

MINUTES OF THE HOUSE COMMITTEE ON TAXATION

The meeting was called to order by Chairman Edmonds at 9:00 a.m. on January 16, 2002 in Room 519-S of the Capitol.

All members were present except: Representative Flora, excused

Committee staff present: Chris Courtwright, Legislative Research Department  
April Holman, Legislative Research Department  
Don Hayward, Revisor  
Winnie Crapson, Secretary

Conferrees appearing before the Committee: None

Others Attending: None.

Representative Edmonds introduced Representative Tim Owens, a new member of the committee.

By unanimous consent bill will be introduced at the request of Representative Bethell to provide sales tax exemption for Wheat Bowl, Inc. [HB 2654 Wheat Bowl, Inc. sales tax exemption]

By unanimous consent bill will be introduced at the request of the Department of Wildlife and Parks will be introduced to continue tax credits for expenditures relating to threatened and endangered species. [HB 2647 Extending the date of nongame and endangered species expenditures tax credits]

By unanimous consent bill will be introduced at the request of the Kansas Judicial Council to amend K.S.A. 79-15101, et seq. concerning estate taxes. [HB 2652 Estate tax conformity to federal law]

By unanimous consent bill will be introduced at the request of the Department of Revenue to amend K.S.A. 79-3226 to clarify and preserve interpretations of Board of Tax Appeals. [HB 2657 Business income defined for uniform division of income for tax purposes act]

By unanimous consent bill will be introduced at the request of the Department of Revenue to amend K.S.A. 79-3650 to broaden circumstances when a consumer could submit sales tax refund claim directly to Department of Revenue. [HB 2650 Timing of taxpayer appeals]

By unanimous consent bill will be introduced at the request of the Department of Revenue to amend K.S.A. 79-3650 providing authority to adopt regulations concerning any tax administered under Chs 41 and 79 of K.S.A. [HB 2649 Rule and regulation authority of secretary of revenue]

By unanimous consent bill will be introduced at the request of the Department of Revenue to amend K.S.A. 8-170 concerning certificate of title for antique vehicles. [HB 2653 Certificate of Title for Antique Vehicles]

Tony R. Folsom, Executive Director/General Counsel of the Kansas Board of Tax Appeals presented to the Committee a history of the Board of Tax Appeals' handling of requests for ad valorem exemption for bulldozers and other earth moving equipment pursuant to K.S.A. 79-201j (Attachment #1). Mr. Folsom reviewed the statutory provisions prior to 1997 and the 1997 amendment to remove the word "exclusively". Also presented for the information of the Committee were Board Order & Order on Reconsideration in Lietz Construction Case, Docket 2000-6480-TX (Attachment #2); Board Order & Order on Reconsideration in the Furney Case, Docket 2000-10075-TX(Attachment #3); and copy of Attorney General Opinion 96-11 dated January 30, 1997 (Attachment #4).

Mr. Folsom reviewed the two recent cases arising in Wabaunsee County. In Lietz Construction BOTAs concluded that the equipment was exempt pursuant to K.S.A. 79-201j. This case is currently pending before the Court of Appeals (*In the matter of the application of Lietz Construction Co. For exemption from ad valorem taxation in Wabaunsee County, Kansas, Case No. 01-86987-A*). In the Furney case Wabaunsee County and Kansas Department of Revenue Division of Property Valuation appeared in opposition to the exemption. The majority of the Board adopted the arguments of the County and PVD and concluded that the equipment did not qualify for exemption. There were two dissenting members. It is anticipated that this case will be appealed to the Court of Appeals.

## CONTINUATION SHEET

Furney argued that he considers himself a soil conservation contractor and that such activities are a necessary part of effective farm management practices in Kansas and that the earth moving equipment is his personal property used in performing farm work for hire and that there is no requirement that the equipment be "typical" farm equipment. The County argued that this type of earth moving equipment is not included in the exemption and contract work is not typically thought of as farming and ranching. Mr. Furney stated he had paid sales tax on all equipment for which he sought property tax exemption.

BOTA found that the statute consists of two parts and that both must be satisfied in order for an exemption to be granted: The property must be "farm machinery and equipment" or be one of the express exceptions enumerated in the statute and it must be actually and regularly used in a "farming or ranching operation." The Board found the property is not part of a farming and ranching operation. A dissenting opinion stated the belief that the machinery is used in farming operations to maximize the production of the land.

On reconsideration BOTA upheld and clarified its prior order.

The Attorney General Opinion No. 96-11 was rendered prior to the amendment in 1997.

In response to a question from Representative Edmonds to contrast the terms "agricultural endeavor" and "farming and ranching operation", Mr. Folsom said the Supreme Court had addressed that issue and found the term "farming and ranching" is not as broad a term as "agricultural endeavor". The opinion in Furney states that the term "farming and ranching" is more limited than the more comprehensive term "agricultural endeavors".

Representative Larkin said he had requested this informational hearing because he had been contacted by persons in his district who described a situation in which two contractors performing the same function are being treated differently. In most cases they say they don't care whether they are taxed or not taxed but just want to be treated the same. He asked if it was best for the Legislature to wait for the ruling of the Court of Appeals before attempting clarification. Mr. Folsom said since it is not known when the Court's opinion will be out. The Legislature may want to look at and clarify what is to be included and not included. There are three BOTA members now who have found this equipment is not exempted. They had approved other exceptions before when parties were arguing the other side.

At present KSA 79-213 allows the County Appraiser the exemption of certain property on their own without the question coming before the BOTA. Testimony in the cases from Wabaunsee County is that some County Appraisers are removing it if it is owned by the farmer or rancher but not if it is owned by a contractor.

In response to a question from Representative Larkin as to whether the Board of Tax Appeals would have any recommendations to the Legislature, Mr. Folsom said that the Board tries to stay out of policy making decisions but he believes they would like clarification as to what the Legislature intends to be exempt.

In response to a question from Representative Powers about the link between property tax and sales tax Mr. Richard Cram said the Department of Revenue tries to follow the interpretation of definition of farm machinery for property tax purposes and to use that for sales tax exemption as well. If it is not exempt for property tax, it is not exempt for sales tax.

In response to Representative Osborne's request Mr. Folsom said he would be willing to work with the Committee to provide suggestions about how this issue could be clarified to provide some consistency.

The Department of Revenue will provide information about sales tax on farm equipment.

The Chairman announced the next meeting will be January 23, 2002.

The meeting adjourned at 9:47 a.m. The next meeting will be January 23.

TESTIMONY BEFORE THE HOUSE TAXATION COMMITTEE  
REPRESENTATIVE JOHN EDMONDS, CHAIRPERSON  
JANUARY 16, 2002

UPDATE ON THE BOARD OF TAX APPEALS' DECISIONS CONCERNING  
THE AD VALOREM TAX EXEMPTION OF EXCAVATING CONTRACTOR'S  
EQUIPMENT PURSUANT TO K.S.A. 79-201j AS  
FARM MACHINERY AND EQUIPMENT

By

**Tony R. Folsom, Executive Director/General Counsel  
Kansas Board of Tax Appeals**

Honorable Chair and Members of the Tax Committee:

The following is a short history of the Board of Tax Appeals' handling of exemption requests for bulldozers and other earth moving equipment pursuant to K.S.A. 79-201j.

Prior to 1997, K.S.A. 79-201j provided in part that the following is exempt from ad valorem taxation:

All farm machinery and equipment. The term "farm machinery and equipment" means that personal property actually and regularly used exclusively in any farming or ranching operation. The term "farming or ranching operation" shall include the performing of farm or ranch work for hire.

The Board applied this language and exempted bulldozers, etc. if the equipment was used by a farmer or rancher exclusively on his/her farm or ranch. Also, excavating contractors were receiving an exemption for their equipment if they testified and provided evidence that they used the equipment exclusively for work for hire on farm and ranches.

In 1997, K.S.A. 79-201j was amended to remove the word "exclusively":

All farm machinery and equipment. The term "farm machinery and equipment" means that personal property actually and regularly used in any farming or ranching operation. The term "farming or ranching operation" shall include the operation of a feedlot and the performing of farm or ranch work for hire.

This amendment meant there was no longer a requirement for exclusive use and the Board began to exempt equipment of excavating contractors if it was shown that the equipment was "actually and regularly used" for work for hire on farm and ranches. This meant that they could use the equipment for other uses, but the majority of the time it had to be used for performing work for hire on farm and ranches. In the majority of these cases, there was no argument by the counties one way or the other.

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Recently, Wabaunsee county has appeared and argued that the exemptions should not be granted. The first case was Lietz Construction Co., Docket 2000-6480-TX wherein the Board concluded that the equipment was exempt pursuant to K.S.A. 79-201j. This case is currently pending before the Court of Appeals. A copy of the Board decision is attached.

The second case was Furney, James E., Docket 2000-10075-TX. In this case, Wabaunsee County and the Kansas Department of Revenue, Division of Property Valuation (PVD), appeared in opposition to the exemption. A majority of the Board Members basically adopted the arguments of the County and PVD and concluded that the equipment did not qualify for exemption. There were two dissenting Members. We anticipate that this case will be appealed to the Court of Appeals. A copy of the Board decision is attached.

#### ATTACHMENTS

1. Board Order & Order on Reconsideration in Lietz Construction Case (pp. 1-8).
2. Board Order and Order on Reconsideration in Furney Case (pp. 9-26).
3. Copy of 79-201i (p. 27).
4. Copy of 79-201j (1989)(p. 28).
5. Copy of 79-201j (1996 Supp.)(pp.29-30).
6. Copy of 79-201j (1997)(p.31).
7. Copy of 79-201j (1999 Supp.)(pp.32-33).
8. Copy of 79-201j (2000 Supp.)(pp. 34-35).
9. Copy of Kansas Constitution, Article 11 § 1 (2000 Supp.)(pp. 36-37).
10. Copy of 8-126 (2000 Supp.)(pp.38-40).
11. Copy of Attorney General Opinion 96-11 (pp. 41-45).

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BEFORE THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE APPLICATION  
OF LIETZ CONSTRUCTION CO.  
FOR EXEMPTION FROM AD VALOREM  
TAXATION IN WABAUNSEE COUNTY, KANSAS

Docket No. 2000-6480-TX

ORDER

Now the above captioned matter comes on for consideration by the Board of Tax Appeals of the State of Kansas.

This Board conducted a hearing in this matter on January 10, 2001. After considering all of the evidence presented, the Board finds and concludes as follows:

1. The Board has jurisdiction of the subject matter and the parties, an application for exemption having been filed pursuant to K.S.A. 79-213, and amendments thereto.
2. The subject matter of this exemption application is described as follows:
  - (1) 1994 Dozer
  - (1) 1979 Galion
  - (1) 1976 Scraper
  - (1) 1940 Scraper
  - (1) 1948 Scraper
  - (1) 1965 Trailer
  - (1) 1994 Generator
  - (1) 1995 Trailer
  - (1) 1998 Dozer
  - (1) 1996 Comatzu Excavator  
ID# 099-PP100182.
3. The applicant appears by Merle and Nora Lietz. The County appears by Craig Spomer, County Counselor, and Robert Miller Jr., County Appraiser. Taxpayer Exhibit #1 and County Exhibit #1 are admitted.
4. The applicant requests exemption from ad valorem taxation pursuant to K.S.A. 79-201j(a), and amendments thereto. The statute provides an exemption from property taxes for:

[a]ll farm machinery and equipment. The term "farm machinery and equipment" means that personal property actually and regularly used in any farming or ranching

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operation. The term "farm machinery and equipment" shall include: (1) Machinery and equipment comprising a natural gas distribution system which is owned and operated by a non-profit public utility described by K.S.A. 66-104c, and amendments thereto, and which is operated predominantly for the purpose of providing fuel for the irrigation of land devoted to agricultural use; and (2) any greenhouse which is not permanently affixed to real estate and which is used for a farming or ranching operation. The term "farming or ranching operation" shall include the operation of a feedlot, the performing of farm or ranch work for hire and the planting, cultivating and harvesting of nursery or greenhouse products, or both, for sale or resale. 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 the terms are defined by K.S.A. 8-126 and amendments thereto.

5. Merle and Nora Lietz asserted that the subject property is used 75% to 80% of the time for farm soil conservation purposes. Merle Lietz asserted that the farm purposes include building terraces, grassed waterways, stock water ponds including pipe installation, erosion control dams, preparing pad sites for farm equipment sheds, work on livestock facilities such as corrals, farm crossings, cleaning drainage ditches, livestock lagoons, fence rows, and tree and brush removal. The applicant further indicates that the 20% to 25% non soil conservation uses of the equipment include building and grading private roads, site preparation for houses, towers, basements, household lagoons, and grading small parking lots. The applicant acquired the subject property on various dates between 1963 and 1998. The applicant requests an exemption beginning January 1, 2000.
6. The County asserted that the applicants have not met the burden of proof for the subject property to be exempt because the applicants have provided no documents to prove what percentage of time the subject property is used as farm machinery and equipment. The County asserts that the Board should interpret 79-201j, and amendments thereto, as giving common terms their common meaning. The County asserts that the common uses of the subject property are not as farm machinery and equipment, but rather for commercial use.
7. The Board finds that the subject property is actually and regularly used as farm equipment. The Board concludes that the applicant satisfies the conditions enumerated in K.S.A. 79-201j(a), and amendments thereto.

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8. The applicant has also requested an exemption for the trailer that hauls the various dozers and scrapers. The Board finds that because the dozers and scrapers that the trailer hauls is farm equipment as defined in K.S.A. 79-201(j), and amendments thereto, the trailer that hauls the dozers and scrapers can also qualify for an exemption pursuant to K.S.A. 79-201(j), and amendments thereto.
9. The applicant should note that in the event its exempt property ceases to be used for exempt purposes, it must report that fact to the appropriate county appraiser within 30 days thereafter. See K.S.A. 79-214, and amendments thereto.

IT IS THEREFORE, BY THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS, CONSIDERED AND ORDERED that the application requesting an exemption from ad valorem taxation be granted from January 1, 2000, and each succeeding year, so long as the property continues to be used for exempt purposes. IT IS FURTHER ORDERED that any refund due and owing the applicant be made pursuant to K.S.A. 79-213(k), and amendments thereto, which limits the refund to a period not to exceed three years.

Any party to this appeal who is aggrieved by this decision may file a written petition for reconsideration with this Board as provided in K.S.A 77-529, and amendments thereto. The written petition for reconsideration shall set forth specifically and in adequate detail the particular and specific respects in which it is alleged that the Board's order is unlawful, unreasonable, capricious, improper or unfair. Any petition for reconsideration shall be mailed to: Secretary, Board of Tax Appeals, DSOB Suite 451, 915 SW Harrison St., Topeka, KS 66612-1505. A copy of the petition, together with all accompanying documents submitted, shall be mailed to all parties at the same time the petition is mailed to the Board. Failure to notify the opposing party shall render any subsequent order voidable. The written petition must be received by the Board within fifteen (15) days of the certification date of this order (allowing an additional three days for mailing pursuant to statute if the Board serves the order by mail). If at 5:00 pm on the last day of the specified period the Board has not received a written petition for reconsideration, this order will become a final order from which no further appeal is available.

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IT IS SO ORDERED

THE BOARD OF TAX APPEALS



Tony R. Folsom  
TONY R. FOLSOM, ACTING SECRETARY

Melissa Graf  
MELISSA GRAF, ATTORNEY

David L. Patton  
DAVID L. PATTON, CHAIRMAN

Jill A. Jenkins  
JILL A. JENKINS, MEMBER

Susan M. Seltsam  
SUSAN M. SELTSAM, MEMBER

Dwight D. Keen  
DWIGHT D. KEEN, MEMBER



CERTIFICATION

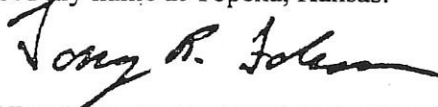
I, Tony R. Folsom, Acting Secretary of the Board of Tax Appeals of the State of Kansas, do hereby certify that a true and correct copy of the order in Docket No. 2000-6480-TX, and any attachments thereto, was placed in the United States Mail, on this 20<sup>th</sup> day of February, 2001, addressed to:

Lietz Construction Co.  
Merle and Nora Lietz, Owners  
RR 1 PO Box 276  
Paxico, KS 66526

Robert Miller Jr  
Wabaunsee County Appraiser  
215 Kansas  
Alma, KS 66401-0278

Ela Mae Kraus  
Wabsunee County Treasurer  
PO Box 440  
Alma, KS 66401-0440

IN TESTIMONY WHEREOF, I have hereunto subscribed my name at Topeka, Kansas.



\_\_\_\_\_  
Tony R. Folsom, Acting Secretary

BEFORE THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE APPLICATION OF  
LIETZ CONSTRUCTION CO.  
FOR EXEMPTION FROM AD VALOREM  
TAXATION IN WABAUNSEE COUNTY, KANSAS

Docket No. 2000-6480-TX

ORDER DENYING RECONSIDERATION

Now the above captioned matter comes on for consideration and decision by the Board of Tax Appeals of the State of Kansas.

The Board finds and concludes as follows:

1. The Board has jurisdiction of the subject matter and the parties, an application for exemption having been filed pursuant to K.S.A. 79-213, and amendments thereto, and a timely Motion for Reconsideration having been filed pursuant to K.S.A. 74-2426 and 77-529, and amendments thereto.
2. The subject matter of this tax exemption application is described as follows:

(1) 1994 Dozer  
(1) 1979 Galion  
(1) 1976 Scraper  
(1) 1940 Scraper  
(1) 1948 Scraper  
(1) 1965 Trailer  
(1) 1994 Generator  
(1) 1995 Trailer  
(1) 1998 Dozer  
(1) 1996 Comatzu Excavator  
ID# 099-PP100182.

3. The Board finds, upon review of the County's Motion for Reconsideration, that no new or additional evidence is offered that would persuade the Board the original order should be modified or that reconsideration should be granted. Therefore, the Board concludes that the Order as originally issued is sustained.

IT IS, THEREFORE, BY THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS, CONSIDERED AND ORDERED that the above captioned Motion for Reconsideration is denied.

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Any party choosing to petition for judicial review of the Board's decision must file the petition with the appropriate court within 30 days from the date of certification of this order. See K.S.A. 77-613(c), and amendments thereto. The Kansas Court of Appeals has jurisdiction over all property appraised and assessed by the director of property valuation, excise, income, or inheritance taxes assessed by the director of taxation, and all tax exemptions. See K.S.A. 74-2426, and amendments thereto. The District Court in the County where the subject property is located has jurisdiction over all tax protests, grievances, and equalizations. See K.S.A. 74-2426, and amendments thereto. Pursuant to K.S.A. 77-529(c), and amendments thereto, any party choosing to petition for judicial review of the Board's decision is hereby notified that the Secretary of the Board of Tax Appeals is to receive notice of the petition for judicial review. Please note, however, that the Board would not be a party to any judicial review because the Board does not have the capacity or power to sue or be sued. See K.S.A. 74-2433(f), and amendments thereto.

IT IS SO ORDERED



Tony R. Folsom  
TONY R. FOLSOM, ACTING SECRETARY

Melissa Graf  
MELISSA GRAF, ATTORNEY

THE BOARD OF TAX APPEALS

David L. Patton  
DAVID L. PATTON, CHAIRMAN

Jill A. Jenkins  
JILL A. JENKINS, MEMBER

Susan M. Seltsam  
SUSAN M. SELTSAM, MEMBER

Dwight D. Keen  
DWIGHT D. KEEN, MEMBER

Calvin T. Roberts  
CALVIN T. ROBERTS, MEMBER

CERTIFICATION

I, Tony R. Folsom, Acting Secretary of the Board of Tax Appeals of the State of Kansas, do hereby certify that a true and correct copy of the order in Docket No. 2000-6480-TX, and any attachments thereto, was placed in the United States Mail, on this 13th day of March, 2001, addressed to:

Merle and Nora Lietz, Owners ✓  
Lietz Construction Co.  
RR 1 PO Box 276  
Paxico KS 66526

Craig J. Spomer, County Counselor ✓  
Wabaunsee County  
Wabaunsee County Courthouse  
215 Kansas  
Alma KS 66401-0440

Robert Miller Jr ✓  
Wabaunsee County Appraiser  
215 Kansas  
Alma KS 66401-0278

Ella Mae Kraus ✓  
Wabaunsee County Treasurer  
PO Box 440  
Alma KS 66401-0440

IN TESTIMONY WHEREOF, I have hereunto subscribed my name at Topeka, Kansas.

*Tony R. Folsom*

\_\_\_\_\_  
Tony R. Folsom, Acting Secretary

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BEFORE THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE APPLICATION  
OF FURNEY, JAMES E. FOR EXEMPTION  
FROM AD VALOREM TAXATION IN  
WABAUNSEE COUNTY, KANSAS

Docket No. 2000-10075-TX

ORDER

Now the above captioned matter comes on for consideration by the Board of Tax Appeals of the State of Kansas.

This Board conducted a hearing in this matter on August 23, 2001, and October 17, 2001. After considering all of the evidence presented, the Board finds and concludes as follows:

1. The Board has jurisdiction of the subject matter and the parties, an application for exemption having been filed pursuant to K.S.A. 79-213, and amendments thereto.
2. The subject matter of this tax exemption application is described as follows:

1976 Fiat Allis 16B Crawler,  
1995 Fiat Allis FL 145 Loader,  
1980 Vulcan Lo Boy Trailer,  
1974 Fiat Allis Grader and  
1984 Fiat Allis FD20 Tractor,  
known as ID# 099-PP-100401.

3. The Applicant appeared by Victor W. Miller, Attorney; and James E. Furney, Applicant. The County appeared by J. Lyn Entrikin Goering, Attorney; and Robert Miller, Jr., County Appraiser. The Division of Property Valuation (hereinafter "PVD") appeared by William E. Waters, Attorney. Jimmy Wallace, KLICA Executive Director, and Mark S. Beck, Director of Property Valuation, appeared as witnesses on August 23, 2001. The Board admitted Applicant Exhibits #2 and #3 and County Exhibits #1 through #14. The Applicant did not offer Applicant Exhibit #4. The Board denied admission of Applicant Exhibits #1, 5, 6, 7, 8 and 9.
4. The Applicant requests exemption from ad valorem taxation pursuant to K.S.A. 79-201j(a), and amendments thereto. The statute provides an exemption from property taxes for:

[a]ll farm machinery and equipment. The term "farm machinery and equipment" means that personal property actually and regularly used in any farming or ranching operation. The term "farm machinery and equipment" shall

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include: (1) Machinery and equipment comprising a natural gas distribution system which is owned and operated by a non-profit public utility described by K.S.A. 66-104c, and amendments thereto, and which is operated predominantly for the purpose of providing fuel for the irrigation of land devoted to agricultural use; and (2) any greenhouse which is not permanently affixed to real estate and which is used for a farming or ranching operation. The term "farming or ranching operation" shall include the operation of a feedlot, the performing of farm or ranch work for hire and the planting, cultivating and harvesting of nursery or greenhouse products, or both, for sale or resale. 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 the terms are defined by K.S.A. 8-126 and amendments thereto. . . .

#### FINDINGS OF FACT

5. The Applicant is James E. Furney who operates Furney Construction Company as a sole proprietorship. Furney Construction Company is a land improvement contractor and charter member of the Kansas Land Improvement Contractors' Association. The Applicant learned about the possibility of a tax exemption for the subject property from another association member and through the association newsletter.
  
6. The Board received the Applicant's application for exemption from ad valorem taxation on November 28, 2000. The Applicant signed the Verification on October 25, 2000. At that time, the Applicant owned a 1976 Fiat Allis 16B Crawler purchased used in 1981 for \$40,000; a 1995 Fiat Allis FL 145 Loader purchased used in 1998 for \$26,000; a 1980 Vulcan Lo Boy Trailer purchased used in 1982 for \$6,000; and a 1974 Fiat Allis Grader purchased used in 1995 for \$6,000. The Applicant also requests an exemption for a 1984 Fiat Allis FD20 Tractor that was traded in 1998 for the 1995 Fiat Allis FL 145 Loader. The Applicant requests the exemption begin in 1997 for the 1976 Fiat Allis 16B Crawler, 1980 Vulcan Lo Boy Trailer, and 1974 Fiat Allis Grader. He further requests the exemption begin in 1999 for the 1976 Fiat Allis FL 145 Loader, and the exemption be granted from 1996 to 1998 for the 1984 Fiat Allis FD20 Tractor. The Applicant did not submit any photographs, certificates of title, or any other documentary evidence of the ownership of the subject property. The Applicant did provide personal property tax receipts showing the Applicant paid the 1998 and 1999 personal property taxes. No receipts were submitted for 1996 or 1997. The Applicant testified that he also paid the 2000 personal property taxes.

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7. The Applicant owns an 80-acre farm in Wabaunsee County on which he produces wheat, soybeans, and native hay. He testified that there are 11,300 feet of terraces on his farm. He uses his equipment two or three times per year on his own property. The Applicant considers the maintenance of these terraces to be an intricate part of his farming operation. He testified that other farmers do not own this type of equipment because of the substantial investment of capital. He explained that the equipment is used on farms to move dirt, push trees, load trucks, and to build and maintain terraces, waterways and ponds.
8. The Applicant testified that the 1976 crawler is used 90 percent of the time for farm work; the 1995 loader is used 60 percent of the time for farm work; the trailer is used 80 to 90 percent of the time for farm work; the road grader is used 80 percent of the time for farm work; and the 1984 tractor is used 90 percent of the time for farm work. The Applicant explained that these estimates were based on the number of jobs he performs. The Applicant had not made any calculations as to the number of hours each item of equipment was used in farm-related work. He testified that he would have to study his books in order to answer such questions. The Applicant did not provide evidence of customer billings, invoices, logbooks or other documentary evidence of the time spent on what he described as "farm work."
9. The Applicant also owns other machinery and equipment for which he does not request an exemption. The Applicant owns three International trucks, a sheep's foot roller, a 1960 dump truck, two Galion single-drum pull type rollers, and two diesel tandem axle dump trucks.
10. The Applicant characterizes himself as a soil conservation contractor. His application indicated that "All work is done on a for hire basis." At the hearing, the Applicant testified that he charges \$95 per hour for the bulldozer, and charged about \$80 per hour for the Fiat -Allis tractor that was traded in 1998 for the bulldozer. He also charges \$80 per hour for the 1995 Loader and \$75 per hour for the 1974 road grader. However, if the job is government-assisted, the Applicant charges rates in accordance with government guidelines that allow charges by the linear foot of terrace, by the acre for waterways, and by the cubic yard of dirt moved for ponds.
11. The Applicant stated that the trailer for which he seeks exemption does not push dirt around. He explained that the trailer is necessary to transport the equipment from job to job because the earth moving equipment, except for the road grader, all move on steel tracks. Only the road grader has rubber tires.
12. The Applicant admitted that the type of equipment for which he is seeking an exemption is more likely to be found under "construction equipment" in the yellow pages, rather than "farm equipment."

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13. The Applicant testified that he had paid sales tax on all of the equipment for which he is seeking an exemption in this matter.
14. Jimmy R. Wallace, Executive Director of the Kansas Land Improvement Contractors' Association, testified that the organization is a lobbying organization and trade association. The association conducted a survey of its members to determine how the farm machinery and equipment exemption was applied from county to county. Mr. Wallace testified that the results showed that there was inconsistency in the application of the exemption statute by county appraisers. See County Exhibit #12.
15. Mark S. Beck, Director of Property Valuation, explained that one of his duties is to assist toward uniform assessments by the counties throughout the state of Kansas. He agreed that there are no directives from the Division of Property Valuation dealing with the interpretation of the farm machinery and equipment exemption. In a Memo dated March 5, 1985, a former Director of Property Valuation stated that machinery used by land improvement companies to form terraces, make ponds, make irrigation ditches and level grades was not eligible for exemption. Mr. Beck was not Director at that time, but agrees with that position today. He also clarified that all directives and memorandums, including the March 5, 1985 Memo, were rescinded in 1992 prior to his arrival.
16. Robert Miller, Jr., Wabaunsee County Appraiser, testified that as he understood the language of K.S.A. 79-201j(a), the exemption applies to typical farm equipment such as tractors, combines, and bailers. He requested a hearing in this matter because he did not feel that the subject property should be exempt from ad valorem taxation and he wanted guidance from the Board.

#### APPLICANT'S ARGUMENTS

17. The Applicant argues that the use of the subject equipment increases the productivity of farm and ranch land. Further, soil conservation activities are a necessary part of effective farm management practices in Kansas.
18. The Applicant asserts that the Board has granted exemption pursuant to K.S.A. 79-201j(a), and amendments thereto, to numerous others similarly situated to the Applicant. The Applicant cites In re Margaret Rathert d/b/a Rathert Construction, In re Glen Schmidt Dozer Work, In re LaVerne Clark, In re Douglas T. Kramer, In re Wilbur Jueneman, and In re Lietz Construction Co.
19. The Applicant argues that the subject equipment is personal property actually and regularly used in a farming and ranching operation. The Applicant asserts that he is performing farm work for hire and, therefore, the statute is

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satisfied. Further, he argues that there is no requirement that the equipment be "typical" farm equipment as asserted by the County Appraiser. The only test is a use test. Consequently, the Applicant states that its equipment qualifies for exemption from ad valorem taxation pursuant to K.S.A. 79-201j(a), and amendments thereto.

### COUNTY'S ARGUMENTS

20. The County asserts that tax exemption statutes are to be construed strictly in favor of imposing the tax and against allowing the exemption for one that does not clearly qualify. It argues that the burden of establishing entitlement to an exemption is on the party claiming the exemption. Further, the Board is required to rule against the exemption and in favor of exemption if there is any doubt. In re Appeal of Scholastic Book Clubs, Inc., 260 Kan. 528,532, 920 P.2d 947,951 (1996).
21. The County argues that whether property is exempt from ad valorem taxation is a question of law if the facts are agreed upon, and a mixed question of law and fact if the facts are disputed. The County urges that bulldozers, crawler tractors, dirt loaders, road graders, dirt scrapers, and other similar earth-moving equipment, including the trailers used to haul them, do not qualify for exemption as "farm machinery and equipment" under K.S.A. 79-201j, and amendments thereto, as a matter of law. The statute requires that the property be actually and regularly used in a "farming or ranching operation." The County points out that "farming or ranching operation" is defined as "the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit and other horticultural crops, [and] the grazing or the production of livestock." See T-Bone Feeders, Inc. v. Martin, 236 Kan. 641, 646-47, 693 P.2d 1187, 1191-92 (1985).
22. The County further argues that unless otherwise specifically provided by legislative amendments to K.S.A. 79-201j, "farming and ranching operation" does not include "providing a service to those who work the land." See Farmers Co-operative v. Kansas Board of Tax Appeals, 236 Kan. 632, 637-640, 694 P.2d 462, 466-68 (1985). While the 1985 Kansas Legislature amended the statute to include "farm or ranch work for hire," the amendment did not go so far as to exempt any service provided to farmers or ranchers, but only those services within the definition of "farming or ranching operation" as set forth by the Kansas Supreme Court in Farmers Co-operative.
23. The County also argues that where the legislature leaves undefined a statutory term in common use then the words such as "farming and ranching operation" must be given their "natural and ordinary" meanings. "The rule of strict construction means that ordinary words are to be given their ordinary meaning." Director of Taxation v. Kansas Krude Oil Reclaiming

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Co., 236 Kan. 450, 455, 691 P.2d 1303 (1984). None of the amendments to K.S.A. 79-201j since Farmers Co-operative in 1985 have adopted any other definition of "farming or ranching operation" than what was expressed by the Court. The County asserts that land improvement, excavating, and earth-moving activities are not in the nature of the common activities that a person of common intelligence would think of as a typical Kansas "farming or ranching operation."

24. The County reasons that the 1985 amendment adding "farm or ranch work for hire" means a "farming or ranching operation," as defined by Farmers Co-operative, that is carried out by a person other than the farmer or rancher personally under an agreement for services. The County argues that because land improvement work does not qualify as a "farming or ranching operation," it follows that it cannot qualify as "farm or ranch work for hire."
25. In the alternative, the County asserts that the applicant has failed to establish by substantial competent evidence that (a) any of the subject property is "actually and regularly used in any farming or ranching operation"; (b) the subject trailer meets the requirements of K.S.A. 8-126(z), and amendments thereto; or (c) any of the equipment was "exclusively" used in a farming or ranching operation prior to 1998, as required for entitlement of a refund for taxes paid of 1996 or 1997.
26. Further, the County argues that when separate statutes relate to the same subject matter and class of things, they should be considered in pari materia. Bulldozers, road maintenance equipment, and road scrapers are usually not exempt from retailers' sales tax as "farm machinery and equipment," which is defined and used in K.S.A. 79-3606(t) in a manner that is analogous to K.S.A. 79-201j. In conclusion, the County requests that the exemption application be denied.

#### PVD'S ARGUMENTS

27. PVD asserts that the Kansas Supreme Court in Farmers Co-operative defined "farming" as "the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit and other horticultural crops, and the grazing and production of livestock." The Court in T-Bone Feeders defined "farming" in essentially the same way. Black's Law Dictionary defines "farming operation" as "[a] business engages in farming, tillage of soil, dairy farming, ranching, raising of crops, poultry, or livestock, and production of poultry or livestock products in an unmanufactured state."
28. PVD states that the Kansas Supreme Court has noted that the term "farming and ranching operations" found in K.S.A. 79-201j is more limited than the more comprehensive term "agricultural endeavors." See Farmers Co-operative. PVD reasons that the Court is implying an intent by the

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legislature to limit the exemption strictly to those who actually farm and ranch.

29. In addition, PVD explains the legislative history of the 1985 amendment to K.S.A. 79-201j that overruled Farmers Co-operative in order to allow the performance of farm or ranch work for hire in the definition of "farming and ranching operation." Despite several amendments the statute still includes the limited term "farming and ranching operation." PVD asserts that this indicates that the legislature did not intend to include all "agricultural endeavors."
30. PVD further argues that the legislature made no attempt to overrule PVD's interpretation of K.S.A. 79-210j as stated by a former director of property valuation. The interpretation of the former director was that machinery used by land improvement companies to form terraces, make ponds, irrigation ditches, and level grades was not eligible for exemption as farm machinery. PVD asserts that the subject property is used in an "agricultural endeavor", but is not used in a "farming or ranching operation."
31. In oral arguments, PVD asserts a two-part test to analyze whether property should be exempt pursuant to K.S.A. 79-201j. The first question is whether the property is what an ordinary person would consider common traditional farm machinery or equipment. If the answer is "no", PVD argues that the second question is whether the property falls within the exceptions expressly enumerated in the statute. If the property is common farm machinery or equipment or falls within the exceptions, then PVD argues that the second question is whether the property is actually and regularly used in a farming or ranching operation. PVD asserts that the subject property is not what an ordinary person would consider farm machinery and does not fall with the exceptions enumerated in the statute. Therefore, PVD argues that the subject property cannot be granted an exemption.

#### CONCLUSIONS

32. In cases involving questions of claimed exemption from ad valorem taxation, the following rules of construction and legal principles have been established:
  - (1) Taxation is the rule; exemption is the exception. All doubts are to be resolved against exemption and in favor of taxation. (Citations omitted.)
  - (2) Constitutional and statutory provisions exempting property from taxation are to be strictly construed. (Citations omitted.)
  - (3) The burden of establishing exemption from taxation is on the one claiming it. (Citations omitted.)

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Board of County Comm'rs v. Kansas Ave. Properties, 246 Kan. 161, 166, 786 P.2d 1141 (1990) citing T-Bone Feeders, Inc. v. Martin, 236 Kan. 641, 693 P.2d 1187 (1985).

33. K.S.A. 79-201j(a), and amendments thereto, provides an exemption from property taxes for:

[a]ll farm machinery and equipment. The term "farm machinery and equipment" means that personal property actually and regularly used in any farming or ranching operation. The term "farm machinery and equipment" shall include: (1) Machinery and equipment comprising a natural gas distribution system which is owned and operated by a non-profit public utility described by K.S.A. 66-104c, and amendments thereto, and which is operated predominantly for the purpose of providing fuel for the irrigation of land devoted to agricultural use; and (2) any greenhouse which is not permanently affixed to real estate and which is used for a farming or ranching operation. The term "farming or ranching operation" shall include the operation of a feedlot, the performing of farm or ranch work for hire and the planting, cultivating and harvesting of nursery or greenhouse products, or both, for sale or resale. 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 the terms are defined by K.S.A. 8-126 and amendments thereto. . . .

34. The Kansas Supreme Court has addressed the exemption provided by K.S.A. 79-201j, and amendments thereto, in two cases. T-Bone Feeders, Inc. v. Martin, 236 Kan. 641, 693 P.2d 1187, 1191-92 (1985) and Farmers Co-operative v. Kansas Board of Tax Appeals, 236 Kan. 632, 694 P.2d 462, 466-68 (1985) were both issued by the Kansas Supreme Court on January 26, 1985. At that time, K.S.A. 79-201j provided an exemption for:

[a]ll farm machinery and equipment. The term "farm machinery and equipment" means that personal property actually and regularly used exclusively in farming or ranching operations. 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 the terms are defined by K.S.A. 8-126 and amendments thereto. . . .

35. The Court in Farmers Co-operative held that rented fertilizer equipment is not entitled to an exemption pursuant to K.S.A. 79-201j because it is not

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used exclusively in farming and ranching operations since a fee was charged. The Court in T-Bone Feeders held that personal property used exclusively in a commercial feedlot operation was not entitled to an exemption pursuant to K.S.A. 79-201j because a commercial feedlot is not a "farming or ranching operation." The Court found that commercial feedlots are "agricultural endeavors" and highly specialized agribusiness. Following these decisions, the Kansas Legislature amended the statutory definition of "farming or ranching operation" to include the operation of a feedlot, and the performance of farm or ranch work for hire.

36. Over the years, the Kansas Legislature has amended K.S.A. 79-201j several times to expressly exempt certain types of machinery and equipment such as aquaculture machinery and equipment, Christmas tree machinery and equipment, commercial feedlots, nonprofit natural gas distribution systems operated predominantly to provide irrigation fuel, and greenhouses not permanently affixed to the real estate. To date, each expansion of K.S.A. 79-201j has been by express terms by the Legislature. The statute continues to contain the more limited term "farming or ranching operation." "Farming or ranching operation" is a more limited term than "agricultural endeavor." Farmers Co-operative, 236 Kan. at 637. Following the Court's decision in Farmers Co-operative, the Legislature did not amend the statute to include the broader term "agricultural endeavor," but instead included within the definition of "farming or ranching operation" the performance of "farm or ranch work for hire."
37. Upon review of the statutory construction of K.S.A. 79-201j, and amendments thereto, the Board finds that the statute consists of two parts that both must be satisfied in order for an exemption to be granted:
  - (1) The subject property must be "farm machinery and equipment," or be one of the express exceptions enumerated in the statute; and
  - (2) The subject property must be actually and regularly used in a "farming or ranching operation."
38. With respect to the first part of the test, the Board notes that the subject property does not fall with the express exceptions listed in the statute. The subject property is not aquaculture machinery, not commercial feedlot equipment, not a natural gas distribution system, and not a greenhouse. Therefore, the question is whether the subject property is "farm machinery and equipment" as the common person of ordinary understanding would define the term.
39. The Kansas Court of Appeals has acknowledged a "traditional category" test when interpreting another exemption statute K.S.A. 79-201c. In re Fairfield, 27 Kan.App.2d 497, 5 P.3d 539 (2000). The Court of Appeals denied a household goods exemption for a backhoe that is typically used for

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construction, even though it was used for only for yard work. "Ordinary words are to be given their ordinary meanings. Statutes should not be read to add which is not found in the language or to delete what is, as a matter of ordinary English, contained in the language." Fairfield, 27 Kan.App.2d at 499 (citation omitted.) With respect to the present application, the Board believes that persons of common understanding would consider the subject property to be construction equipment, not farm machinery and equipment. Consequently, the Board finds that the subject property fails the traditional category examination.

40. With respect to the second part of the test, the Board finds that K.S.A. 79-201j, and amendments thereto, requires that the subject property be "actually and regularly used in any farming or ranching operation." The Kansas Supreme Court in Farmers Co-operative and T-Bone Feeders essentially defined "farming" as "the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit and other horticultural crops, and the grazing and production of livestock." Although there is actual and regular use of the subject property on farms for soil conservation purposes, the Board finds that the use of this property in building and maintaining terraces and ponds, etc. is not part of a "farming or ranching operation." Soil conservation may be an agricultural endeavor, but it is not a farming and ranching operation.
41. In conclusion, the Board finds that the subject property does not satisfy the conditions enumerated in K.S.A. 79-201j, and amendments thereto. The subject property is not traditional "farm machinery and equipment", nor is it used in a "farming or ranching operation." Consequently, the Board concludes that the application for exemption from ad valorem taxation is denied.

IT IS THEREFORE, BY THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS, CONSIDERED AND ORDERED that the application requesting an exemption from ad valorem taxation be denied.

Any party to this appeal who is aggrieved by this decision may file a written petition for reconsideration with this Board as provided in K.S.A. 77-529, and amendments thereto. The written petition for reconsideration shall set forth specifically and in adequate detail the particular and specific respects in which it is alleged that the Board's order is unlawful, unreasonable, capricious, improper or unfair. Any petition for reconsideration shall be mailed to: Secretary, Board of Tax Appeals, DSOB Suite 451, 915 SW Harrison St., Topeka, KS 66612-1505. A copy of the petition, together with all accompanying documents submitted, shall be mailed to all parties at the same time the petition is mailed to the Board. Failure to notify the opposing party shall render any subsequent order voidable. The written petition must be received by the Board within fifteen (15) days of the certification date of this order (allowing an additional three days for mailing pursuant to statute if the Board serves the order by mail). If at 5:00 pm on the

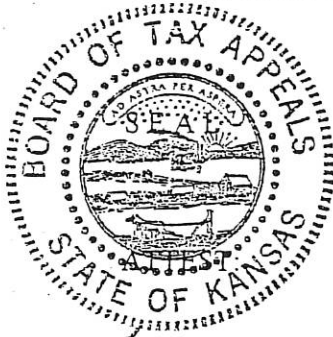
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last day of the specified period the Board has not received a written petition for reconsideration, this order will become a final order from which no further appeal is available.

IT IS SO ORDERED



*Tony R. Folsom*

TONY R. FOLSOM, ACTING SECRETARY

*Amelia Kovar-Donohue*  
AMELIA KOVAR-DONOHUE, ATTORNEY

THE BOARD OF TAX APPEALS

*David L. Patton*  
DAVID L. PATTON, CHAIRMAN

DISSENTING OPINION  
*Jill A. Jenkins*  
JILL A. JENKINS, MEMBER

*Susan M. Seltsam*  
SUSAN M. SELTSAM, MEMBER


DISSENTING OPINION  
*Dwight D. Keen*  
DWIGHT D. KEEN, MEMBER

*Calvin T. Roberts*  
CALVIN T. ROBERTS, MEMBER

DISSENTING OPINION

We respectfully dissent from the majority opinion that the subject property does not qualify for exemption pursuant to K.S.A. 79-201j, and amendments thereto. K.S.A. 79-201j, and amendments thereto, provides an exemption from ad valorem taxation for “[a]ll farm machinery and equipment.” The statute itself defines “farm machinery and equipment” as “personal property actually and regularly used in any farming or ranching operation.” The subject property is personal property, and it is actually and regularly used in farming operations. Soil conservation activities are a necessary part of effective farm management practices in the state of Kansas. By the inclusion of “farm and ranch work for hire” in the definition of “farming or ranching operation,” the Legislature has expressed an intent to allow an exemption for the subject property. We believe that the subject property is used in farming operations to maximize the production of the land. Therefore, we would grant an exemption pursuant to K.S.A. 79-201j, and amendments thereto, for the subject property.

We respectfully dissent.



JILL A. JENKINS, MEMBER



DWIGHT D. KEEN, MEMBER



CERTIFICATION

I, Tony R. Folsom, Acting Secretary of the Board of Tax Appeals of the State of Kansas, do hereby certify that a true and correct copy of the order in Docket No. 2000-10075-TX, and any attachments thereto, was placed in the United States Mail, on this 19<sup>th</sup> day of NOVEMBER, 2001, addressed to:

James E. Furney  
RR 2 PO Box 8  
Alta Vista, KS 66834

Victor W. Miller  
Attorney at Law  
700 SW Jackson Ste 404  
Topeka, KS 66603

Robert Miller Jr.  
Wabaunsee County Appraiser  
215 Kansas  
Alma, KS 66401-0278

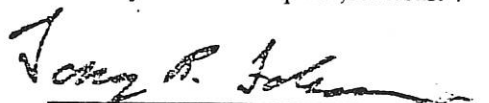
J Lyn Entrikin Goering  
Attorney at Law  
1557 Lakeside Dr  
Topeka, KS 66694

Ella Mae Kraus  
Wabaunsee County Treasurer  
PO Box 440  
Alma, KS 66401-0440

And a copy was hand-delivered to:

William E. Waters, Attorney  
Division of Property Valuation  
Docking State Office Bldg 4th Floor  
Topeka, KS 66612

IN TESTIMONY WHEREOF, I have hereunto subscribed my name at Topeka, Kansas.

  
Tony R. Folsom, Acting Secretary

BEFORE THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE APPLICATION  
OF FURNEY, JAMES E. FOR EXEMPTION  
FROM AD VALOREM TAXATION IN  
WABAUNSEE COUNTY, KANSAS

Docket No. 2000-10075-TX

ORDER DENYING RECONSIDERATION

Now the above captioned matter comes on for consideration and decision by the Board of Tax Appeals of the State of Kansas.

The Board finds and concludes as follows:

1. The Board has jurisdiction of the subject matter and the parties, an application for exemption having been filed pursuant to K.S.A. 79-213, and amendments thereto, and a timely Petition for Reconsideration having been filed pursuant to K.S.A. 74-2426 and K.S.A. 77-529, and amendments thereto.
2. The subject matter of this tax exemption application is described as follows:  

1976 Fiat Allis 16B Crawler,  
1995 Fiat Allis FL 145 Loader,  
1980 Vulcan Lo Boy Trailer,  
1974 Fiat Allis Grader and  
1984 Fiat Allis FD20 Tractor,  
known as ID# 099-PP-100401.
3. In an Order certified November 19, 2001, the Board denied the Applicant's request for an exemption from ad valorem taxation. On December 7, 2001, the Board received the Applicant's Petition for Reconsideration and Request for Rehearing. The Board received Wabaunsee County's Response in Opposition to Applicant's Petition for Reconsideration and Request for Rehearing on December 10, 2001. The Board also received a Response of the Director of Property Valuation to Petition for Reconsideration and Request for Rehearing on December 12, 2001.
4. The Applicant asserts that evidence of similar equipment not being taxed in Wabaunsee County has been newly discovered to refute the testimony of the

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County Appraiser. The Applicant also argues that the Board failed to distinguish its conclusions in this matter from a previously filed application from Lietz Construction wherein the Board granted an exemption for similar equipment. Further, the Applicant asserts the Board improperly interpreted and applied Farmers Co-operative v. Kansas Board of Tax Appeals, 236 Kan. 632, 694 P.2d 462 (1985), and erroneously applied its own definition of "farming and ranching operation."

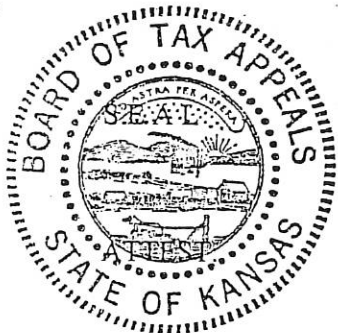
5. The County argues that the Applicant has not come forward with any "newly discovered evidence." It asserts that the evidence could have been discovered through routine discovery prior to the hearing. Further, the County points out that the Applicant wishes to attempt to use the evidence to impeach the testimony elicited on cross-examination of a County witness. The County contends that the Applicant must have anticipated asking the witness these questions, but failed to prepare the asserted "newly discovered evidence." The Applicant should not now be allowed to offer the evidence in a new hearing.
6. The County also asserts that the Board's order is not arbitrary and capricious because it fails to specifically distinguish this matter from an exemption granted to another applicant. Further, the County believes that the Board did not invent its own definition of "farming and ranching operation," but did rely on binding judicial precedent to define the term as required by K.S.A. 74-2433(a), and amendments thereto.
7. The Division of Property Valuation (hereinafter "PVD") asserts that the Court of Appeals has held that the Board does not have the authority to investigate the taxability of property. The authority to place property on the tax rolls is vested in the county appraiser and, for that reason, reconsideration or rehearing would accomplish nothing on this issue. PVD also contends that the Board is not bound by stare decisis and, therefore, has no obligation to distinguish its own cases.
8. Further, PVD asserts that there is no evidence that the Board misinterpreted or ignored the holdings of Farmers Co-operative. PVD also argues that the Board did not apply its own definition of farm machinery and equipment, but applied the definition stated by the Kansas Supreme Court in Farmers Co-operative and T-Bone Feeders, Inc. v. Martin, 236 Kan. 641, 693 P.2d 1187 (1985).

9. Upon review of the Applicant's proffer of the evidence it wishes to offer at a rehearing, the Board finds that such evidence is not "newly discovered evidence," because the evidence with reasonable diligence could have been produced at the hearing. See Plains Transport of Kansas, Inc. v. Baldwin, 217 Kan. 2, 7-8, 535 P.2d 865 (1975). Further, the Board finds that the evidence would not persuade the Board to modify its original order.
10. The Board acknowledges that it granted an exemption to Lietz Construction in Docket No. 2000-6480-TX, and that the matter is currently pending before the Kansas Court of Appeals. The Board is not bound by the doctrine of stare decisis to follow prior Board decisions in other cases. In re K-Mart Corp., 238 Kan. 393, 396, 710 P.2d 1304 (1985). Therefore, the Board finds that it is not required to distinguish its own cases, and concludes that such a failure to distinguish cases is not arbitrary and capricious.
11. The Board believes that it has properly interpreted and applied the Kansas Supreme Court opinions of Farmers Co-operative and T-Bone Feeders, Inc., in light of subsequent legislative amendments to the statute. The Board also believes that it properly applied the definition of "farming and ranching operation" as defined by the Kansas Supreme Court and the subsequent legislative amendment.
12. Finally, the Board notes that it did not state that the subject property must be specifically enumerated in the statute. In paragraphs 37 through 39, the Board reasoned that the subject property must be (1) "farm machinery and equipment" as the common person of ordinary understanding would define the term *or* (2) be one of the express exceptions enumerated in the statute. The Board found that the subject property met neither of these requirements.
13. Upon review of the Applicant's Petition for Reconsideration and Request for Rehearing, the Board finds that no new or additional evidence is offered that would persuade the Board the original order should be modified or that reconsideration and rehearing should be granted. Therefore, the Board concludes that the Order as originally issued is sustained.

IT IS, THEREFORE, BY THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS, CONSIDERED AND ORDERED that the above captioned Petition for Reconsideration and Request for Rehearing is denied.

Any party choosing to petition for judicial review of the Board's decision must file the petition with the appropriate court within 30 days from the date of certification of this order. See K.S.A. 77-613(c), and amendments thereto. The Kansas Court of Appeals has jurisdiction over all property appraised and assessed by the director of property valuation, excise, income, or inheritance taxes assessed by the director of taxation, and all tax exemptions. See K.S.A. 74-2426, and amendments thereto. The District Court in the County where the subject property is located has jurisdiction over all tax protests, grievances, and equalizations. See K.S.A. 74-2426, and amendments thereto. Pursuant to K.S.A. 77-529(c), and amendments thereto, any party choosing to petition for judicial review of the Board's decision is hereby notified that the Secretary of the Board of Tax Appeals is to receive notice of the petition for judicial review. Please note, however, that the Board would not be a party to any judicial review because the Board does not have the capacity or power to sue or be sued. See K.S.A. 74-2433(f), and amendments thereto.

IT IS SO ORDERED



*Tony R. Folsom*

TONY R. FOLSOM, ACTING SECRETARY

*Amelia Kovar-Donohue*  
AMELIA KOVAR-DONOHUE, ATTORNEY

THE BOARD OF TAX APPEALS

*David L. Patton*  
DAVID L. PATTON, CHAIRMAN

DISSENTING  
JILL A. JENKINS, MEMBER

*Susan M. Seltsam*  
SUSAN M. SELTSAM, MEMBER

DISSENTING  
DWIGHT D. KEEN, MEMBER

*Calvin T. Roberts*  
CALVIN T. ROBERTS, MEMBER

CERTIFICATION

I, Tony R. Folsom, Acting Secretary of the Board of Tax Appeals of the State of Kansas, do hereby certify that a true and correct copy of the order in Docket No. 2000-10075-TX, and any attachments thereto, was placed in the United States Mail, on this 21st day of December, 2001, addressed to:

James E Furney ✓  
RR 2 PO Box 8  
Alta Vista KS 66834

Victor W Miller, Attorney at Law ✓  
700 SW Jackson Ste 404  
Topeka KS 66603

Robert Miller Jr ✓  
Wabaunsee County Appraiser  
215 Kansas  
Alma, KS 66401-0278

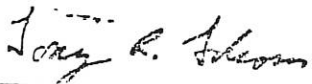
J Lyn Entrikin Goering ✓  
Attorney at Law  
1557 Lakeside Dr  
Topeka, KS 66694

Ella Mae Kraus ✓  
Wabaunsee County Treasurer  
PO Box 440  
Alma, KS 66401-0440

And a copy was hand-delivered to:

William E Waters, Attorney ✓  
Division of Property Valuation  
Docking State Office Bldg 4th Floor  
Topeka, KS 66612

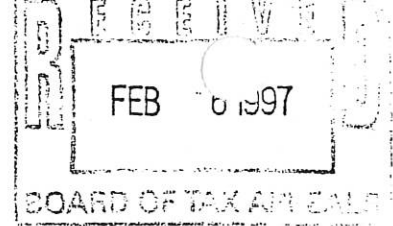
IN TESTIMONY WHEREOF, I have hereunto subscribed my name at Topeka, Kansas.

  
\_\_\_\_\_  
Tony R. Folsom, Acting Secretary

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State of Kansas

Office of the Attorney General

301 S.W. 10TH AVENUE, TOPEKA 66612-1597

CARLA J. STOVALL  
ATTORNEY GENERAL

January 30, 1997

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
FAX: 296-6296

ATTORNEY GENERAL OPINION NO. 96- 11

The Honorable Eugene L. Shore  
State Representative, 124th District  
Route 2  
Johnson, Kansas 67855-9804

Re: Constitution of the State of Kansas--Finance and Taxation--System of  
Taxation; Classification; Exemption; Farm Machinery and Equipment

Taxation--Property Exempt from Taxation--Farm Machinery and Equipment;  
Exclusive Use for Farming or Ranching

Synopsis: The constitutional exemption from property taxation for farm machinery and  
equipment does not require that the property be used exclusively for farming.  
K.S.A. 1995 Supp. 79-201j does have an exclusive use requirement. In that  
the constitutional exemption postdates the statutory exemption, is broader  
than the statutory exemption, and the legislature is precluded from limiting  
self-executing constitutional exemptions such as this, an exemption for farm  
machinery and equipment may be granted even if the property is subject to  
more than one use. Cited herein: K.S.A. 79-201i; K.S.A. 1995 Supp. 79-  
201j; Kan. const., art. 11, § 1.

\* \* \*

Dear Representative Shore:

You request our opinion regarding K.S.A. 1995 Supp. 79-201j and its application to certain  
farm machinery and equipment. You explain that the Board of Tax Appeals has taken the  
position that farm machinery and equipment, such as center pivot irrigation systems, is not  
entitled to exemption under K.S.A. 1995 Supp. 79-201j(a) if it is financed through a lease-

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Attachment No. 4

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purchase agreement. The board, in at least one of its decisions, cites to Kansas Supreme Court cases that have concluded that if property is leased and the lessor collects rent, a dual use exists for that property and, even if it is used by the lessee for an exempt purpose, it is not entitled to exemption when there is an exclusive use requirement. You explain that the issue of exemption is a significant one for farmers needing to finance purchase of center pivot irrigation systems because of the cost of the systems and their rate of depreciation. You pose two questions:

"1--The Kansas Constitution specifically exempts 'farm machinery and equipment' from property tax in the classification amendment. There is no use test applied, farm machinery and equipment is exempt. As I understand it, statutory law can not restrict the constitution. Does K.S.A. 79-201j restrict the constitution by applying a use test?

"2--If the statutory use test is constitutional does the means of financing the farm machinery and equipment change the exemption status? In other words does lease-purchase vs. a conventional loan make a sprinkler system non exempt?"

To our knowledge, the Board of Tax Appeals has not addressed the first of these issues. Neither are there any reported decisions of the Kansas appellate courts directly on point.

K.S.A. 1995 Supp. 79-201j provides in part:

"The following described property, to the extent specified by this section, shall be exempt from all property or ad valorem taxes levied under the laws of the state of Kansas:

"(a) All farm machinery and equipment. The term 'farm machinery and equipment' means that personal property actually and regularly used exclusively in any farming or ranching operation. . . .

"The provisions of this subsection shall apply to all taxable years commencing after December 31, 1984."

By contrast, article 11, section 1(b) (1995 Supp.) of the Kansas Constitution provides as follows:

"All property used exclusively for state, county, municipal, literary, educational, scientific, religious, benevolent and charitable purposes, farm machinery and equipment, merchant's and manufacturer's inventories and livestock and all household goods and personal effects not used for the production of income, shall be exempted from property taxation."



While the Constitution establishes an exclusive use requirement for property used for government, literary, educational, scientific, religious, benevolent and charitable purposes, it contains no such requirement for farm machinery and equipment. Clearly K.S.A. 1995 Supp. 79-201j(a) does contain a requirement for exclusive use of this property. *Farmers Co-op v. Kansas Board of Tax Appeals*, 236 Kan. 632, 636-638 (1985). The question you pose is whether the statutory requirement for exclusive use limits the constitutional exemption for farm machinery and equipment and, if so, is such a limitation constitutional.

Arguably, K.S.A. 79-201j(a) was not intended as a restriction, but rather to define the term "farm machinery and equipment" in the absence of a constitutional definition. However, the chain of events regarding the enactment of the statute and the constitutional amendment suggest otherwise. The K.S.A. 79-201j farm machinery and equipment exemption was first enacted in 1982 with the purpose to "promote, stimulate and develop the general welfare, economic development and prosperity of the state of Kansas by fostering the growth and development of agricultural endeavors within the state. . . ." K.S.A. 79-201i. At the time of its enactment, there was no constitutional exemption for farm machinery and equipment. The Article 11, Section 1(b) farm machinery and equipment exemption was crafted in 1985 and adopted by the electorate on November 4, 1986. L. 1985, ch. 364, § 1. Because the statute predates the constitutional exemption, its original intent could not have been to implement the constitutional exemption or define the term farm machinery and equipment as used in the Constitution. Further, there is no evidence of a subsequent legislative intent for K.S.A. 79-201j to implement or define the constitutional exemption. While K.S.A. 79-201j has been amended twice, once in 1985 and once in 1992, neither amendment mentioned the constitutional exemption or stated that the statute was intended at that time to define the constitutional provision. The 1985 amendment was for the sole purpose of including the performance of farm or ranch work for hire in the statutory definition of "farming or ranching operation," and the Legislature changed the effective date of the provision from 1982 to 1984. The 1992 amendment did not affect the farm machinery and equipment provision. Not only is there a lack of evidence of intent for the statute to be purely definitional, the constitutional provision was actually seen by the Legislature as an expansion of the then existing exemption for farm machinery and equipment. The constitutional exemption for farm machinery and equipment was added in the Senate committee during consideration of 1985 House Concurrent Resolution No. 5018. Just prior to adopting the amendment, a question was raised as to its relation to K.S.A. 79-201j. "Senator Parrish questioned whether the amendment would broaden the current farm machinery exemption. Staff said that this would probably be the case." Minutes, Senate Committee on Assessment and Taxation, April 11, 1985. Thus, even if one could argue that the common understanding of the term "farm machinery and equipment" in 1985 was as it was then defined in the statute, legislative intent appeared to grant a broader exemption for farm machinery and equipment by excluding from the constitutional provision an exclusive use requirement. Based on these factors, it is our opinion that K.S.A. 1995 Supp. 79-201j(a) was not intended to define the constitutional exemption. In fact, we believe the statute was intended to, and does, do much more. K.S.A. 1995 Supp. 79-201j actually establishes an exemption (one

that was not provided for in the Constitution at the time the statute was enacted) and limits the scope of that exemption by providing for exclusive use of the property. (*See e.g. Farmers Co-op*, 236 Kan. 632.) We must therefore determine whether such a limitation is permissible.

In *Colorado Interstate Gas Co. v. Board of Morton County Comm'rs*, 247 Kan. 654 (1990), the Kansas Supreme Court found that subsection (b) of Article 11, Section 1 of the Kansas Constitution is self-executing. "The exemptions are granted by the amendment itself as opposed to empowering the legislature to enact legislation in the subject area." 247 Kan. at 659. The Court then quoted the following excerpt from 16 Am.Jur.2d, *Constitutional Law* § 139 *et seq.*:

"The rule is that a self-executing provision of the constitution does not necessarily exhaust legislative power on the subject, but any legislation must be in harmony with the constitution and further the exercise of constitutional right to make it more available. Thus, even in the case of a constitutional provision which is self-executing, the legislature may enact legislation to facilitate the exercise of the powers directly granted by the constitution; legislation may be enacted to facilitate the operation of such a provision, prescribe a practice to be used for its enforcement, provide a convenient remedy for the protection of the rights secured or the determination thereof, or place reasonable safeguards around the exercise of the right. And, even though a provision states that it is self-executing, some legislative action may be necessary to effectuate its purposes. . . .

"It is clear that legislation which would defeat or even restrict a self-executing mandate of the constitution is beyond the power of the legislature. . . ." 247 Kan. at 659. *See also State, ex rel., Miller v. Board of Education*, 212 Kan. 482, 488-489 (1973) (the legislature cannot thwart a self-executing provision of the constitution)

The rule is that while the Legislature may act in harmony with a self-executing provision, the power of the Legislature is limited to procedural aspects or expanding on any right granted. K.S.A. 79-201j(a) is not procedural in nature. The exclusive use requirement of K.S.A. 1995 Supp. 79-201j(a) does not facilitate operation of the constitutional exemption, nor does it provide a procedure or a remedy for enforcement. In fact, K.S.A. 1995 Supp. 79-201j(a) cannot be said to implement the constitutional exemption in any way because it predates the constitutional amendment and the statute's substantive provisions dealing with farm machinery and equipment have not since been amended in a way that would indicate an attempt to implement the Constitution. We have already determined that K.S.A. 1995 Supp. 79-201j(a) is more limited in its application than the constitutional exemption. To conclude that the statutory exemption that predated this constitutional amendment effectively limits its application would not only be contrary to legislative intent, but would also lead to an unconstitutional result in the sense that it would operate to limit

a self-executing provision of the Constitution. See *Tri-County Public Airport Auth. v. Board of Morris County Comm'rs*, 245 Kan. 301, 305 (1989) (property expressly exempt from taxation by the Constitution cannot be taxed); *State, ex rel., Fatzer v. Board of Regents*, 167 Kan. 587, 595 (1949) (property expressly exempt from taxation by the Constitution cannot be taxed, but statutory exemption may be broader than the constitutional one). Thus, in our opinion, K.S.A. 1995 Supp. 79-201j(a) cannot be applied to limit the exemption for farm machinery and equipment granted in the Constitution by requiring that the property be used exclusively for farming or ranching operations.

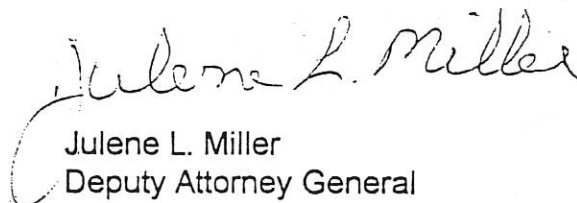
Because our answer to your initial question is that a taxpayer may seek an exemption from property taxation for farm machinery and equipment under the broader provisions of the Constitution notwithstanding the exclusive use requirement of K.S.A. 1995 Supp. 79-201j(a), we need not address your second inquiry.

In conclusion, unlike K.S.A. 1995 Supp. 79-201j, the constitutional exemption from property taxation for farm machinery and equipment does not require that the property be used exclusively for farming. In that the constitutional exemption postdates the statutory exemption, is broader than the statutory exemption, and the legislature is precluded from limiting self-executing constitutional exemptions such as this, a tax exemption for farm machinery and equipment may be granted even if the property is subject to more than one use.

Very truly yours,



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