jackson*, 736 S.W.2d 87, 90-92 (Tenn. 1987); Op. Tenn. Att’y Gen. No. 09-57 (Apr. 16, 2009).

The facts indicate that the Stainless Steel Wash Lines, Water Chillers, and Pulse Sanitizing Instrumentation are each used in the production of [PRODUCE]. In the process described above, each appliance provides a transformative function in the creation of an agricultural product fit for human consumption.

Accordingly, the Taxpayer may purchase the Stainless Steel Wash Lines, Water Chillers, and Pulse Sanitizing Instrumentation exempt from the Tennessee sales and use tax. Note that in order to make tax-exempt purchases as a qualified farmer, the Taxpayer must present to its vendor either a Tennessee Agricultural Sales and Use Tax Certificate of Exemption (or a copy of the wallet-sized exemption card also provided by the Department) or a fully completed Streamlined Sales Tax Certificate of Exemption, which must include the exemption number appearing on the Agricultural Sales and Use Tax Certificate of Exemption.³ See TENN. CODE ANN. § 67-6-207(c).

2. Non-exempt items

The Taxpayer's purchases of the Ice Machines, Ice Storage and Distribution System, Racking, and Office Equipment are subject to the Tennessee sales and use tax, and are not exempt under TENN. CODE ANN. § 67-6-207(a)(1).

The Taxpayer's use of the Ice Machines, Ice Storage and Distribution System, Racking and Office Equipment does not meet the requirement that the item in question be an appliance "used directly and principally for the purpose of producing agricultural products . . . for sale and use or consumption off the premises."

The facts indicate that once the [PRODUCE] is cleaned and packed into boxes, the boxes run along a conveyor belt and through the ice distribution system, which drops a pre-determined amount of ice into each box. The Ice Machines produce approximately five tons of ice each day. Ice is accumulated in a sanitary storage facility. A modular racking system within the storage facility makes up the distribution system and conveys the ice to two case ice dispensers, one for each of the two packing lines. The case ice dispensers place ice on the top of each box as it passes on the conveyor belt. The process concludes when the boxes are conveyed through a box closing machine that seals the boxes before they are palletized and placed in cold storage to await pickup and delivery.

While the Ice Machines and the Ice Storage and Distribution System are necessary for the post-production packaging of the [PRODUCE], they are not used directly in the production of the produce. Rather, production of the [PRODUCE] is completed *before* the ice is placed on the product: at that point, the produce has been washed and the cold chain created. The ice is simply used to maintain the cleaned [PRODUCE] at its ideal temperature.

Furthermore, the Ice Machines and Ice Storage and Distribution system provide no transformative effect upon the produce. In other words, by the time it is transported to the Ice Distribution System, the process of bringing forth, creating, manufacturing, or giving rise to the agricultural product is already complete. See Tenn. Op. Att'y Gen. No. 09-57. Such equipment,

³ For forms and additional information, visit the Department's website at:

<http://state.tn.us/revenue/tntaxes/sales/farmerexemption.shtml>.

therefore, is not used directly and principally for the purpose of producing the Taxpayer's agricultural products.

The Racking Equipment is for holding the boxed [PRODUCE] in cold storage prior to shipping. The Office Equipment, which consists of office furniture and other items, is used for general administrative activities. For the same reasons explained above, such equipment is not used directly and principally for the purpose of producing the Taxpayer's agricultural products.

Accordingly, the Taxpayer's purchase of the Ice Machines, Ice Storage and Distribution System, Racking, and Office Equipment does not qualify for the exemption under TENN. CODE ANN. § 67-6-207(a)(1).

Garrett E. Guillory
Tax Counsel

APPROVED: Richard H. Roberts
Commissioner of Revenue

DATE: 10-17-012