

WAYNE FARMS, LLC §
c/o Simon E. Dagher §
DuCharme, McMillen & Associates, Inc. §
1000 Parkwood Circle, SE, Suite 320 §
Atlanta, GA 30339, §

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Petitioner, §

DOCKET NO. S. 03-521

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

FINAL ORDER

Wayne Farms, LLC (“Petitioner”) applied to the Department for a utility tax exemption certificate concerning natural gas and electricity it purchases for use in two chicken hatcheries in Alabama. The Department denied the petition. The Petitioner appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-8(a). A hearing was conducted on January 6, 2004. Simon E. Dagher and Hugh Bishop represented the Petitioner. Assistant Counsel Glen Powers represented the Department.

Code of Ala. 1975, §40-21-83(9) provides an exemption from Alabama’s utility gross receipts tax for “the furnishing of natural gas or electricity for use or consumption as fuel or energy in and for the heating of poultry houses.” The issue in this case is whether a chicken hatchery constitutes a “poultry house” within the scope of the exemption.

The Petitioner is a large scale grower and processor of chickens. It operates facilities in Alabama at which breeder chickens lay eggs. The eggs are subsequently transferred to one of two hatcheries operated by the Petitioner in Alabama.

In the hatcheries, the eggs are maintained in a setter for 17 to 19 days. The Petitioner uses gas and electricity to maintain a constant temperature and humidity level in the setters. It is assumed that the Petitioner uses gas for heat and electricity for cooling

because one of its representatives indicated at the January 6 hearing that the Petitioner uses more gas than electricity in the Winter, and vice versa in the Summer.

When the eggs are close to hatching, they are placed on hatching trays and put in an incubator, where they hatch within one to five days. The Petitioner is also required to keep the temperature and humidity in the incubators at a constant level. The hatched chicks remain in the hatchery for 24 to 48 hours, and are subsequently transported to separate buildings where they are grown into adult chickens.

The Department concedes that a building in which chickens are grown to maturity qualifies as a poultry house. It argues, however, that a hatchery does not come within the scope of the exemption. The Petitioner counters that a hatchery should be considered a poultry house because eggs and newborn chicks are housed in the facility.

The term “poultry house” is not defined in Alabama’s Revenue Code, Title 40, Code of Ala. 1975, or elsewhere by Alabama law. In such cases, the term should be given its commonly understood meaning. *State v. American Brass*, 628 So.2d 920 (Ala.Civ.App. 1993). Unfortunately, there is no evidence as to the commonly understood or generally accepted meaning of the term. Consequently, rules of statutory construction must be applied.

First, as an exemption provision, §40-21-83(9) must be narrowly construed against the exemption. *Bean Dredging Corp. v. State of Alabama*, 454 So.2d 1009 (Ala. 1984). Also, the Department has never construed the exemption to include chicken hatcheries. That long-standing interpretation by the Department must be given weight. *Pilgram v. Gregory*, 594 So.2d 114 (Ala.Civ.App. 1991). Applying the above rules of statutory construction, I must find that a chicken hatchery is not a poultry house within the scope of

the exemption. The Department thus correctly refused to issue the Petitioner an exemption certificate.

Even if a hatchery was determined to be a poultry house within the scope of the statute, the exemption would only apply to gas and electricity used to heat the hatchery building. Gas and electricity used to cool the building, or any part thereof, would not be exempt. It is also problematic whether the utilities used to maintain a constant temperature in the setters and incubators would be exempt. A strict reading of the statute indicates that only gas and electricity used to heat the poultry house would be exempt, but not necessarily gas and electricity used to heat machines or enclosures within the poultry house.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered February 26, 2004.

BILL THOMPSON
Chief Administrative Law Judge