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#93003

NO.
STATE OF NEBRASKA
OFFICIAL
JAN 28 1993
DEPT. OF JUSTICE

DATE: January 28, 1993

SUBJECT: Refund of Nebraska Checkoff Tax on Corn Subject to a Checkoff Tax in Another State

REQUESTED BY: Nebraska Corn Development, Utilization and Marketing Board

WRITTEN BY: Don Stenberg, Attorney General
Steve Grasz, Deputy Attorney General

You have requested an Attorney General's Opinion regarding the availability of a refund of the Nebraska "checkoff tax" on corn which is also subject to a checkoff tax in another state. Specifically, you have asked,

> If a Nebraska farmer hauls his/her corn to a Missouri elevator, sells the corn, and is assessed the Missouri checkoff tax of 1/2 cent per bushel and the Nebraska checkoff tax of 1/4 cent per bushel, is he/she subject to a refund under Nebraska law of the 1/4 cent per bushel?

The Nebraska corn checkoff tax is governed by the provisions of the Nebraska Corn Resources Act (the "Act"). The Act provides as follows:

> There is hereby levied a fee of not to exceed four-tenths of a cent per bushel upon all corn grown in the State of Nebraska and sold through commercial channels. The fee shall be paid by the grower at the time of sale or delivery and shall be collected by the first purchaser. Under the Nebraska Corn Resources Act, no corn shall be subject to the fee more than once.

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Thus, a "fee" is to be collected on each bushel of corn grown in Nebraska and sold through commercial channels, and no corn shall be subject to "the fee" more than once. "The fee" applies to Nebraska-grown corn whether it is stored inside or outside of Nebraska.

At issue is whether the provision in the Act that "no corn shall be subject to the fee more than once" refers only to the Nebraska checkoff tax or to all such checkoff taxes, including the Missouri checkoff tax. We conclude the Act prohibits only the multiple imposition of the Nebraska checkoff tax. The Act prohibits the multiple imposition of "the fee." Neb. Rev. Stat. § 2-3623. The words "the fee" in the last sentence of § 2-3623 (regarding double taxation) refer back to the "fee" created in the first sentence of § 2-3623, which is the Nebraska checkoff tax. Section 2-3629, which makes the checkoff tax applicable to corn stored outside of Nebraska, specifically refers to "the fee" which is "provided for by section 2-3623."

Furthermore, the relevant legislative history reveals the intent behind the prohibition on double taxation was to preclude the imposition of the Nebraska checkoff tax more than once on the same corn as the result of certain government farm programs. *See* Committee Records on LB 610, 90th Neb. Leg., 1st Sess. 6-7 (Jan. 27, 1987); Floor Debate on LB 610, 325-326 (Jan. 29, 1987). Thus, no refund of the Nebraska checkoff tax is provided for under the Act where a farmer hauls corn to a Missouri elevator and is assessed both the Missouri and Nebraska checkoff taxes. Such a scenario does not constitute double imposition of the Nebraska checkoff tax.

We note that, although the Nebraska checkoff tax is mandatory, a refund of the Missouri checkoff tax is possible. Under Missouri law, "any producer or grower may . . . have the fee paid and all future fees . . . refunded to him . . . within sixty days following the payment of such fee." Mo.Ann.Stat. §275.360 (Vernon 1992 Supp.). Consequently, a Nebraska farmer selling corn in Missouri must pay the Nebraska checkoff tax, but can obtain a refund of

the Missouri checkoff tax, if application is made within sixty days.

Sincerely yours,

DON STENBERG
Attorney General

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Deputy Attorney General

Approved:

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3-1054-3