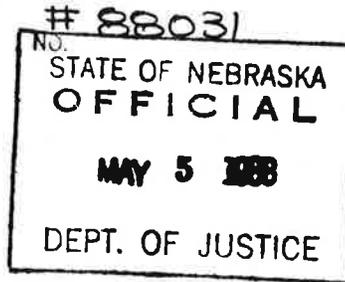


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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ROBERT M. SPIRE
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Deputy Attorney General

DATE: May 4, 1988

SUBJECT: Property Tax Exemption for Earthmoving Equipment
Used for Agricultural and Soil Conservation
Purposes - Neb.Rev.Stat. §77-202.46 (Supp. 1987).

REQUEST BY: Michael J. Shaughnessy, Howard County Attorney

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

You have requested our opinion as to the scope of the exemption provided for earthmoving equipment used for agricultural and soil conservation purposes under Neb.Rev.Stat. §77-202.46 (Supp. 1987). Subsection (1) of §77-202.46 provides:

Commencing January 1, 1988, all persons required by Sections 77-1201 and 77-1229 to list personal tangible property subject to taxation shall be allowed an exemption for earthmoving equipment used for agricultural and soil conservation purposes as provided in this section.

The current exemption for earthmoving equipment used for agricultural and soil conservation purposes provides a percentage exemption based on the ratio that the gross revenue earned by use of the equipment for agricultural and soil conservation work bears to the total gross revenue earned by use of the equipment. Neb.Rev.Stat. §77-202.46(2) (Supp. 1987). Prior to the adoption of this percentage exemption provision by the passage of LB 591 in 1987, a total exemption for earthmoving equipment used primarily for agricultural and soil conservation purposes was provided. Neb.Rev.Stat. §77-202.46 (Reissue 1986) (Amended 1987). The language creating the exemption for earthmoving equipment used for "agricultural and soil conservation purposes" was not altered by the 1987 amendment to §77-202.46.

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 earthmoving equipment used

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for agricultural and soil conservation purposes, the Commissioner has adopted Reg-42-003.06 of the Nebraska Department of Revenue Personal Property Tax Regulations. Reg-42.003.06 provides, in pertinent part:

Earthmoving equipment used primarily for agricultural and soil conservation purposes shall mean all such equipment which is actually and primarily used for earthmoving for agricultural and soil conservation purposes. Agricultural purposes include terracing or earthmoving for the purpose of moving or storing water for irrigation purposes. Agricultural purposes shall not include earthmoving for road building or the construction of buildings. Soil conservation purposes include any earthmoving activities, the primary purpose of which is to prevent or lessen undue erosion of the soil.

Earthmoving equipment shall include all equipment used primarily for the actual alteration of the contour of the land for the purpose described above. The term earthmoving equipment shall not include motor vehicles. (Emphasis added.)

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 Co., 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).

On the basis of the Department's construction of the exemption for equipment used for agricultural and soil conservation purposes contained in Reg-42-003.06, we believe the exemption is not limited solely to situations wherein such equipment is utilized to alter land for soil conservation. The regulation separately defines agricultural purposes (which may include terracing or earthmoving for the purpose of moving or storing water for irrigation purposes), and soil conservation purposes (which include any earthmoving activities designed to prevent or lessen undue erosion of the soil). Thus, it is our opinion that neither the statute nor the regulation requires that,

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in order to qualify for exemption, a piece of earthmoving equipment must be used for both an "agricultural" purpose and a "soil conservation" purpose. To the extent that certain language in Property Tax Directive No. 87-4 could be interpreted to require a contrary conclusion, we believe the directive should not be construed to alter the standards set forth by the Department's regulation. The question of whether any specific use of such equipment falls within the scope of the exemption is, of course, a matter which initially must be decided by the county assessor and the county board of equalization, under the guidance provided by Reg-42-003.06.

Very truly yours,

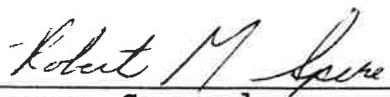
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APPROVED:



Attorney General

7-24-3