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STATE OF NEBRASKA
OFFICIAL
NOV 27 1991
DEPT. OF JUSTICE

DATE: November 25, 1991

SUBJECT: Exemption of Fuels Purchased for Governmental Industrial Activities from the Nebraska Special Fuel Tax.

REQUESTED BY: M. Berri Balka, Tax Commissioner
Nebraska Department of Revenue

WRITTEN BY: Don Stenberg, Attorney General
David Edward Cygan, Assistant Attorney General

You have requested our advice regarding the application of Neb. Rev. Stat. § 66-605.06 (1991 Supp.) which provides when special fuels may be purchased without the payment of Nebraska Special Fuels Tax. Specifically, you inquire as to the interpretation of subsection (1) of this statute, which provides an exemption for special fuel purchased for "[a]gricultural, quarrying, or industrial use other than in an engine located in or on a motor vehicle or trailer; . . . ." Your question is whether or not activities carried out by a governmental entity, such as the use of equipment in constructing or repairing roads, may fall within this exemption. Imperative to this determination is the meaning of the terms "industrial" and "motor vehicle."

The primary rule of construction is that the intention of the Legislature is to be found in the ordinary meaning of the words of a statute in connection with the manner in which they are used and in light of mischief to be remedied. Freese v. Douglas County, 210 Neb. 521, 315 N.W.2d 638 (1982). Absent anything to indicate a contrary intent, words within a statute must be given their ordinary meaning. State v. Parmer, 210 Neb. 92, 313 N.W.2d 237 (1981).

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The word "industrial" is derivative of the term "industry", which is defined as a "systematic labor, especially for some purpose or the creation of something of value." Webster's Ninth New Collegiate Dictionary, (1983). It is not unforeseeable that industrial activity may be carried on by both the private and public sector. If a governmental entity purchases special fuels for use in the type of industrial, non-highway, activities you have described, such purchases would be exempt under Neb. Rev. Stat. § 66-605.06(1).

We further note that the equipment you describe does not qualify as a "motor vehicle or trailer", for purposes of the exception to the exemption set forth in Neb. Rev. Stat. § 66-605.06(1). Specifically excluded from the definition of "motor vehicle" in Neb. Rev. Stat. § 60-301(16)(g) (Cum. Supp. 1990) are:

> road and general-purpose construction and maintenance machinery not designed or used primarily for the transportation of persons or property, including, but not limited to, ditchdigging apparatus, asphalt spreaders, bucket loaders, leveling graders, earthmoving carryalls, power shovels, earthmoving equipment, crawler tractors, ...

Accordingly, the non-highway equipment used in constructing or repairing roads, described in your request, is not within the exception to the exemption set forth in Neb. Rev. Stat. § 66-605.06(1). Further, as noted above, the usage of the fuel purchased for industrial activities by the government entities would exempt the fuel purchase from taxation.

Therefore, if a governmental entity engages in the industrial activity you have described, it may purchase special fuels tax-free for use in its non-highway construction and repair equipment.

Sincerely,

DON STENBERG
Attorney General

David Edward Cygan
Assistant Attorney General

Approved By:

Attorney General

32-110-6.91