

Approved: Feb 27, 1995
Date

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION.

The meeting was called to order by Chairperson Audrey Langworthy at 11:00 a.m. on February 22, 1995 in Room 519--S of the Capitol.

Members present: Senator Langworthy, Senator Corbin, Senator Martin, Senator Bond, Senator Clark, Senator Feleciano, Jr., Senator Hardenburger, Senator Lee, Senator Ranson, Senator Sallee and Senator Wisdom.

Committee staff present: Tom Severn, Legislative Research Department
Chris Courtwright, Legislative Research Department
Don Hayward, Revisor of Statutes
Elizabeth Carlson, Secretary to the Committee

Conferees appearing before the committee: Secretary John LaFaver, Department of Revenue
Jack Bybee, Department of Commerce and Housing
Michel Miller, Kansas, Inc.
Alan Cobb, Kansas Association of Small Business
Rich McKee, Kansas Livestock Association

Others attending: See attached list

Senator Langworthy called the committee's attention to the Attorney General's opinion on **SB 88 and SB 90** for Ottawa County and also a handout from Willie Martin, City of Wichita, regarding **SB 294**.

SB 315--Income Tax refund claim limitations

Secretary John LaFaver, Department of Revenue, appeared to explain **SB 315**. (Attachment 1) He said it is a clean-up bill which would limit claims on income tax refunds. Under **SB 315** a refund claim based upon a constitutional issue would be required to be filed within 120 days of April 15th. He gave some reasons why the statutes should be amended. Refund claims based upon the constitutional issues involve unusual circumstances. They are not merely computational errors. When tax laws are declared to be unconstitutional, the courts have often found it reasonable to limit the scope of refunds to the parties who were involved in the decision. Under **SB 315**, taxpayers would have to apply for a refund within 120 days after April 15th and if they fail to do so, a refund would not be retroactive.

Secretary LaFaver was asked if this would put a burden upon the Department, and he replied he did not think it would do so. He said other states have acted to restrict their liability. He was also asked about giving notice to all single taxpayers and what the procedure would be. Secretary LaFaver said there is no procedure set up under the law. Another question was asked how many other states are doing this, and he said he did not know the number, but this bill was patterned after a statute in New Hampshire. He also said this bill is applied only to income tax

The hearing was closed on **SB 315**.

SB 301--Income tax credit for education and training of qualified firm's employees'

David Bybee, Kansas Department of Commerce and Housing, spoke in support of **SB 301**. (Attachment 2) He explained the Kansas High Performance Incentive Program (HPIP) and said it offers tax benefits to firms in designated industries. The purpose of **SB 301** is to remove the cap which limits eligible companies to those with no more than 500 full time equivalent employees. Some of these larger firms pay higher salaries and have the higher skilled jobs. He said HPIP is a recruitment tool. It provides a strong tool for a favorable business climate in the state. If this program is limited to the smaller firms, HPIP can only be used to help smaller companies. He spoke of certifying a company in the Kansas City area which is world wide and this company has decided to go ahead and relocate in the Kansas City area and the only reason is because of this program.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION, Room 519-S
Statehouse, at 11:00 a.m. on February 22, 1995.

Senator Feleciano said the reason this bill was capped at 500 was to encourage the small businesses and he felt there were other programs available to help the larger businesses. Mr. Bybee said he felt they should not be excluded from the program.

Michel Miller, Kansas, Inc., spoke in support of **SB 301**. She said the reason for the 500 cap was because there was no idea of how many companies would qualify for this program. She said one company had a tax credit of \$2.4 million and the total of tax credits over the past two years is \$4.5 million. This bill would not preclude the use by small companies.

Senator Feleciano asked the staff of the department who runs this program to give the committee a list of companies that have used this program and the number of credits issued since the enactment of the program. Senator Ranson also asked for a list of the large businesses who are using KIT, KIR, SKIL and the KEOF programs.

Alan Cobb, representing the Kansas Association of Small Business, said as he read the legislation, small companies would be thrown in with much larger companies when determining average wage eligibility for this program. (Attachment 3) He felt small manufacturers in Sedgwick County may never be able to qualify as a High Performance Organization. KASB strongly opposed the bill unless the deletions contained in lines 38 and 39 are lifted.

The hearing was closed on **SB 301**

SB 302--Farm machinery and equipment sales tax exemption

Rich McKee, representing the Kansas Livestock Association, said they requested the introduction of this bill. (Attachment 4) He gave a brief history of the exemption from sales tax for farm machinery and equipment, repair and replacement parts and services which was passed in 1978. In 1987, the Secretary of Revenue issued an order which states the department's intentions to change their interpretation of what constitutes farm machinery. The legislature quickly passed a bill clarifying cattle feeders were allowed the exemption. In recent year, the department has taken the position that the equipment is in some manner "affixed to real property" is not exempt from sales tax. Much of the equipment used by livestock producers should be fastened to the land or a building. Mr. McKee said just being bolted to the concrete pad or floor should not be reasons for being charged sales tax; however, it appears necessary to seek clarification by statute and therefore the reason for **SB 302** being introduced.

There were questions from the committee if this sales tax was being applied uniformly across the state. Mr. McKee said it is not being applied in any special part of the state. There was discussion how this would apply to manufacturing equipment and it was stated the law should be applied in the same way.

David Prager, Acting General Counsel, Department of Revenue said it is a complicated law. They use the real estate law for the equipment.

Senator Langworthy asked if the Department of Revenue would supply a reason for this sales tax being charged as it is.

The meeting adjourned at 12:00 noon

The next meeting is scheduled for February 23, 1995.

STATE OF KANSAS

John LaFaver, Secretary of Revenue
Robert B. Docking State Office Building
915 S.W. Harrison St.
Topeka, Kansas 66612-1588

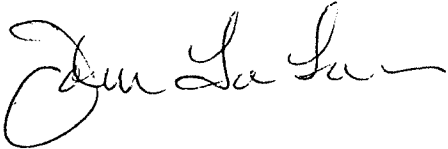


(913) 296-3041
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Department of Revenue
Office of the Secretary

MEMORANDUM

To: The Honorable Senator Audrey Langworthy, Chairperson
Senate Committee on Assessment and Taxation

From: John LaFaver, Secretary
Kansas Department of Revenue 

Date: February 22, 1995

RE: S. B. 315, Income Tax Refund Claim Limitations, K.S.A. 79-3230.

Senate Bill 315 would provide a specific period for the allowance of refund claims that are based upon the federal or state constitution. These refund claims would be required to be filed within 120 days of the due date of the tax payment. For most taxpayers, the tax due date is April 15th. This would mean that under S. B. 315 a refund claim based upon a constitutional issue would be required to be filed within 120 days of April 15th. This bill is based upon a similar statute which has been enacted by the state of New Hampshire.

For several reasons, the existing statutory procedure for refund claims based upon constitutional issues should be amended.

Refund claims to recover taxes claimed to be unconstitutional involve unusual circumstances. These circumstances do not exist when the refund claim is based merely upon computational errors, federal audit adjustments, or other nonconstitutional grounds. Tax statutes are held to be unconstitutional when a court issues a decision that works a change in settled law that has been relied upon by taxpayers or the Legislature. Tax statutes may also be held to be unconstitutional when the courts decide an issue of first impression whose resolution was not clearly foreshadowed or the courts overrule past precedent upon which the the taxpayers and state government may have reasonably relied. Under these circumstances, when tax laws are declared to be unconstitutional, the courts have often found it reasonable to limit the scope of refunds to the parties who were involved in the decision.

Senate Assess + Tax
2-22-95
Attach 1-1

Under the current, general refund claim period, taxpayers who were not involved in a constitutional case may have a free ride and obtain refunds for past years even though another taxpayer had gone to all of the time and expense of litigating the issues. In addition, when refunds are paid to all taxpayers regardless of whether they were involved in the decision, a large portion of the payment usually goes to enrich the attorneys rather than being paid to the taxpayers.

Another concern is the unusually harsh fiscal burdens that can arise from refunds of unconstitutional taxes to a great number of taxpayers and the resulting disruption of state planning and operations. When the legislature enacts a taxing measure, its action is presumed to be constitutional and detailed projections are made based upon the anticipated revenue. These projections are taken into consideration and relied upon in determining the amount of money available to operate state government and to fund state programs and services. If the tax is later struck down as unconstitutional and the state is forced to pay refunds to thousands of taxpayers, the state has suddenly and unexpectedly lost the planned source of revenue, and this may cause substantial disruption in the state's operations. These problems are not encountered when a single taxpayer requests a refund on nonconstitutional grounds. In such nonconstitutional cases the fiscal impact is usually negligible and there is no disruption to the state's operations as a whole.

The U. S. Supreme Court has acknowledged that the states are permitted to impose "relatively short statutes of limitation applicable to refund actions" in order to protect their fiscal security. *McKesson Corp. v. Division of Alc. Bev.*, 496 U.S. 18, 50 (1990). The Kansas Legislature should amend K.S.A. 79-3230 to specify a 120 day period for refund claims that are based on a violation of the federal or state constitution. By shortening the refund claim period, the state would have a more accurate sense of its potential liability for refunds and would be able to operate more efficiently and with less fiscal disruption from one year to the next.

Finally, if for any reason at a later date the Legislature wished to make refunds on claims filed beyond the 120 day period, it would still be free to authorize this by legislation. A recent example of this was the legislation which authorized refunds to military retirees even though the majority of them had not filed timely refund claims under K.S.A. 79-3230.

February 22, 1995

Testimony for Senate Committee on Assessment and Taxation
Chairperson Senator Audrey Langworthy

Prepared by David Bybee, HPIP Manager, KDOC&H

RE: Senate Bill 301 - Income tax credit for education and training
of qualified firm's employees

The Kansas High Performance Incentive Program (HPIP) offers tax benefits to firms in designated industries. The firms are provided incentives to invest in plant and equipment, to increase employee training and wage levels, and in some cases to place a greater emphasis on exporting products outside of Kansas.

The purpose of Senate Bill 301 is to remove from HPIP a cap which limits eligible companies to those with no more than 500 full time equivalent employees.

The current 500 FTE cap does create constraints which have eliminated otherwise eligible companies from qualification. For example, last December there were four businesses which expected to meet other HPIP criteria, but were prevented from obtaining access to program tax benefits due to their size. Two firms were well over the cap with 980 and 700 employees, and another firm had only 575 employees. Still another firm was below the limit with 450 employees, but expected to add 70 new jobs during its certification period, which would exceed the cap.

These firms were considering multi-million dollar investments in Kansas. When the firms became aware of the cap, they ceased investigation of HPIP, except for the 450 employee company which is still looking into the program.

The impact on the investment plans of these firms, due to not having HPIP tax incentives available, is unknown. However, the purpose of the program is to entice businesses to proceed with capital investment and provide enhanced worker training. HPIP effectively makes such investment in capital assets and worker skills less costly for the business. It therefore seems arguable that even if these firms decide to proceed with the capital investment, it may well be a smaller investment than would have been the case had HPIP tax incentives been available. Further, without HPIP, such firms have a greatly reduced incentive to upgrade employee skills through additional training and education.

HPIP is also a recruitment tool. It provides our marketing people with an strong tool to use in touting the favorable business climate the state can offer. With the employee cap in place, HPIP can only be used to help tempt smaller companies, which are likely to provide fewer jobs at lower wage levels, and which are likely to make a smaller initial capital investment.

Senate Assess + Tax

2-22-95

attach 2-1

The same arguments apply to retention. A good example is the recent Cessna expansion. The number of employees involved precluded the use of HPIP. While other factors in this particular case worked in favor of the company deciding to keep its new facility in Kansas, circumstances can easily be imagined where an incentive such as HPIP may have been the deciding factor.

There are currently 35,764 Kansas firms which meet the 500 employee cap, of which 3,386 are manufacturers. There are an additional 87 firms which exceed the cap, of which 42 are manufacturers. (first quarter 1994 data provided by the Kansas Department of Human Resources)

The large firms are relatively few in number, but account for many of the higher paying, higher skilled jobs in the state. It is fair to ask if encouraging smaller firms to enhance workforce skills and make capital investment means we must also prevent use of the same incentives by firms with an employee count which exceeds a specifically derived cap. It seems apparent that tax incentives can encourage businesses to pursue goals from which the state expects to receive benefit. Such incentives are effective no matter what the size of the business.

KASB

Kansas Association for Small Business

532 N. Broadway ♦ Wichita, Kansas 67214 ♦ (316)267-9992 ♦ Fax (316)267-1448

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Lavon Wenger
Wenger Mfg.
Sabetha

Larry Widmer
Professional
Machine & Tool
Wichita

Bob Winkler
Mid-Central Mfg.
Wichita

Exec. Director
Alan Cobb

February 22, 1995

Madam Chair, members of the committee:

I am Alan Cobb, representing the Kansas Association for Small Business, a group of over 75 small manufacturers located throughout Kansas. I appreciate this opportunity to express some serious concerns about Senate Bill 301.

As I read the proposed legislation, small companies would be thrown in with much larger companies when determining average wage eligibility for this program.

This means that an aircraft component parts manufacturer in Sedgwick County would be evaluated in the same wage pool as Boeing, Cessna, Learjet and Raytheon.

Because of the sheer numbers employed by these fine companies and the high wages they pay, small manufacturers in Sedgwick County may never be able to qualify as a High Performance Organization and take part of this program.

The KASB strongly opposes this bill unless the deletions contained in lines 38 and 39 and lifted.

Thank you for this opportunity.

Senate Assess + Jax
2-22-95
attach 3-1



*A Century of Service
1894-1994*

**Statement
of the
Kansas Livestock Association**

to the

Senate Assessment & Taxation Committee

Senator Audrey Langworthy, Chairperson

with respect to

Senate Bill 302

Sales Tax on Farm Machinery

presented by

Rich McKee

**Executive Secretary, Feedlot Division
Kansas Livestock Association**

February 22, 1995

The Kansas Livestock Association (KLA) is a statewide association with a membership of approximately 7,000 members. These members are generally involved in some aspect of livestock production, including cattle, swine and sheep production.

The Kansas Livestock Association requested the introduction of Senate Bill 302 and respectfully requests favorable passage. The amendment proposed in this bill would clarify that farm machinery and equipment attached to a building, should not lose its identity for purposes of the sales tax exemption granted under K.S.A. 1994 Supp. 79-3606(t). A brief review of this issue and the need for this legislation is in order.

It was in 1978 that used farm machinery and equipment, repair and replacement parts and the services performed in the repair and maintenance of such equipment became exempt from sales tax. Since that time, the Kansas Livestock Association has worked with the Department of Revenue in an attempt to clarify this exemption. Please know, the only amendments that have been made to this statute since 1978 have broaden the exemption.

*Senate Assess + Tax
2-22-95
attach 4-1*

In 1987, Harley Duncan, then Secretary of Revenue, issued the enclosed memorandum which states the department's intentions to change their interpretation of what constitutes farm machinery. Specifically, the department was planning to begin taxing livestock equipment purchased by cattle feeders due to a property tax case. In response, the Kansas legislature quickly and convincingly (the House vote was 112-4 & the Senate vote was 32-5) passed SB 309 clarifying cattle feeders (feedlots) were allowed the exemption.

In recent years the department has taken the position that if the equipment is in some manner "affixed to real property" it is not exempt from sales tax. This position has been expressed by the department through a relatively recent ruling letter and audits conducted of livestock operations. Neither the statute nor the respective Kansas Administrative Regulations make any mention of this issue.

Much of the equipment used by livestock producers should be fastened to the land or a building. This is necessary for the safety of the animals, the humans operating the equipment and for the proper operation of the equipment. In our opinion, bolting a squeeze chute to a concrete pad or securing a grain grinder to the floor of a building should not jeopardize the sales tax exemption. Unfortunately, it appears necessary to seek clarification by statute and that is the essence of SB 302.

We respectfully request your support for Senate Bill 302. Thank you!



Kansas
 DEPARTMENT OF REVENUE

State Office Building
 TOPEKA, KANSAS 66625

October 8, 1981

Dee Likes, Executive Secretary
 Feedlot Division
 Kansas Livestock Association
 2044 Fillmore
 Topeka, Kansas 66604

Dear Mr. Likes:

This will acknowledge receipt of your letter dated September 28, 1981.

It would be the position of this office that the charges made by scales companies for the service of calibrating and repairing scales used for livestock or grain should be exempt from sales tax. This position is based on the fact that these scales if used by a farmer or rancher in his farming or ranching operation would qualify as used farm machinery or equipment within the intended scope of K.S.A. 79-3606(u).

With respect to the exempt status of repair or replacement parts for feed handling equipment or grain grinders, the information guide sent out by the Department of Revenue in November of 1980 speaks directly to this issue. The guide specifically provides that feed handling equipment or grain grinders could qualify as farm machinery or equipment if purchased by a farmer or rancher for use in a farming or ranching operation. Thus, the purchase of repair or replacement parts for these items of equipment should qualify for the exemption provided by 79-3606(u).

When making any exempt purchases, an exemption certificate should be provided to the supplier which would set forth the basis for exemption. A copy of a sample exemption certificate has been enclosed.

Please feel free to contact me if I can be of any further assistance.

Sincerely,

Alan F. Alderson
 General Counsel

S. Lucky DeFries

By: S. Lucky DeFries
 Attorney

Information Guide 19-87-1

Sales Tax

Exemption for Used Farm Machinery and Equipment and Purchases by Farmers and Ranchers



Kansas
Department
of Revenue

PURPOSE. This information guide is intended to assist persons in the application of the sales tax exemption for used farm machinery and equipment, repair and replacement parts for farm machinery and equipment, repair and maintenance of used farm machinery and equipment, and purchases of general tangible personal property by farmers and ranchers.

I. GENERAL RULE.

K.S.A. 79-3606 (u) provides a sales tax exemption for the following:

- a. Sales of used farm machinery and equipment;
- b. Sales of repair and replacement parts for used farm machinery and equipment; and
- c. Charges for service performed in the repair and maintenance of used farm machinery and equipment.

In order to qualify for the exemption contained in K.S.A. 79-3606 (u), both of the following conditions must exist:

- a. The purchaser must be a farmer or rancher; and
- b. The property purchased, repaired or serviced will be used only in farming or ranching on real property owned, leased or sharecropped by said farmer or rancher.

II. DEFINITIONS.

- a. "Farm machinery and equipment" means all machinery and equipment which is purchased by a farmer or rancher and which is used only in farming or ranching. However, the phrase "farm machinery and equipment" does not include buildings, building materials, silos, fence, land, passenger vehicles, all terrain vehicles, motorcycles, trucks, truck tractors, trailers, semitrailers, or pole trailers, other than a farm trailer. Therefore, any piece of machinery or equipment other than those just listed, may qualify as farm machinery and equipment if it is purchased by a farmer or rancher and if it is used only in farming or ranching.

For example, if a person who is not a farmer or a rancher, purchases a tractor, then the tractor would not be considered farm machinery or equipment because it was not purchased by a farmer or rancher (see subsection (b) below for definition of "farmer or rancher"). On the other hand, if a used hay baler was purchased by a farmer for use only in farming, then the used hay baler would qualify as farm equipment. However, if a mower was purchased by a farmer for use partially in farming and partially in maintaining the yard of his personal residence, then the mower would not qualify as farm equipment because it was not purchased for use only in farming or ranching.

Examples of items (which are used when purchased) which may qualify as farm machinery and equipment, if purchased by a farmer or rancher for use only in farming or ranching, are: combines, cultivators, discs, farm tractors, forage blowers, grain grinders, hay balers, loaders, mowers and rakes, harrows, irrigation equipment, ensilage cutters, milking machines and related equipment, planters, plows, ventilating units, feed handling equipment, feeding troughs, water hose for livestock use, protective covers for farm machinery and equipment (other than buildings), stock waterers, and water heaters.

- b. "Farmer or rancher" means a person who:
- (i) owns, leases or sharecrops real property used for farming or ranching; and
 - (ii) is engaged in the business of farming or ranching on such real property (see subsection (c) below).
- c. "Farming or ranching" means engaging in activity which is ordinary and necessary for the growing or raising of agricultural products. "Farming or ranching" does not include activity occurring after the harvesting of crops or after the time immediately preceding slaughter of livestock. For example, a person in the business of storing grain would not be considered engaged in farming or ranching. Neither would a slaughterhouse be considered farming or ranching.
- d. "Sales of used farm machinery and equipment" means the sale or lease of farm machinery and equipment other than the original retail sale or lease of such farm machinery and equipment, or when title to leased farm machinery and equipment remains with the lessor. To qualify as "used", an item must be sold or leased to someone else other than the original user, and title must not have remained with the lessor. For example, if Mr. X leases a new tractor for twenty-four months (taxable as original lease) and then exercises an option to purchase it after the twenty-four month's use, the sale will not constitute the sale of used farm machinery and equipment because the sale was not made to someone other than the original user, and title remained with the lessor. If Mr. X leases a new tractor for one month and returns it to the lessor, who in turn sells the tractor to Mr. Y, the sale will not constitute the sale of used farm machinery and equipment, because the lessor never transferred title to Mr. X, and subsequently sold the tractor to a new original purchaser. A dealer or retailer will not be

regarded as the original user of property unless the dealer or retailer has paid sales or use tax on the purchase price of such property.

- e. "Repair and replacement parts" means those parts which replace an existing part, or which are necessary to maintain the working condition of a piece of farm machinery or equipment. For example, the sale of a new air conditioner for the cab of a tractor which was not previously air conditioned would not be considered the sale of a repair or replacement part because the new air conditioner is not replacing any existing part nor is it necessary to maintain the working condition of the tractor. However, if a cab without air conditioning is totally replaced by a new air conditioned cab, then the whole new cab would qualify as a "replacement part" because it is replacing an existing part of a piece of farm machinery.

Other examples of "repair and replacement parts" are air filters, antifreeze, batteries, belts, bolts, cable and clamps, gear, hydraulic cylinders, lubricants, oil filters, paint (but not for buildings), plow points, plow shares, sickle sections, spark plugs and tires. However, the sale of these items are exempt only if: 1) purchased by a farmer or rancher; and, 2) the parts are to repair or maintain machinery or equipment used only in farming or ranching.

III. PROCEDURES.

- a. Used machinery and equipment. In order to qualify for this exemption, the purchaser of used machinery and equipment may certify in writing on a copy of the invoice or sales ticket that the purchaser is engaged in farming or ranching and that the farm machinery or equipment purchased will be used only in farming or ranching. The retailer must retain this signed certification for a period of at least three years.
- b. Repair and replacement parts and service. In order to sell parts or repair and maintenance service without tax, the retailer must secure an exemption certificate from the purchaser (or a certification as in subsection (a) above). A retailer who repeatedly makes the same type of exempt sale to the same purchaser may take a blanket exemption certificate covering all such sales, rather than a separate exemption certificate for each transaction. However, with a blanket exemption certificate, the retailer will be required to keep a record of all exempt sales



KANSAS DEPARTMENT OF REVENUE

DIVISION OF TAXATION

Robert B. Docking State Office Building
Topeka, Kansas 66625-0001

March 2, 1987

NOTICE

TO: Interested Agri-Business Organizations
FROM: Kansas Department of Revenue
SUBJECT: Revenue Ruling 19-87-1 Commercial Feed Lots

Enclosed please find a copy of proposed Revenue Ruling 19-87-1 concerning the sales and compensating tax exemption on purchases of used farm machinery and equipment by commercial feedlots. As noted in the body of the ruling, Revenue Ruling 19-87-1 has been written to conform the sales and compensating taxes to the Kansas property tax statutes as discussed in the recent case of T-Bone Feeders Inc. v. Martin 236 Kan. 641, 693 P2d 1187 (1985).

The Department of Revenue would appreciate any comments which you may have. The proposed effective date of the revenue ruling is April 1, 1987, and all comments should be directed to the Secretary of Revenue's office no later than March 16, 1987. Thank you for your continued cooperation.

Sincerely,

Harley T. Duncan,
Secretary of Revenue

HTD:JMH:d/1/6303a

bonds issued pursuant to the provisions of article 46 of chapter of the Kansas Statutes Annotated, and acts amendatory thereof or supplemental thereto; and (c) bonds issued for the purpose of financing the construction or remodeling of a courthouse, jail or law enforcement center facility, which bonds are payable from the proceeds of a countywide retailers' sales tax, shall not be included in computing the total bonded indebtedness of any county for the purpose of determining the limitations on bonded indebtedness provided in K.S.A. 10-306, and amendments thereto.

Sec. 6. K.S.A. 1986 Supp. 10-307, 12-187, 12-189, 12-192, 12-192a, 12-192b and 12-195 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved March 24, 1987.

Published in the *Kansas Register* April 2, 1987.

CHAPTER 64
Senate Bill No. 309
(Amends Chapter 292)

1987
§ 32-5
14 112-4

AN ACT relating to sales taxation; concerning the exemption of certain tangible personal property and services; amending K.S.A. 12-190 and K.S.A. 1986 Supp. 79-3606, as amended by section 32 of 1987 House Bill No. 2043, and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1986 Supp. 79-3606, as amended by section 32 of 1987 House Bill No. 2043, is hereby amended to read as follows: 79-3606. The following shall be exempt from the tax imposed by this act:

(a) All sales of motor-vehicle fuel or other articles upon which a sales or excise tax has been paid, not subject to refund, under the laws of this state except cigarettes as defined by K.S.A. 79-3301 and amendments thereto, cereal malt beverages and malt products as defined by K.S.A. 79-3817 and amendments thereto, including wort, liquid malt, malt syrup and malt extract, which is not subject to taxation under the provisions of K.S.A. 79-41a02 and amendments thereto, and motor vehicles as defined by K.S.A. 79-1017 and amendments thereto;

(b) all sales of tangible personal property or service, including the renting and leasing of tangible personal property, pur-

chased directly by the state of Kansas, a political subdivision thereof, other than a school or educational institution, or purchased by a public or private nonprofit hospital or nonprofit blood, tissue or organ bank and used exclusively for state, political subdivision, hospital or nonprofit blood, tissue or organ bank purposes, except when: (1) Such state or hospital is engaged or proposes to engage in any business specifically taxable under the provisions of this act and such items of tangible personal property or service are used or proposed to be used in such business, or (2) such political subdivision is engaged or proposes to engage in the business of furnishing gas, water, electricity or heat to others and such items of personal property or service are used or proposed to be used in such business;

(c) all sales of tangible personal property or services, including the renting and leasing of tangible personal property, purchased directly by a public or private elementary or secondary school or public or private nonprofit educational institution and used primarily by such school or institution for nonsectarian programs and activities provided or sponsored by such school or institution or in the erection, repair or enlargement of buildings to be used for such purposes. The exemption herein provided shall not apply to erection, construction, repair, enlargement or equipment of buildings used primarily for human habitation;

(d) all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any public or private nonprofit hospital, public or private elementary or secondary school or a public or private nonprofit educational institution, which would be exempt from taxation under the provisions of this act if purchased directly by such hospital, school or educational institution; and all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any political subdivision of the state, the total cost of which is paid from funds of such political subdivision and which would be exempt from taxation under the provisions of this act if purchased directly by such political subdivision. Nothing in this subsection or in the provisions of K.S.A. 12-3418 and amendments thereto, shall be deemed to exempt the purchase of any construction machinery, equipment or tools used in the constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or re-

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Modeling facilities for any political subdivision of the state. As used in this subsection, K.S.A. 12-3418 and 79-3640, and amendments thereto, "funds of a political subdivision" shall mean general tax revenues, the proceeds of any bonds and gifts or grants-in-aid. Gifts shall not mean funds used for the purpose of constructing, equipping, reconstructing, repairing, enlarging, furnishing or remodeling facilities which are to be leased to the donor. When any political subdivision of the state, public or private nonprofit hospital, public or private elementary or secondary school or public or private nonprofit educational institution shall contract for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to the political subdivision, hospital, school or educational institution concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. If any materials purchased under such a certificate are found not to have been incorporated in the building or other project or not to have been returned for credit or the sales or compensating tax otherwise imposed upon such materials which will not be so incorporated in the building or other project reported and paid by such contractor to the director of taxation not later than the 20th day of the month following the close of the month in which it shall be determined that such materials will not be used for the purpose for which such certificate was issued, the political subdivision, hospital, school or educational institution concerned shall be liable for tax on all materials purchased for the project, and upon payment thereof it may recover the same from the contractor together with reasonable attorney fees. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall

be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto;

(e) all sales of tangible personal property or services purchased by a contractor for the erection, repair or enlargement of buildings or other projects for the government of the United States, its agencies or instrumentalities, which would be exempt from taxation if purchased directly by the government of the United States, its agencies or instrumentalities. When the government of the United States, its agencies or instrumentalities shall contract for the erection, repair, or enlargement of any building or other project, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificates to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to the government of the United States, its agencies or instrumentalities concerned a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed upon such materials, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615 and amendments thereto;

(f) tangible personal property purchased by a railroad or public utility for consumption or movement directly and immediately in interstate commerce;

(g) sales of aircraft including remanufactured and modified aircraft, sales of aircraft repair, modification and replacement parts and sales of services employed in the remanufacture, modification and repair of aircraft sold to persons using such aircraft and aircraft repair, modification and replacement parts as certified or licensed carriers of persons or property in interstate or foreign commerce under authority of the laws of the United States or any foreign government or sold to any foreign govern-

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ment or agency or instrumentality of such foreign government and all sales of aircraft, aircraft parts, replacement parts and services employed in the remanufacture, modification and repair of aircraft for use outside of the United States;

(h) all rentals of nonsectarian textbooks by public or private elementary or secondary schools;

(i) the lease or rental of all films, records, tapes, or any type of sound or picture transcriptions used by motion picture exhibitors;

(j) meals served without charge or food used in the preparation of such meals to employees of any restaurant, eating house, dining car, hotel, drugstore or other place where meals or drinks are regularly sold to the public if such employees' duties are related to the furnishing or sale of such meals or drinks;

(k) any motor vehicle, semitrailer or pole trailer, as such terms are defined by K.S.A. 8-126 and amendments thereto, or aircraft sold and delivered in this state to a bona fide resident of another state, which motor vehicle, semitrailer, pole trailer or aircraft is not to be registered or based in this state and which vehicle, semitrailer, pole trailer or aircraft will not remain in this state more than 10 days;

(l) all isolated or occasional sales of tangible personal property, services, substances or things, except isolated or occasional sale of motor vehicles specifically taxed under the provisions of subsection (o) of K.S.A. 79-3603 and amendments thereto;

(m) all sales of tangible personal property which become an ingredient or component part of tangible personal property or services produced, manufactured or compounded for ultimate sale at retail within or without the state of Kansas; and any such producer, manufacturer or compounder may obtain from the director of taxation and furnish to the supplier an exemption certificate number for tangible personal property for use as an ingredient or component part of the property or services produced, manufactured or compounded;

(n) all sales of tangible personal property which is consumed in the production, manufacture, processing, mining, drilling, refining or compounding of tangible personal property, the providing of services or the irrigation of crops for ultimate sale at retail within or without the state of Kansas; and any purchaser of such property may obtain from the director of taxation and furnish to the supplier an exemption certificate number for tangible personal property for consumption in such production, manufacture, processing, mining, drilling, refining, compounding, irrigation and in providing such services;

(o) all sales of animals, fowl and fish, the primary purpose of which is use in agriculture, the production of food for human consumption, the production of animal, dairy, poultry or fish products, fiber or fur, or the production of offspring for use for any such purpose or purposes;

(p) trade fixtures and equipment which are already installed and second-hand when sold by a person ceasing to do business where said fixtures or equipment is installed;

(q) all sales of prescription only drugs, as defined by K.S.A. 65-1626 and amendments thereto, dispensed pursuant to a prescription order, as defined by K.S.A. 65-1626 and amendments thereto, by a licensed practitioner;

(r) all sales of insulin dispensed by a person licensed by the state board of pharmacy to a person for treatment of diabetes at the direction of a person licensed to practice medicine by the board of healing arts;

(s) all sales of prosthetic and orthopedic appliances prescribed in writing by a person licensed to practice the healing arts, dentistry or optometry. For the purposes of this subsection, the term prosthetic and orthopedic appliances means any apparatus, instrument, device, or equipment used to replace or substitute for any missing part of the body; used to alleviate the malfunction of any part of the body; or used to assist any disabled person in leading a normal life by facilitating such person's mobility; but such term shall not include motor vehicles, accessories to be attached to motor vehicles or personal property which when installed becomes a fixture to real property;

(t) all sales of tangible personal property or services purchased directly by a groundwater management district organized or operating under the authority of K.S.A. 82a-1020 *et seq.*, and amendments thereto, which property or services are used in the operation or maintenance of the district;

(u) all sales of used farm machinery and equipment, repair and replacement parts therefor and services performed in the repair and maintenance of such machinery and equipment. For the purposes of this subsection the term "farm machinery and equipment" shall not include any passenger vehicle, truck, truck tractor, trailer, semitrailer or pole trailer, other than a farm trailer, as such terms are defined by K.S.A. 8-126 and amendments thereto. For the purposes of this subsection "sales of used farm machinery and equipment" shall mean and include sales other than the original retail sale of such machinery and equipment. Each purchaser of farm machinery or equipment exempted

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herein must certify in writing on the copy of the invoice or sales ticket to be retained by the seller that such purchaser is engaged in farming or ranching and that the farm machinery or equipment purchased will be used only in farming or ranching. *As used in this subsection, farming or ranching shall include the operation of a feedlot;*

(v) all leases or rentals of tangible personal property used as a dwelling if such tangible personal property is leased or rented for a period of more than 28 consecutive days;

(w) all sales of food products to any contractor for use in preparing meals for delivery to homebound elderly persons over 60 years of age and to homebound disabled persons or to be served at a group-sitting at a location outside of the home to otherwise homebound elderly persons over 60 years of age and to otherwise homebound disabled persons, as all or part of any food service project funded in whole or in part by government or as part of a private nonprofit food service project available to all such elderly or disabled persons residing within an area of service designated by the private nonprofit organization;

(x) all sales of natural gas, electricity, heat and water delivered through mains, lines or pipes to residential premises for noncommercial use by the occupant of such premises and all sales of natural gas, electricity, heat and water delivered through mains, lines or pipes for agricultural use;

(y) all sales of propane gas, LP-gas, coal, wood and other fuel sources for the production of heat or lighting for noncommercial use of an occupant of residential premises;

(z) all sales of intrastate telephone and telegraph services for noncommercial use except noncommercial intrastate long distance telephone service;

(aa) all sales of materials and services used in the repairing, servicing, altering, maintaining, manufacturing, remanufacturing, or modification of railroad rolling stock for use in interstate or foreign commerce under authority of the laws of the United States;

(bb) all sales of tangible personal property and services purchased directly by a port authority or by a contractor therefor as provided by the provisions of K.S.A. 12-3418 and amendments thereto;

(cc) all sales of materials and services applied to equipment which is transported into the state from without the state for repair, service, alteration, maintenance, remanufacture or modification and which is subsequently transported outside the state

for use in the transmission of liquids or natural gas by means of pipeline in interstate or foreign commerce under authority of the laws of the United States;

(dd) all sales of used mobile homes. As used in this subsection: (1) "Mobile homes" shall have the meaning ascribed thereto by K.S.A. 75-1226 and amendments thereto; and (2) "sales of used mobile homes" means sales other than the original retail sale of such mobile homes;

(ee) all sales of tangible personal property or services purchased for the purpose of and in conjunction with constructing, reconstructing, enlarging or remodeling a qualified business facility located within an enterprise zone, which will qualify for an income tax credit under K.S.A. 79-32,153 and amendments thereto, and the sale and installation of machinery and equipment purchased ~~and installed in conjunction with the original establishment of~~ *for installation at* such a facility. When a person shall contract for the construction, reconstruction, enlargement or remodeling of any such facility, such person shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials, machinery and equipment for incorporation in such project. The contractor shall furnish the number of such certificates to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to the owner of the qualified business facility a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials, machinery or equipment purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed thereon, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615 and amendments thereto;

(ff) all sales of tangible personal property purchased with food stamps issued by the United States department of agriculture; ~~and~~

(gg) all sales of lottery tickets and shares made as part of a lottery operated by the state of Kansas;

(hh) on and after July 1, 1988, all sales of new mobile homes to the extent of 40% of the gross receipts, determined without regard to any trade-in allowance, received from such sale. As used in this subsection, "mobile homes" shall have the meaning ascribed thereto by K.S.A. 75-1226 and amendments thereto;

(ii) all sales of tangible personal property purchased in accordance with vouchers issued pursuant to the federal special supplemental food program for women, infants and children;

(ij) all sales of medical supplies and equipment purchased directly by a nonprofit skilled nursing home or nonprofit intermediate nursing care home, as defined by K.S.A. 39-923, and amendments thereto, for the purpose of providing medical services to residents thereof. This exemption shall not apply to tangible personal property customarily used for human habitation purposes;

(kk) all sales of tangible personal property purchased directly by a nonprofit organization for nonsectarian comprehensive multidiscipline youth development programs and activities provided or sponsored by such organization. This exemption shall not apply to tangible personal property customarily used for human habitation purposes; and

(ll) all sales of tangible personal property or services, including the renting and leasing of tangible personal property, purchased directly on behalf of a community-based mental retardation facility or mental health center organized pursuant to K.S.A. 19-4001 et seq., and amendments thereto, and licensed in accordance with the provisions of K.S.A. 75-3307b and amendments thereto. This exemption shall not apply to tangible personal property customarily used for human habitation purposes.

Sec. 2. 'K.S.A. 12-190 is hereby amended to read as follows: 12-190. All sales of farm machinery and equipment, repair and replacement parts therefor and services performed in the repair and maintenance of such machinery and equipment and all sales of machinery and equipment for use in manufacturing plants located in the state of Kansas and used in the process of manufacturing personal property the sale of which will be subject to taxation under the Kansas retailers' sales tax act, shall be exempt from taxes in any county in which the same were exempt on June 30, 1978, and taxes hereafter initiated by counties and class B cities under the provisions of this act. Each purchaser of farm machinery and each purchaser of manufacturing machinery and equipment exempted herein from the imposition of local sales

taxes must certify in writing on the copy of the invoice or sales ticket to be retained by the seller that he or she such purchaser is engaged in farming or ranching or manufacturing and that the farm machinery or manufacturing machinery and equipment will be used only in farming or ranching or manufacturing as the case may be. As used in this section, farming or ranching shall include the operation of a feedlot.

Sec. 3. K.S.A. 12-190 and K.S.A. 1986 Supp. 79-3606, as amended by section 32 of 1987 House Bill No. 2043, are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 15, 1987.

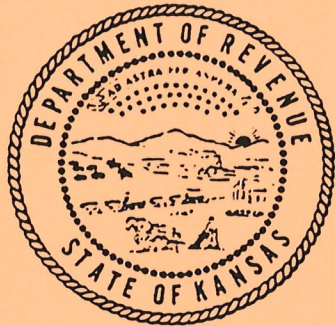
CHAPTER 65

Senate Bill No. 195

AN ACT relating to watercraft; requiring proof of sales or compensating tax payment prior to giving an identification number therefor; imposing a local compensating use tax upon the privilege of use or storing watercraft; amending K.S.A. 12-198 and 82a-804 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 82a-804 is hereby amended to read as follows: 82a-804. (a) The owner of each vessel requiring numbering by this state shall file an application for number with the commission on forms approved by it. The application shall be signed by the owner of the vessel and shall be accompanied by a fee of \$9 and by proof of payment of any tax imposed under the provisions of K.S.A. 12-187, and amendments thereto, K.S.A. 12-198, and amendments thereto, the Kansas retailers' sales tax act or the Kansas compensating tax act, as the case requires, upon forms devised and furnished by the department of revenue to every county treasurer for such purpose. Upon receipt of the application in approved form and proof of payment of sales or compensating taxes, the commission shall enter the same upon the records of its office and issue to the applicant a certificate of number stating the number awarded to the vessel and the name and address of the owner. The owner shall paint on or attach to each side of the bow of the vessel the identification number in such manner as may be prescribed by rules and regulations of the commission in order that it may be clearly visible. The



Kansas Department of Revenue
Division of Taxation

INFORMATION GUIDE 19-89-2

Kansas Retailers' Sales Tax

Sales Tax Exemption for Farm Machinery and Equipment and Certain Supplies

July 1989

This information guide is intended to assist retailers in understanding the Kansas retailers' sales tax exemption for farm machinery and equipment contained in K.S.A. 79-3606(u).

The statute exempts the collection of state and local sales and compensating (use) taxes on the purchase of farm machinery and equipment, as well as labor and parts for repairs or maintenance of such items. The exemption extends not only to purchases of farm machinery and equipment but also to leases (rentals). In addition, the exemption extends to local retailers' sales taxes as well as compensating (use) taxes.

Effective July 1, 1989, there is no longer the requirement that a farmer or rancher must be purchasing the machinery and equipment before this exemption can apply. The definition of "farming or ranching" was expanded to include "farm or ranch work for hire". Therefore, custom cutters, crop dusters, etc., would be entitled to this exemption.

I. MACHINERY AND EQUIPMENT WHICH MAY QUALIFY AS FARM MACHINERY AND EQUIPMENT

In order to qualify as farm machinery and equipment, the machinery and equipment must be used only in farming or ranching.

Examples of machinery and equipment which will qualify as farm machinery and equipment provided the above condition is met include:

combines	cultivators
discs	farm tractors
forage blowers	hay balers
grain grinders	loaders
harrows	plows
irrigation equipment	feeders
seeders	shellers
milking equipment	tillers
pickers	planters
rotary hoes	drags
threshing machines	dusters
farm trailers	weeders

Repair and replacement parts for the equipment mentioned above, and repair and maintenance services to this equipment would likewise be exempt from sales tax.

This list is not intended to be all inclusive as there are many other types of machinery and equipment which may qualify for this exemption.

II. MACHINERY AND EQUIPMENT NOT QUALIFYING FOR THE EXEMPTION

Examples of machinery and equipment which generally do not qualify as farm machinery and equipment include:

air compressors	air tanks
anti-freeze (vehicles)	axes
automobiles	trucks
welding equipment	baler twine
barn ventilators	brooms
brushes	bulldozers
building materials	chain saws
electrical wiring	fans
fence building tools	fencing material
garden hoses	garden rakes
hand tools	hammers
lawnmowers	light bulbs
nails	office supplies
shovels	silos
water wells	gas wells
all terrain vehicles (ATVs)	
grain bins	

any equipment which becomes a part of a building, facility or land improvement

III. PURCHASES OF GENERAL TANGIBLE PERSONAL PROPERTY BY FARMERS AND RANCHERS

Aside from the farm machinery and equipment sales tax exemption, farmers and ranchers must usually pay sales tax on items purchased for use in farming and ranching operations. Thus, purchases of boots, gloves, work clothes, fencing materials, building materials, baling twine and wire, hand tools, etc., are subject to Kansas sales tax.

IV. OTHER EXEMPTION STATUTES

A. Ingredient and Component Part

Certain items purchased by farmers and ranchers may be exempt from Kansas sales tax because the items will become an ingredient or component part of animals or plants raised for resale. This exemption is contained in K.S.A. 79-3606(m).

Four requirements must be met in order for a purchase to be exempt as an ingredient or component part:

- 1) the item purchased must be essential or necessary to the finished product;
- 2) the item purchased must actually be used in or on the finished product;
- 3) the item purchased must become a physical part of the finished product; and,
- 4) the item purchased must become a part of property which is for resale.

Thus, seed, seedlings and fertilizer purchased for use in the production of plants and plant products produced for resale may be purchased exempt from sales tax.

Examples: a) Wheat seed may be purchased exempt from sales tax while bedding plants purchased for a home garden are subject to sales tax.

b) Feed purchased for livestock for use in agriculture or the production of livestock for resale may be purchased exempt from sales tax.

c) Ground grain purchased to feed chickens in an egg-laying operation may be purchased exempt from sales tax while feed purchased for pets and pleasure animals is subject to sales tax.

B. Consumed in Production

As with the ingredient or component part exemption, certain items may be purchased exempt from Kansas sales tax because they are consumed in the production of animals or plants raised for resale. This exemption is contained in K.S.A. 79-3606(n).



KANSAS DEPARTMENT OF REVENUE

Division of Taxation

Robert B. Docking State Office Building
Topeka, Kansas 66625-0001

November 9, 1990

Rich McKee
KANSAS LIVESTOCK ASSOCIATION
6031 S.W. 37th St.
Topeka, Kansas 66614-5128

Dear Mr. McKee:

We are responding to your letter, dated August 20, 1990, requesting a reconsideration of the Department's written ruling, dated June 20, 1990, regarding a livestock weight scale. You are also requesting a ruling regarding the spraying of weeds, which are located around a livestock operation.

K.A.R. 92-19-32, regarding farm machinery and equipment, reads in part:

"...(b) Definitions. (1) "Farm machinery and equipment" shall mean machinery and equipment purchased by a farmer or rancher...which is ordinary and necessary for the growing or raising of agricultural products. Farm machinery and equipment shall not include disposable supplies, buildings, building materials, silos, fence, fencing materials, land, all terrain vehicles, passenger motor vehicles, trucks, truck tractors, trailers, semitrailers, and pole trailers, other than a farm trailer...

(3) "Farming or ranching" shall mean engaging in activity which is ordinary and necessary for the growing or raising of agricultural products. Farming and ranching shall not include any activity occurring after the harvesting of crops or after the time immediately preceding slaughter of livestock."

Regarding your statement about the logic that a combine would not be exempt from sales tax; a combine is definitely a piece of farming machinery and equipment. A combine is used during the harvesting of crops and not after the harvesting of crops. Therefore, the logic, that a combine is exempt from sales tax. A grain dryer, which is used after the harvesting of crops, is not exempt from sales tax as farm machinery and equipment.

Scales may be an ordinary and necessary part of the livestock producing business, but so may be branding irons, syringes, bolus guns, etc. Those items are not exempt from sales tax, simply, because they are considered ordinary and necessary as farm machinery and equipment. Those items are not exempt from sales tax, because they are not machinery and equipment.

It has been and remains the policy of the Kansas Department of Revenue that the sales tax exemption for farm machinery and equipment does not apply to equipment which becomes part of a building, facility, or land improvements. For example: A portable cattle feeder is exempt from sales tax. A cattle feeder, which is not portable but has been permanently attached, is not exempt from sales tax. Portable conveyors are exempt from sales tax. Non-portable conveyors are not exempt from sales tax. Portable farrowing houses are exempt from sales tax. Non-portable farrowing houses are not exempt from sales tax. Fencing and fence materials are subject to sales tax.

Accordingly, a portable livestock weight scale is exempt from sales tax. A livestock weight scale, which is not portable but has been permanently attached, is not exempt from sales tax as farm machinery and equipment.

K.S.A. 79-3606(n) exempts from sales tax, "all sales of tangible personal property which is consumed in the production,...of tangible personal property,...for ultimate sale at retail..."

K.S.A. 79-3602(m) reads: ""Property which is consumed" means tangible personal property which is essential or necessary to and which is used in the actual process of and immediately consumed or dissipated in (1) the production, manufacture, processing, mining, drilling, refining or compounding of tangible personal property, (2) the providing of services or (3) the irrigation of crops, for sale in the regular course of business, and which is not reuseable for such purpose. The following items of tangible personal property are hereby declared to be "consumed" but the listing of such property shall not be deemed to be exclusive nor shall such listing be construed to be a restriction upon or an indication of, the type or types of property to be included within the definition of "property which is consumed" as herein set forth:

(A) Insecticides, herbicides, germicides, pesticides, fungicides, antibiotics, biologicals, pharmaceuticals, vitamins and chemicals for use in commercial or agricultural production of fruit, vegetables, feeds, seeds, animals or animal products whether fed, injected, applied or otherwise used."

K.A.R. 92-19-53, regarding consumed in production, reads in part:

"(a) In order for purchases of tangible personal property to qualify for exemption under K.S.A. 1986 Supp. 79-3606 (n) as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1 and amendments, the following requirements must be met:

- (1) The tangible personal property must be essential or necessary to the process;
- (2) the tangible personal property must be used in the actual process;
- (3) the tangible personal property must be immediately consumed or dissipated in the process;
- (4) the tangible personal property must be used in the production,...of tangible personal property,...for ultimate sale at retail in the regular course of business; and
- (5) the tangible personal property cannot be reusable for such purposes. The identity of the buyer, seller or item purchased is immaterial. Whether the purchase qualifies for exemption is determined by how the item is used in the production or processing activity. An item may be taxable for one use and exempt for another use, even though purchased by the same consumer. Each transaction shall be separately measured against the statutes and regulations to determine the taxability of the transaction."

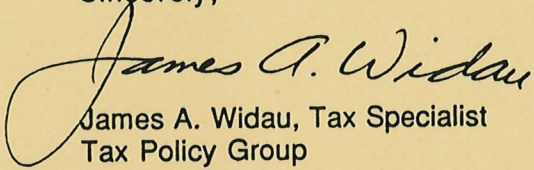
A herbicide used to spray weeds, which are located around a livestock operation, is not "essential or necessary" to the livestock production and is not being used "in the actual process" of producing livestock for ultimate sale at retail. A herbicide used to spray weeds, which are located in a crop field, is being used "in the actual process" of producing the crop for ultimate sale at retail. An insecticide which is fed, injected, or applied to livestock, which is for the ultimate sale at retail, is exempt from sales tax as consumed in production.

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Rich McKee
Kansas Livestock Association

Accordingly, a herbicide used to spray weeds located around a livestock operation is not exempt from sales tax, as consumed in the production of the livestock.

If we may be of further assistance, please contact us at your earliest convenience.

Sincerely,


James A. Widau, Tax Specialist
Tax Policy Group

FOR THE DIRECTOR OF TAXATION