



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 83- 18

Honorable Don M. Rezac
State Representative
Sixty-First District
Room 273-W, State Capitol
Topeka, Kansas 66612

Re: Taxation--Kansas Retailers' Sales Tax--Exempt
Sales

Synopsis: The production of dogs and cats, through breeding and raising the same, does not constitute an "agricultural use" which exempts sales of natural gas, electricity, heat and water to be consumed for such use from the Kansas retailers' sales tax. Cited herein: K.S.A. 1982 Supp. 79-3606, K.S.A. 79-3618, K.A.R. 1982 Supp. 92-19-39.

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Dear Representative Rezac:

You request our interpretation of K.S.A. 1982 Supp. 79-3606(x) and K.A.R. 1982 Supp. 92-19-39. Specifically, you ask whether, under the aforesaid regulation, the production of dogs and cats, through breeding and raising the same, constitutes an "agricultural use" which exempts sales of natural gas, electricity, heat and water to be consumed for such use from the Kansas retailers' sales tax.

K.S.A. 1982 Supp. 79-3606 exempts, from the retailers' sales tax, "all sales of natural gas, electricity, heat and water delivered through mains, lines or pipes for agricultural use." (Emphasis added.) The secretary of revenue, pursuant to rule-making authority granted by K.S.A. 79-3618, has adopted K.A.R. 1982 Supp. 92-19-39, which regulation defines the term "agricultural use" as follows:

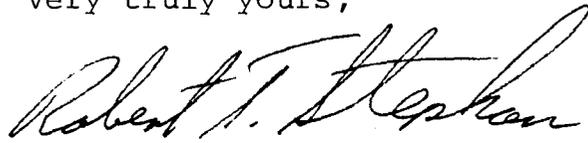
" '[A]gricultural use' means any use related to the occupation of farming or ranching. 'Farming or ranching' means an enterprise using land and improvements thereto for agricultural and horticultural production ultimately intended for consumption either as a food product, textile, or in the production thereof. Farming or ranching includes, but is not limited to, such enterprises producing forages; poultry and poultry products; grains and feed crops; maple syrup; dairy products; livestock, including beef and dairy cattle, sheep, swine, goats, or rabbits, including the breeding, grazing and feeding of any or all such animals; fish; fruits of all kinds, including grapes, nuts and berries; and vegetables. Farming or ranching does not include commercial operations such as processing food or dairy products, off-farm grain storage and marketing, the processing of lumber, or the operation of a stockyard or slaughter house. Nor does farming or ranching include such commercial operations as a floral shop, turf farm or nursery, to the extent such floral shop, turf farm or nursery primarily cultivates products intended to be of an ornamental or decorative nature." (Emphasis added.)

As the underscored portion of the above-quoted regulation indicates, an "agricultural use" must be related to the occupation of farming and ranching, and said occupation is defined, for purposes of interpreting the sales tax exemption, as one which is directed at agricultural and horticultural production "ultimately intended for consumption either as a food product, textile, or in the production thereof." We are unaware of any enterprise wherein dogs or cats are raised for consumption as a food product or textile, 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). Accordingly, it is our opinion that the production of dogs and cats, through breeding and raising the same, does not constitute an "agricultural use"

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which exempts sales of natural gas, electricity, heat and water
to be consumed for such use from the Kansas retailers' sales tax.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm