

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Blue Spruce Farms, Inc. :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the :
Period 6/1/76-6/1/79. :

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 11th day of December, 1981, he served the within notice of Decision by certified mail upon Blue Spruce Farms, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Blue Spruce Farms, Inc.
Gardner Rd.
Altamont, NY 12009

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
11th day of December, 1981.

Cornelia P. Hagelmaier

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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of :
Blue Spruce Farms, Inc. :
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Period 6/1/76-6/1/79.

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 11th day of December, 1981, he served the within notice of Decision by certified mail upon Richard V. D'Alessandro the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard V. D'Alessandro
111 Washington Ave.
Albany, NY 12210

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
11th day of December, 1981.

Annice M. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

December 11, 1981

Blue Spruce Farms, Inc.
Gardner Rd.
Altamont, NY 12009

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1139 1243 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Richard V. D'Alessandro
111 Washington Ave.
Albany, NY 12210
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
BLUE SPRUCE FARMS, INC.	:	DECISION
for Revision of a Determination or for Refund	:	
of Sales and Use Taxes under Articles 28 and 29	:	
of the Tax Law for the Period June 1, 1976	:	
through June 1, 1979.	:	

Petitioner Blue Spruce Farms, Inc., Gardner Road, Altamont, New York 12009, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 & 29 of the Tax Law for the period June 1, 1976 through June 1, 1979 (File No. 28677).

A small claims hearing was held before Arthur Johnson, Hearing Officer at the offices of the State Tax Commission, State Campus, Bldg. 9, Albany, New York, on May 26, 1981 at 9:15 A.M. Petitioner appeared by Richard V. D'Alessandro, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Harry Kadish, Esq., of counsel).

ISSUE

- I. Whether petitioner is entitled to the exemption from sales and use tax provided in section 1115(a)(6) of the Tax Law for farming.
- II. Whether petitioner paid sales tax on its purchases of feed and chemicals.

FINDINGS OF FACT

1. Petitioner, Blue Spruce Farms, Inc., is a New York Corporation having its offices at Gardner Road, Altamont, New York. Petitioner was engaged in the sale and breeding of rodents (rats and mice) under sterile conditions to produce germ free animals for laboratory use.

2. On June 22, 1979, petitioner filed a Claim For Refund By Farmers (ST-142) for sales taxes of \$18,668.50 paid on its purchases of feed covering the period June 1, 1976 through June 1, 1979. A second claim was filed on the same date for sales tax of \$41.05 paid on purchases of chemicals for the period August 30, 1976 through May 9, 1979.

3. The Audit Division determined that the feed and chemicals were supplies used or consumed directly and predominantly in the production of tangible personal property for sale. On December 12, 1979 it approved a refund of \$8,079.91 for the local sales tax based on the exemption provided in section 1210(a)(1) of the Tax Law. The balance of the refund claim \$10,629.64 (New York State sales tax) was denied since section 1115(a)(12) of the Tax Law does not exempt supplies from the New York State sales tax.

4. Petitioner argued that its business activities constitute a farming operation and therefore the purchases of feed and chemicals are exempt from New York State sales tax under section 1115(a)(6) of the Tax Law. It is the position of petitioner that the language of section 1115(a)(6) is clear and unambiguous and that under time honored rules of general construction, the language must be interpreted as written in People v. Olak, 300 N.Y. 96 and no limitation or restriction must be placed upon its language (Chamberlain v. Western Transportation Co., 44 N.Y. 305).

5. During the period at issue, petitioner purchased feed and chemicals in the amount of \$269,317.65 and paid sales taxes thereon of \$18,858.47.

CONCLUSIONS OF LAW

A. That in accordance with Finding of Fact "5", petitioner paid the sales taxes for which it is seeking a refund.

B. That section 1115(a)(6) of the Tax Law provides in part, an exemption from sales and use tax for "tangible personal property... for use or consumption directly and predominantly in the production for sale of tangible personal property by farming, including stock, dairy, poultry, fruit, fur bearing animal, graping and truck farming.

C. That section 1142 of the Tax Law authorizes and empowers the tax commission (1) to make, adopt and amend rules and regulations appropriate to the carrying out of this Article and the purposes thereof.

The policy of the tax commission with respect to section 1115(a)(6) of the Tax Law is evidenced by the promulgation of 20 NYCRR 528.7 which provides in subsection (b) Farming:

"The term 'farming' means raising stock, dairy, poultry, or fur bearing animals, fruit and truck farming, operating ranches, nurseries, greenhouses, or other similar structures used primarily for the raising of agricultural, horticultural or floriculture commodities and operating orchards.

* * *

Example 2: The breeding of dogs, cats and other pets or laboratory animals is not farming...".

That a statute or regulation authorizing an exemption from taxation is to be strictly construed against the taxpayer (Matter of Grace v. New York State Tax Commission, 37 N.Y.2d 193).


Accordingly, petitioner is not engaged in farming within the meaning and intent of section 1115(a)(6) of the Tax Law and 20 NYCRR 528.7 and thereby is not entitled to refund of the New York State sales tax paid on feed and chemicals.

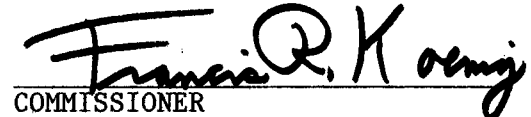
D. That the petition of Blue Spruce Farms, Inc. is denied and the refund denial issued December 12, 1979 is sustained.

DATED: Albany, New York

DEC 11 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER