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January 15, 1980

ATTORNEY GENERAL OPINION NO. 80- 13

Mr. John C. Bottenberg
Director of Vehicles
Kansas Department of Revenue
State Office Building
Topeka, Kansas 66625

Re: Taxation--Interstate Motor Fuel User Tax--Vehicles Subject to Interstate Motor Fuel Use Act

Synopsis: The owners of farm vehicles registered in states other than Kansas, which vehicles are "commercial motor vehicles," as defined in subsection (b) of K.S.A. 79-34,108, must obtain a "trip permit" (as provided in K.S.A. 79-34,118), secure a temporary authorization (as provided in K.S.A. 79-34,119), or secure a license pursuant to K.S.A. 79-34,115 (and otherwise comply with the provisions of the "Interstate Motor Fuel Use Act," K.S.A. 79-34,108 et seq.) in order to lawfully operate such vehicles on highways within this state.

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Dear Mr. Bottenberg:

You request our opinion as to whether a "farm vehicle" registered in a state other than Kansas must obtain a "trip permit," pursuant to the provisions of the "Interstate Motor Fuel Use Act," K.S.A. 79-34,108 et seq., in order to operate on highways within this state. Briefly stated, the "Interstate Motor Fuel Use Act" imposes a tax on "motor fuel" used by "interstate motor fuel users" in the "operation" of "commercial motor vehicles" on highways within this state. The tax is equal to the rate of tax applicable to motor fuel sold in this state, and the number of gallons of motor fuel used in the operations of an interstate motor fuel user on highways in this state is computed pursuant to the provisions of subsections (a) and (b) of K.S.A. 79-34,109.

Subsection (b) of K.S.A. 79-34,108 defines the term "commercial motor vehicle," as used in the act, as follows:

> "'Commercial motor vehicle' means any of the following motor vehicles or combinations, if propelled by motor fuel:
> "(1) A passenger vehicle that has seats for more than nine passengers in addition to the driver, or
> "(2) A truck having more than two axles, or
> "(3) A road tractor or a truck tractor, or
> "(4) A two axle truck with a gross weight of more than twelve thousand (12,000) pounds used in combination with another vehicle."

Subsection (c) of the same statute defines the term "interstate motor fuel user" to mean "any person who operates or causes to be operated on highways within and without this state any commercial motor vehicle," and subsection (e) of the statute defines the term "operations" to mean "the operation on any highway of one or more commercial motor vehicles, whether loaded or empty, whether for compensation or not for compensation, and whether owned by or leased to the operator thereof." K.S.A. 79-34,115 provides, in part, that, except as otherwise provided in the act, "no interstate motor fuel user shall conduct operations within this state without first having secured a license for such operation from the director," and K.S.A. 79-34,122(b) provides, in part, that "any interstate motor fuel user who engages in operations within this state without a valid license, trip permit or temporary authorization issued by the director shall be guilty of a misdemeanor."

K.S.A. 79-34,118 authorizes the issuance and purchase of a "trip permit," under conditions to be specified in regulations adopted by the Secretary of Revenue, in lieu of the tax imposed by the act, and provides as follows:

> "Upon application to the director of taxation and payment of the fee therefor prescribed under this section any interstate motor fuel user may obtain a trip permit which will authorize one commercial motor vehicle to be operated within this state without compliance with the other provisions of the interstate motor fuel use act and in lieu of the tax imposed by K.S.A. 79-34,109. The fee for each trip permit issued under this section shall be five dollars ($5). The secretary of revenue shall adopt rules and regulations specifying the conditions under which trip permits will be issued and providing for the issuance thereof. The secretary may designate agents or contract with private individuals, firms or corporations to issue such trip permits so that such permits will be obtainable at convenient locations. No contract with a private individual, firm or corporation shall take effect prior to July 1, 1978."

K.S.A. 79-34,119 allows the director of taxation to issue "temporary authorizations" to interstate motor fuel users to operate in this state, and provides as follows:

> "Whenever the director is satisfied that unforeseen circumstances of an emergency nature have arisen which require an interstate motor fuel user to operate a commercial motor vehicle in this state and a permit has not been obtained therefor, and if the director is satisfied that prohibition of such operation would cause undue hardship, the director may provide the interstate motor fuel user with temporary authorization for the operation of such commercial motor vehicle. The conditions for the issuance of any such temporary authorization shall be established by rules and regulations adopted by the secretary of revenue."

Pursuant to the rule-making power granted by K.S.A. 79-34,118 and 79-34,119, the Secretary of Revenue has specified the conditions under which "trip permits" and "temporary authorizations" may be issued, in K.A.R. 1979 Supp. 92-13-9, which regulation provides as follows:

> "Trip permits and emergency authorizations may be issued by the department of revenue or the motor carrier inspection bureau. The application for trip permits and emergency authorizations shall be on forms prescribed by the director. No more than twelve (12) trip permits may be issued to any one (1) person in any one (1) calendar year."

K.S.A. 79-34,120 provides, in part, that:

> "Nothing in this act shall apply to any vehicle having farm registration issued under authority of K.S.A. 1977 Supp. 8-143."

This means that any farm truck or farm truck tractor registered in the State of Kansas, pursuant to K.S.A. 1979 Supp. 8-143, is exempted from the reporting and licensing requirements of the act, as well as the option of obtaining a "trip permit" under 79-34,118. However, farm vehicles registered in states other than Kansas are not specifically included within the the exemption, and it is a well established rule of statutory construction (in the field of taxation) that "exemption provisions are to be construed strictly against the claimant for exemption." Assembly of God v. Sangster, 178 Kan. 678, 680 (1955). It is, therefore, our opinion that farm vehicles registered in states other than Kansas are not within the exemption set forth in K.S.A. 79-34,120, and that the owners of all such vehicles which are "commercial motor vehicles," as defined in K.S.A. 79-34,108(b), must obtain, a "trip permit" (as provided in K.S.A. 79-34,118), secure a temporary authorization (as provided in K.S.A. 79-34,119), or secure a license pursuant to K.S.A. 79-34,115 (and otherwise comply with the provisions of the "Interstate Motor Fuel Use Act") in order to lawfully operate such vehicles on highways within this state.

Very truly yours,

Robert T. Stephan

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RTS:BJS:TRH:jm