**Opinion Letter**

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| **Letter Number:** | **O-2004-002** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Sanitizing process performed with steam at slaughterhouses, meat packing plants, and other food processors.** |
| **Keywords:** |  |
| **Approval Date:** | **03/19/2004** |

**Body:**

Office of Policy & Research

March 19, 2004

XXXXX
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RE: Your e-mail received February 24, 2004

Dear XXXXX:

I have been asked to answer your recent e-mail. In it, you discuss the sanitizing process performed with steam at slaughterhouses, meat packing plants, and other food processors in Kansas. You ask if the water and gas used to create the steam is exempt as consumed in production. You point out that the USDA requires the equipment to be cleaned and sanitized with scalding hot water once every 16 hours of production. Please be advised that the plants purchases of water and gas to perform these processes are not exempt from sales tax.

For these purchases to be exempt, the water and gas would have to qualify as being consumed in production. This exemption is found at K.S.A. 2003 Supp. 79-3606(n):

(n) all sales of tangible personal property which is consumed in the production, manufacture, processing, mining, drilling, refining or compounding of tangible personal property, the treating of by-products or wastes derived from any such production process, the providing of services or the irrigation of crops for ultimate sale at retail within or without the state of Kansas ….

The scope of this exemption is explained in K.S.A. 2003 Supp. 79-3602(dd):

(dd) "Property which is consumed" means tangible personal property which is essential or necessary to and which is used in the actual process of and consumed, depleted or dissipated within one year in (1) the production, manufacture, processing, mining, drilling, refining or compounding of tangible personal property, (2) the providing of services, (3) the irrigation of crops, for sale in the regular course of business, or (4) the storage or processing of grain by a public grain warehouse or other grain storage facility, and which is not reusable for such purpose. The following is a listing of tangible personal property, included by way of illustration but not of limitation, which qualifies as property which is consumed:
(A) Insecticides, herbicides, germicides, pesticides, fungicides, fumigants, antibiotics, biologicals, pharmaceuticals, vitamins and chemicals for use in commercial or agricultural production, processing or storage of fruit, vegetables, feeds, seeds, grains, animals or animal products whether fed, injected, applied, combined with or otherwise used;
(B) electricity, gas and water; and
(C) petroleum products, lubricants, chemicals, solvents, reagents and catalysts.

K.A.R. 92-19-53 implements these provisions, as it relates to cleaning and sanitizing equipment.

(c) "Used in the actual process'" means the use of the tangible personal property used shall:
(1) Be integral and essential to the production or processing activity;
(2) occur at the location where the production or processing activity is carried on; and
(3) occur during the production activity.
The fact that a particular item of tangible personal property may be considered important to a production process does not, of itself, mean that the tangible personal property is used in the actual process. The following uses of tangible personal property do not qualify for exemption from sales tax as consumed in production: shipping, testing, repairing, servicing, maintaining, cleaning the equipment and the physical plant, and storing. Tangible personal property used in the administration of the business and wholesale, commercial or retail facilities or buildings do not qualify for exemption from sales tax as consumed in production.

While the consumed-in-production exemption is not co-extensive with the integrated plant exemption, it should be noted that the integrated plant exemption does not exempt equipment used for cleaning and maintenance. K.S.A. 2003 Supp. 79-3606(kk)(5)(A) and (B) provide:

(5) "Machinery and equipment used as an integral or essential part of an integrated production operation" shall not include:
(A) Machinery and equipment used for nonproduction purposes, including, but not limited to, machinery and equipment used for plant security, fire prevention, first aid, accounting, administration, record keeping, advertising, marketing, sales or other related activities, plant cleaning, plant communications, and employee work scheduling;
(B) machinery, equipment and tools used primarily in maintaining and repairing any type of machinery and equipment or the building and plant;

Water and gas used to produce steam that is used to sanitize equipment and areas of the slaughterhouse are not "used in the actual process" of slaughtering and dressing animals. For the same reasons, these purchases are not exempt when used in other sanitizing operations where other kinds of food are processed.

I hope that I have adequately explained why these purchases are taxable under Kansas law. If you have any additional questions, please call me.

Sincerely,

Thomas E. Hatten

Attorney/Policy & Research

**Date Composed: 03/25/2004 Date Modified: 03/26/2004**