STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

CURT T. SCHNEIDER
Attorney General

March 7, 1975

Opinion No. 75-99

Harold C. Rohmiller, Director
Division of Property Valuation
State Office Building
Topeka, Kansas 66612

RE: K.S.A. 79-3901 et seq.

Dear Sir:

You ask if "feed", assuming it is a "mixture of grains and/or supplements", is assessable, and if it would be taxed under the above law or other laws.

K.S.A. 79-3901 defines "grain" by naming specific grains, and then adds: "but shall not include said grain after it has been milled or processed." It appears plain that this law was intended to cover all grains so long as they retain their positive identity as such. If the grains are mixed together, if a supplement is added, this would be "milled or processed" and excluded from this law. It would be "personal property" and assessed under K.S.A. 79-301 et seq. as other personal property.

By K.S.A. 79-3902 the legislature established a "dealer" or "production" excise tax at the rate of one-half mill on ALL grain, and that law says in each instance: "Said tax shall be in lieu of ALL general property tax upon said grain." This means just exactly what it says. Once this tax on grain is paid, that grain, so long as it is identifiable as such, is exempt from all general property taxes, the year it is produced or in subsequent years.

It is our opinion that the mere cracking or grinding of grain such as milo or corn, or the chopping of grain such as kafir, will not take it out of K.S.A. 79-3901 et seq. so long as it continues to hold its identity as a specific grain and is not milled or processed with other grains or supplements.

The feed-lot operator should be able to claim such exemption by showing proof of the payment of a dealer or production tax under K.S.A. 79-3901 et seq. on any grain as above defined which he has on hand, providing it can be identified as a specific grain only unmixed and unprocessed with other grains or components. If his claim for exemption is denied, then he can file application with the State Board of Tax Appeals, on its form #1, for relief from a tax grievance and ask that Board to exercise its authority under K.S.A. 79-1701 to strike his grain from the general property tax rolls.

You ask if a feed-lot operator can be classified as a merchant and the inventory he has on hand, including grain, be valued and assessed under K.S.A. 1974 Supp. 79-1001 thru 79-1004. A merchant is defined by that law as being as one who owns or holds personal property which he "purchased with a view of being sold at an advanced price or profit". Unless the feed-lot operator is engaging in selling "milled or processed" grain or some other item at retail, he could not be so classified. The best way is to determine if he holds a "Retailers Sales Tax" license. If he does then he probably should report his personal property as a merchant's inventory.

You further ask if a feed-lot operator could be classified and taxed as a manufacturer and then assessed under K.S.A. 79-1005 et seq. upon his inventory. Manufacturing is defined by that law as one who adds to value by "refining or by the combination of different materials."

In a recent case in Pennsylvania a holding was made that growing of mushroom spawn in horse manure was not "manufacture" but "agriculture", and that the ruling extended to "farming in all its branches". Gaspari v. Bd. of Adjustment, 392 Pa. 7, 139 A. 2d 559, 561. Also, Cronite v. U.S. Customs, 150 Fed. Supp. 754, 763, held that to constitute "manufacture" there must be "a transformation, and a new and different article must emerge, having a distinctive name, character and use."

It is our opinion that the operator of a feed-lot to fill out or "finish" a beef animal is not a "manufacturer" under K.S.A. 79-1005 for taxation purposes.

Lastly, you asked if a feed-lot could be classified, assessed and taxed under K.S.A. 79-304. You must be referring to the

"freeport" proviso which provides for exemption of personal property moving in interstate commerce, and sets limits on the trip interruption in Kansas and requires records kept.

The enclosure of the corrals or fences could be the perimeter of a "Bonded and Licensed STORAGE AREA" as mentioned in the freeport law. So, the answer is "Yes". However, attention should be called to the existence of K.S.A. 79-316c which provides that cattle moving in interstate commerce acquires a tax situs in Kansas if maintained here more than thirty days. In our opinion, this is a special statute pertaining only to livestock, and that it would take precedence over the time limits of two years with 35% moving annually as set for personal property generally under K.S.A. 79-304.

Very truly yours,

Curt Schneider

CURT T. SCHNEIDER
Attorney General

CTS:CJM:gdw