TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #97-34

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

Sales tax on mash feed mill.

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

[THE TAXPAYER] is a Tennessee corporation which maintains offices in [CITY], Tennessee and [CITY AND STATE - NOT TENNESSEE]. Its principal business is the production of eggs.

The taxpayer is planning for the construction of a mash feed mill to supply feed for its chickens. The chickens are used to produce eggs which are sold by the taxpayer to supermarkets and other distributors and then ultimately sold to the consumer. The proposed feed mill would be located in [CITY], Tennessee. Approximately 80% of the feed produced by the feed mill will be used by the taxpayer to be fed to its egg-producing chickens. The remaining production of approximately 20% will be used to feed poultry in joint ventures in which [THE TAXPAYER] and other parties raise poultry for the production of eggs. Additionally, a small percentage (less than 5%) of the feed production, might be sold to other agricultural users, but there are no definite plans for sales of this type. The proposed project consists of equipment to be installed in a newly constructed building.

ISSUE

Is the equipment to be installed in the mash feed mill exempt as farm equipment and machinery pursuant to T.C.A. § 67-6-207?

RULING

The equipment is exempt as farm machinery, to the extent that single articles of the equipment have a retail price exceeding $250.00. The equipment is taxable for those single articles with a retail price not exceeding $250.00.

ANALYSIS

T.C.A. § 67-6-207 provides that “after June 30, 1983, no tax is due with respect to farm equipment and machinery.”

T.C.A. § 67-6-102(8) defines “farm equipment and machinery” as follows:

> (8) "Farm equipment and machinery" means any appliance used directly and principally for the purpose of producing agricultural products, including nursery products, for sale and use or consumption off the premises, the retail price of which, for any such single article, exceeds two hundred fifty dollars ($250), but does not include an automobile, truck, household appliances or property which becomes real property when erected or installed. Notwithstanding the foregoing provisions, grain bins and attachments thereto which are sold to or used by a farmer, aircraft

> designed and used for crop dusting, such as an agracat or other similar airplanes which are designed for crop dusting purposes, and trailers used to transport livestock, as defined in § 44-18-101, shall be considered "farm equipment and machinery." Self-propelled fertilizer or chemical application equipment used to spread fertilizer or chemical on farms to aid in the production of food or fiber for human or animal consumption (notwithstanding the fact that such equipment may be mounted on a chassis with wheels), if such equipment is not designed for over-the-road use, but may be driven over-the-road from the source of supply to the farm, and tender beds and spreader beds, even if mounted on a truck chassis, shall be considered farm equipment and machinery. Systems for poultry environment control, feeding and watering poultry and conveying eggs, the retail price of which exceeds two hundred fifty dollars ($250) shall also be considered "farm equipment and machinery". Included within this definition of "farm equipment and machinery" is the lease or rental of such farm equipment and machinery, regardless of the amount of the lease or rental, even if the amount of the lease or rental is less than two hundred fifty dollars ($250).

The first question to be addressed is whether the equipment in question is directly for the purpose of producing agricultural products for sale and use or consumption off the premises. It is clear from the ruling request that the taxpayer is a farmer, engaged in the production of eggs for sale. Whether this equipment is “directly” used in the production of eggs must be determined. The equipment does not have physical contact with the eggs or the chickens which produce the eggs. However, in *Essary v. Huddleston,* 1995 Tenn. App. LEXIS 433, the Tennessee Court of Appeals, in deciding a farm machinery question, did not require physical contact between the agricultural product and the equipment or machinery. Specifically, the court allowed as farm equipment or machinery a backhoe which did not plant or harvest trees, the agricultural product. The use of the backhoe in an overall farming process resulting in an agricultural product for sale was held sufficient to constitute “direct” use.

In Attorney General Opinion No. 81-66 (January 30, 1981), a similar “agricultural purpose” test was applied. Livestock trailers were held to constitute farm machinery because they were sold to farmers and designed for agricultural usage. Historically, the Department has considered use for “agricultural purposes” sufficient for machinery to meet the “directly” requirement.

In light of the above-cited authorities, the inquiry becomes “is the machinery used by a farmer in the production of agricultural products?” The production of the feed is a step in an integrated egg production process. The taxpayer is a farmer. Therefore, the equipment is used “directly”, for purpose of the definition of farm machinery.

The “principally” requirement of the definition is met since over half of the output of the feed mill is used in the taxpayer’s egg farming operation. In *Tennessee Farmers’ Coop.*

v. State ex rel. Jackson, 736 S.W.2d 87 (Tenn. 1987) the Tennessee Supreme Court applied a "51% test" in deciding the applicability of a definition which included the term "principal." It is appropriate to use a similar definition of "principally" here.

It should be noted that the farm machinery exemption, in the definition of "farm machinery" in T.C.A. § 67-6-102(8), *supra*, requires that the retail price of each single article exceed $250.00. Therefore, only those single articles of feed mill equipment with a price in excess of $250.00 would qualify. There is an exception to the $250.00 requirement, applicable to "[s]ystems for poultry environment control, feeding and watering poultry and conveying eggs, the retail price of which exceeds two hundred fifty dollars ($250)." In the case of a "system" for the purposes described in the statute, if the price of the system exceeds $250.00, the system qualifies. The words of a statute should be taken in their ordinary sense without any forced and subtle construction. *Bowater North American Corp. v. Jackson*, 685 S.W.2d 637 (Tenn. 1985). Tax exemption statutes are strictly construed against the taxpayer, who has the burden of proving entitlement to the exemption. *See Jersey Miniere Zinc Co. v. Jackson*, 774 S.W.2d 928 (Tenn. 1989). The equipment here is not a system for *feeding* poultry, that is, it does not convey the feed to the poultry, rather, it is for the production of poultry feed. The portion of the farm machinery definition regarding "poultry systems" was enacted by Ch. 852, Pub. Acts 1994. A review of the legislative history of this act[1] reveals nothing that would indicate the enactment would apply to systems for the manufacture of poultry feed. The original bill would have exempted all "systems" when the system price exceeded $250.00; by amendment, the bill as enacted was limited to the named items. Therefore, the $250.00 per single article limitation applies to each article, not to the system.

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Owen Wheeler, Tax Counsel 3

APPROVED: _____
Ruth E. Johnson

DATE: 8-13-97

[1] Tapes of debate as follows were reviewed: House Finance, Ways, and Means Committee, April 5, 1994; House Calendar and Rules Committee, April 12, 1994; House Floor, April 14, 1994; Senate Finance, Ways, and Means, April 5, 1994; and Senate Floor, April 11, 1994. Additionally, the fiscal note prepared by the Department of Revenue was examined.