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ATTORNEY GENERAL OPINION NO. 79- 62

The Honorable Jayne Aylward
State Representative, 73rd District
Room 170 West, State Capitol
Topeka, Kansas 66612

Re: Taxation--Property Exempt from Taxation--Farm
Storage and Drying Equipment

Synopsis: If farm storage equipment, otherwise qualified for tax-exempt status pursuant to K.S.A. 1978 Supp. 79-201d, Third is not, during a particular calendar year, used exclusively for grain storage purposes, said property loses its eligibility for tax exempt status for that particular year. If, in a subsequent year, the eligible equipment is used exclusively for such storage, the taxpayer may claim such exemption for that particular calendar year.

* * *

Dear Representative Aylward:

You request our opinion regarding a hypothetical situation involving the provisions of K.S.A. 1978 Supp. 79-201d, Third. Specifically, you ask us to assume a situation wherein a farmer borrows money to construct a steel building which the farmer intends to use exclusively for grain storage. However, the farmer has a poor harvest and, not having enough grain to completely fill the structure, the farmer uses a portion of the building to store one of his or her tractors.

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Your question is: "Would the building be tax exempt while used in this capacity and, if not, could it be tax exempt for the remainder of the eight years of the exemption period if it were used exclusively for the storage of grain the remainder of the period?"

Pursuant to K.S.A. 1978 Supp. 79-201d, Third, all farm storage and drying equipment, (meeting certain eligibility requirements fixed by federal law for loans under the federal farm storage and drying equipment loan program), which is used exclusively for the storage or drying of certain grains, is exempted from all property or ad valorem taxes levied under the laws of the state of Kansas for a period of eight (8) years, commencing with the calendar year in which such equipment is acquired or construction thereof is completed.

As many of the statutes which exempt property from property or ad valorem taxation impose the requirement that the property sought to be exempted be "used exclusively" for some particular purpose (see K.S.A. 79-201; K.S.A. 1978 Supp. 79-201, Second, Third, and Fourth; and K.S.A. 79-201c, Third), this phrase has been interpreted by the Kansas Supreme Court on numerous occasions. In the recent case of Defenders of Christian Faith v. Board of County Commissioners, 219 Kan. 181 (1976), the court held:

"In the absence of a statute to the contrary, where a single building is under single ownership so that it is listed for taxation as an entity, the nonexempt use of any portion of the building renders the entire building taxable." (Syl. para. 1.)

In light of this express ruling of the Supreme Court, we have no doubt that, if a farmer uses any portion of his or her farm storage equipment for a nonexempt purpose, the entire storage equipment is taxable. In our opinion, the use of farm storage equipment as a place to store a tractor is a nonexempt purpose, such that the equipment loses its tax exempt character.

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The question then becomes, however, whether the exemption is lost forever, if such equipment does not qualify in one or more of the eight (8) years provided in K.S.A. 1978 Supp. 79-201d, Third. In our opinion, it is not.

In Attorney General Opinion No. 79-39, we stated in the opinion's synopsis:

"The owner or owners of farm storage and drying equipment which is exempt from all property or ad valorem taxes levied under the laws of the state of Kansas pursuant to K.S.A. 1978 Supp. 79-201d, Third, must claim such exemption on or before March 1 of each year subsequent to 1978, in order to establish or maintain the exempt status of such property."

Said opinion was predicated in part, on the express provisions of K.S.A. 1978 Supp. 79-210, which in relevant part provides:

"The owner or owners of all property which is exempt from the payment of property taxes under the laws of the state of Kansas other than . . . [certain kinds of exempt property] shall claim such exemption on or before March 1 of each year" [Emphasis added.]

In the text of the above-referenced opinion, we stated:

"The effect of such claim is to demonstrate that the property for which exemption is claimed meets the statutorily prescribed eligibility requirements."

While still adhering to this statement, it is our further opinion that said demonstration is made for each calendar year during which the property may be exempt. That is, the determination

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of whether farm storage or drying equipment qualifies for tax exempt status, pursuant to K.S.A. 1978 Supp. 79-201d, Third is required to be made for each, separate calendar year. It matters not that the equipment did not qualify in the preceding calendar year or years; only its use and eligibility for the current calendar year are to be considered. If, during a particular calendar year, the equipment meets the eligibility requirements of the federal law and is used exclusively for the storage of a type of grain listed in K.S.A. 1978 Supp. 79-201d, Third, the owner or owners thereof may file a claim to exempt such equipment from all property or ad valorem taxes levied under the laws of the state of Kansas.

Because of the requirement of K.S.A. 1978 Supp. 79-210 that the owner or owners claim such exemption on or before March 1 of each year, we are firmly of the opinion that the equipment need not be used exclusively for farm storage or drying purposes throughout the entire eight (8) year period. Such is not specifically required by the statute and was not, in our opinion, the intent of the legislature when it enacted K.S.A. 1978 Supp. 79-201d, Third.

So as not to be misunderstood, however, we wish to make it clear that the eight-year period, during which such equipment may be exempt from property or ad valorem taxation, is that period of time which commences in the calendar year during which such equipment was acquired or construction thereof was completed. If such equipment does not qualify for exempt status during the year of its acquisition or construction, or during any one of the seven (7) years immediately succeeding said year, the owner or owners may claim such exemption in only the remaining years. The loss of exempt status during any one of the eight (8) years does not extend the period of time within which the property may qualify for tax exempt status. At the end of the seventh calendar year following the calendar year in which the equipment was acquired or construction thereof was completed, the equipment is subject to property or ad valorem taxes, unless exempted by some other statutory provision.

In summary, it is our opinion that if any portion of farm storage equipment is used for a nonexempt purpose, the entire equipment is subject to taxation. It is our further opinion that whether farm storage or drying equipment is exempt from

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all property or ad valorem taxes levied under the laws of the state of Kansas, must be determined upon the eligibility and use of such equipment during the individual calendar year for which such equipment is sought to be exempted. The exempt status of such property may be lost in one particular calendar year, but regained in the following calendar year.

Very truly yours



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RTS:BJS:RJB:jm