

Gillis, Diana L.

Subject: FW: Your VM

From: Gillis, Diana L.
Sent: Monday, May 18, 2015 1:16 PM
To: [REDACTED]; Walsh, Kathryn E.
Subject: RE: Your VM

The pullet houses are not exempt, because they are used in conjunction with the laying/washing/packing complex (it's an either/or test – either adjacent to or used in conjunction...).

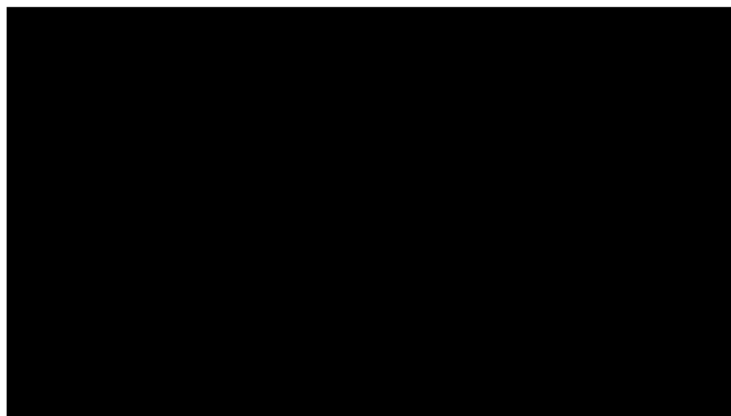
From: [REDACTED]
Sent: Friday, May 15, 2015 3:11 PM
To: Gillis, Diana L.; Walsh, Kathryn E.
Subject: RE: Your VM

Diana:

Thank you for the response.

One point of clarification: the pullet houses are situated on separately deeded, non-adjointing tracts and are not "adjacent" to the laying/washing/packing complex. Would you agree that the pullet houses are, therefore, exempt? I am not certain that it will make a difference, but we are examining the value of the pullet properties, which might result in the transaction being valued below the threshold.

Thanks very much.



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From: Gillis, Diana L. [<mailto:dgillis@ftc.gov>]
Sent: Friday, May 15, 2015 2:40 PM
To: [REDACTED]; Walsh, Kathryn E.
Subject: RE: Your VM

The 2004 guidance is indeed out of date. It sounds to us like the laying and pullet facilities are adjacent to or used in conjunction with the washing and packing facilities, and therefore not exempt.

-Diana

From: [REDACTED]
Sent: Thursday, May 14, 2015 3:37 PM
To: Walsh, Kathryn E.
Subject: RE: Your VM

Kate:

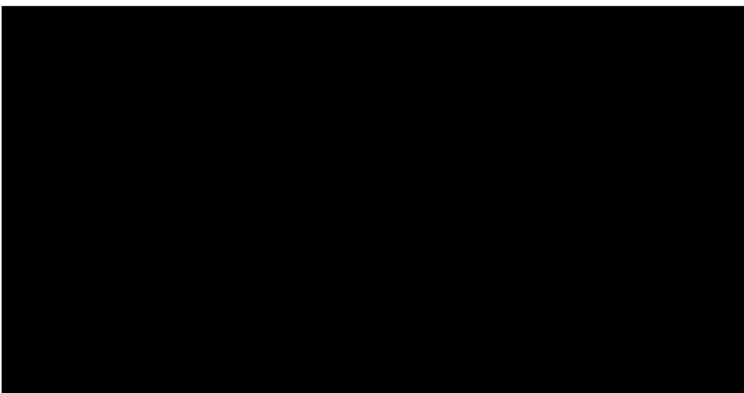
Thanks for getting back to me so quickly.

We reviewed this opinion and it was, in part, what prompted us to seek your guidance. We have a transaction involving the purchase of an inline egg laying facility that is nearly factually identical to prior agricultural exemption guidance from your office, Informal Interpretation 0402004: <https://www.ftc.gov/enforcement/premerger-notification-program/informal-interpretations/0402004>. Our question essentially is whether the 0402004 interpretation can still be regarded as guidance we can rely on for our very similar transaction and to what extent, if any, the winery opinion you cited changes the conclusions in 0402004.

Like the prior opinion, a small portion (roughly 10%) of the property and assets our client proposes to acquire is devoted to egg washing and packaging, while the remaining 90% portion of the land and the assets thereon are strictly agricultural egg laying activities as the exemption requires. We were hoping to initially determine whether there has been any change in your office's policy since Interpretation 0402004 was issued. Specifically, the language in Interpretation 1304001 that "the agricultural land (but not the vines) can be exempted" prompted us to ask whether the underlying land in the facility to be acquired would be treated as exempt, but the egg laying houses and other facilities constructed thereon would not be exempt. Interpretation 0402004 suggests they would be exempt.

We have prepared a more detailed description of the transaction, including some observations about its similarity to the 0402004 guidance, which I have attached.

Thanks again for your assistance.



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From: Walsh, Kathryn E. [mailto:kwalsh@ftc.gov]
Sent: Thursday, May 14, 2015 3:02 PM

To: [REDACTED]
Subject: Your VM

Hi [REDACTED]— here is current guidance on the agricultural exemption. <https://www.ftc.gov/enforcement/premerger-notification-program/informal-interpretations/1304001>

Feel free to follow up with your facts via email.

Thanks,
Kate

Kathryn E. Walsh
Deputy Assistant Director
Premerger Notification Office
Federal Trade Commission
(202) 326-2977

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