

Dec 12, 1988

Genfarm Limited Partnership III

Petitioner,

v.

CASE NO. 87-6A

DEPARTMENT OF REVENUE

Respondent.

DECLARATORY STATEMENT

Petitioner seeks a Declaratory Statement on the following issues:

ISSUES:

Whether a dairy enterprise, agricultural in nature, can qualify for the exemption from sales tax for industrial machinery and equipment contained in Section 212.08(5), F.S.

ANALYSIS:

Based on a review of the Petition and attachments it is found that GenFarm III Limited Partnership, located at the corner of County Road 232 West and State Road 129, one and a half miles south of Bell, Florida, will begin to sell tangible personal property (cow's milk) in December, 1988. Further, no process, such as homogenization or pasteurization will be performed on the raw product (cow's milk) at this location. Also, no other location in Florida was closed in order to open this new location.

Section 212.08(5)(b)1., F.S., as amended by Chapter 87-548, Laws of Florida, which became effective January 1, 1988, provides:

"(b) Machinery and equipment used to increase productive

output.

"1. Industrial machinery and equipment purchased for use in new businesses which manufacture, process, compound or produce for sale items of tangible personal property at fixed locations are exempt from the tax imposed by this chapter upon an affirmative showing by the taxpayer to the satisfaction of the department that said items are used in a new business in this state. Such purchases must be made prior to the date the business first begins its productive operations, and delivery of the purchased item must be made within 12 months of that date."

The 1979 session of the Legislature addressed the question of whether or not agriculture machinery and equipment should have the same exemptions as industrial machinery and equipment as provided in Section 212.08(5)(b)1. and 2., F.S. Senate Bill 113 was introduced. The bill attempted to amend subparagraphs 1. and 2., to read:

"Industrial or agriculture machinery or equipment purchased for use..."

The bill failed to pass.

Therefore, in view of this fact, Petitioner's Application for a Temporary Tax Exemption Permit is denied because it is not the Legislative intent to provide sales tax exemption under Section 212.08(5)(b)1., F.S., for agricultural machinery and equipment used in an operation such as Petitioner's.

IT IS THEREFORE SO ORDERED.

Any Party to this Order has the right to seek judicial review of the Order pursuant to Section 120.68, F.S., by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the clerk of the Department in the Office of General Counsel, Post Office Box 6668, Tallahassee, Florida 32314-6668 and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District court of Appeal. The Notice of Appeal must be filed within 30 days from the date of this Order is

filed with the clerk of the Department.

DONE AND ORDERED this 12th day of December, 1988.

STATE OF FLORIDA
DEPARTMENT OF REVENUE
KATIE D. TUCKER
EXECUTIVE DIRECTOR

Filed with the Agency Clerk and served on the parties this 12th
day of December, 1988.

Agency clerk