

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

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v.

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DOCKET NO. S. 87-246

COUNTRY GAS SERVICE, INC.
P.O. Box 419
Sumiton, AL 35148,

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Taxpayer.

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ORDER

The Taxpayer, Country Gas Service, Inc., filed a Petition for Refund of Sales Tax concerning the period June 1, 1984 through May 31, 1987. The Department denied the petition and the Taxpayer appealed to the Administrative Law Division. The Administrative Law Division entered a recommended order advising the Department to issue the refund in question. Based on a review of the Administrative Record, the following order is hereby entered:

FINDINGS OF FACT

The Taxpayer sold liquefied petroleum ("LP") gas to Spring Valley Farms/Tyson Foods (hereinafter "Tyson") for use in a poultry hatchery. The issue in dispute is whether the gas was used by Tyson for "agricultural purposes" so as to be exempt from sales tax pursuant to Code of Ala. 1975, §40-23-4(a)(33). That is, does a chicken hatchery constitute an agricultural endeavor.

Tyson is a large scale grower of chickens and processor of chicken products. First, Tyson purchases day old chicks of the best quality and genetic composition. The chicks are raised under contract by independent pullet growers, with direct supervision by

Tyson inspectors. Tyson provides all the medicine, feed, etc., that is used by the independent growers.

The chickens are subsequently transported to Tyson's breeder houses, where they begin laying eggs after 6 weeks and continue laying for approximately 25 weeks. Eggs are picked-up twice weekly by Tyson employees and delivered to the hatchery.

The hatchery is zoned agricultural and is housed in a single, large building in rural North Alabama. No crops are cultivated in the vicinity of the hatchery, although Tyson does grow feed elsewhere for use in feeding its chicks.

At the hatchery, the cased eggs are placed on conveyors and moved into the hatchery building. The eggs are then trayed and placed in an incubator for 18 1/2 days. A constant temperature is maintained in the incubator by the use of large heaters. The LP gas in question is used as fuel for those heaters.

The eggs are removed from the incubator and transferred to a hatchery section within the hatchery building. The eggs are hatched after 2 1/2 days in the hatchery section, or a total of 21 days after entering the hatchery building. All bad chicks are culled, and the remainder are debeaked, vaccinated and shipped out of the hatchery building for growing and subsequent processing. Hundreds of thousands of eggs are hatched at the hatchery each year.

The Department argues that the hatchery is not a farm, but rather is an independent non-agricultural related business. The

Department's primary contention is that Tyson does not engage in any traditional farming activities. The Department's examiner reported as follows:

The primary function of the plant (hatchery) appears to be equipment utilization to artificially duplicate the natural hatching process by use of tremendous amounts of electricity and gas power in maintaining the necessary temperature of the eggs. The facility looks like any number of other normal manufacturing enterprises in that it requires climate control equipment such. as incubators/hatchers, overhead material handling equipment to relocate/transport the eggs and chicks in their boxes/crates from one location to another in the plant, and mechanized circular vaccination stands from which the chicks are then loaded and placed with growers.

Based on my observations, the operation appears to be a processing or manufacturing business rather than a farm in the traditional sense.

CONCLUSIONS OF LAW

Code of Ala. 1975, §40-23-4(a)(33) exempts from sales tax the "gross proceeds from the sale of liquefied petroleum gas sold to be used for agricultural purposes". Department Reg. 810-6-3-.36 states in pertinent part as follows:

(3). Hatcheries not being operated on farms but as independent businesses, the drying of grain in grain bins when done by grain dealers who are not farmers..... the grain drying bins would not located on a farm but on the grain dealer's property; and hot houses when not being operated as part of the farming operation are not entitled to the exemption.

The term "agriculture" is not defined by the revenue code. Accordingly, the term must be given its commonly accepted meaning. Alabama Farm Bur. Mut. Ins. Co. v. City of Hartselle, 460 So.2d

1219.

Black's Law Dictionary, Fourth Edition, defines "agriculture" in part as ". . . the science or art of production of plants and animals useful to man, . . .". That same source defines "farming purposes" as ". . . not limited in meaning to mere cultivation of soil . . . but including raising of livestock . . .". Further, the American Heritage Dictionary, Second College Edition, defines "agriculture" as "the science, art, or business of cultivating the soil, producing crops, and raising livestock; farming". A "farm" is defined in part as "a tract of land devoted to the raising and breeding of domestic animals".

In short, agriculture involves not only the cultivation of crops, but also the breeding, feeding and management of domestic and other animals. For example, the breeding, raising and pelting of foxes has been held to constitute an agricultural endeavor. Fromm Bros. v. U.S., 35 F. Supp. 145. Certainly if the raising of foxes is agricultural, the hatching of eggs and the raising of chickens must also be considered agricultural in nature.

The Department's primary contention is that the hatchery is not a traditional farm, but rather, more closely resembles a processing business. However, the terms "farm" and "business" are not mutually exclusive. Tyson's hatchery is part of the company's business operation, but also constitutes a farm in that its sole function is the hatching of chicks, i.e. farm animals. The operation is no less a chicken or egg farm merely because it is

housed in a large building, uses modern equipment and hatches hundreds of thousands of chicks a year.

Tyson's hatchery is an agricultural pursuit. The LP gas in issue was sold for agricultural purposes and should be exempt from sales tax under §40-23-4(a)(33). Accordingly, the refund in question should be granted.

The above considered, it is hereby ordered that the Department issue the refund requested, along with the appropriate interest.

This order is the final order of the Department for the purpose of judicial review under Code of Alabama 1975, §41-22-20.

Done this the 6th day of October, 1988.