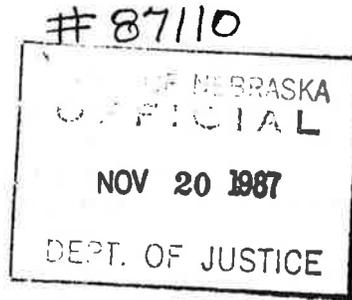


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509



ROBERT M. SPIRE
Attorney General
A. EUGENE CRUMP
Deputy Attorney General

DATE: November 18, 1987

SUBJECT: Exemption from Personal Property Tax of Machinery and Equipment of Popcorn Plant as Agricultural Income - Producing Machinery and Equipment under Neb.Rev.Stat. §77-202(6) (Reissue 1986).

REQUESTED BY: Steven M. Curry,
Merrick County Attorney

WRITTEN BY: Robert M. Spire, Attorney General
L. Jay Bartel, Assistant Attorney General

You have requested our opinion on the question of whether machinery or equipment of a popcorn plant which is situated at a farm location may qualify for the exemption from personal property tax provided to agricultural income - producing machinery and equipment contained in Neb.Rev.Stat. §77-202(6) (Reissue 1986).

Section 77-202(6) provides:

Agricultural income-producing machinery and equipment shall be exempt from the personal property tax except (a) Motor vehicles, as provided in section 60-301; (b) property assessed by the State Board of Equalization and Assessment as provided in sections 77-601 to 77-675; (c) property owned by parties deemed public service companies subject to the provisions of sections 77-801 to 77-803; and (d) any building or fixture, whether permanently attached to the land or not.

Prior to the enactment of §77-202(6), a partial personal property tax exemption was provided for agricultural income-producing machinery and equipment under Neb.Rev.stat. §77-202.25 (Reissue 1976) (Repealed 1980). With the enactment of LB 882 in 1980, the partial personal property tax exemption granted under

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former §77-202.25 was repealed, and the present exemption under §77-202(6) was adopted. The language creating the exemption for agricultural income-producing machinery equipment was not altered by the passage of LB 882, except to the extent that what previously had been only a partial exemption under §77-202.25 was changed to create a full exemption under present §77-202(6).

Pursuant to Neb.Rev.Stat. §77-202.06 (Reissue 1986), the Tax Commissioner has adopted and promulgated regulations regarding the tax-exempt status of real or tangible personal property. In construing the exemption granted for agricultural income-producing machinery and equipment, the Commissioner has adopted Reg-42-003.01 of the Nebraska Department of Revenue personal property tax regulations. Reg-42-003.01 provides, in pertinent part:

Agricultural income-producing machinery and equipment shall mean all machinery and equipment which is used actually and primarily in the conduct of an agricultural operation to directly produce a raw agricultural commodity.

. . .

If machinery and equipment does not directly produce a raw agricultural commodity, it is not agricultural income-producing machinery and equipment.

Furthermore, in Rev.Rul. 41-75-1, the Department concluded the exemption for agricultural income-producing machinery and equipment "is granted only to machinery and equipment which is used actually and primarily in an agricultural capacity and which produces agricultural income." In this ruling the Department recognized a distinction between farm equipment used to plant, harvest, and cultivate seed corn (determining such to be exempt), and equipment used to process seed corn (determining such equipment to be non-exempt).

Generally, "although construction of a statute by a department charged with enforcing it is not controlling, considerable weight will be given to such a construction, particularly when the Legislature has failed to take any action to change such an interpretation." McCaul v. American Savings Company, 213 Neb. 841, 331 N.W.2d 795 (1983). "The interpretation of a statute given by an administrative agency to which the statute is directed is entitled to great weight." ATS Mobile Telephone, Inc. v. Curtin Call Communications, Inc., 194 Neb. 404, 232 N.W.2d 248 (1975).

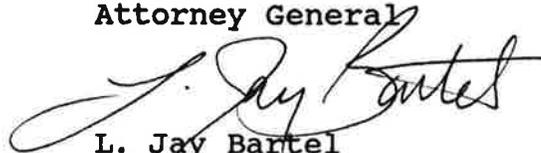
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Applying the provisions of Reg-42-003.01 to the machinery and equipment of the popcorn plant in question, we believe the exemption from personal property tax granted under §77-202(6) does not apply, irrespective of whether the plant is actually located at a farm location. The machinery and equipment utilized by the plant to process popcorn would not be "used actually and primarily in the conduct of an agricultural operation to directly produce a raw agricultural product." Activities related to the production of a raw agricultural commodity (in this case popcorn) are considered completed upon harvesting and removal of the crop from the field. Thus, equipment used by the plant to process the popcorn after this point would be used in an industrial or commercial capacity, and not in an agricultural capacity within the meaning of §77-202(6).

Based on the foregoing, it is our opinion that machinery and equipment used to process popcorn after production in its raw agricultural state would not qualify for the exemption from personal property taxation granted under Neb.Rev.Stat. §77-202(6) (Reissue 1986) for agricultural income-producing machinery and equipment.

Very truly yours,

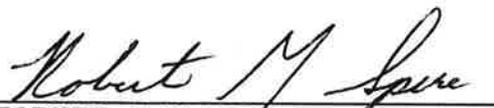
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APPROVED:



ATTORNEY GENERAL