**Private Letter Ruling**

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| **Ruling Number:** | **P-1999-162** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Taxability of welding rod purchased and used by a farmer.** |
| **Keywords:** |  |
| **Approval Date:** | **07/26/1999** |

**Body:**

Office of Policy and Research

July 26, 1999

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XXXXXXXXXX

Re: Kansas Sales Tax

Dear XXXXX:

Your correspondence of June 1, 1999, has been referred to me for response. Thank you for your inquiry.

By your letter you ask for our advice concerning the taxability of welding rod purchased and used by a farmer. You indicate it is your opinion that the welding rod should be exempt from Kansas sales tax as “farm machinery and equipment” or as a “repair and replacement part.” You argue that since welding rod becomes part of the machine it is used to repair, it is not equipment, but actually a repair part.

The Kansas retailer’s sales tax is imposed by K.S.A. 79-3603. Exemptions are found in K.S.A. 79-3606. Subsection (t) of the statute provides an exemption for:

(t) all sales of farm machinery and equipment or aquaculture machinery and equipment, repair and replacement parts therefor and services performed in the repair and maintenance of such machinery and equipment. For the purposes of this subsection, “farm machinery and equipment or aquaculture machinery and equipment” shall include machinery and equipment used in the operation of Christmas tree farming but shall not include any passenger vehicle, truck, truck tractor, trailer, semitrailer of pole trailer, other than a farm trailer, as such terms are defined by K.S.A. 8-126, and amendments thereto. Each purchaser of farm machinery and equipment or aquaculture machinery and equipment exempted herein must certify in writing on the copy of the invoice or sales ticket to be retained by the seller that the farm machinery and equipment or aquaculture machinery and equipment purchased will be used only in farming, ranching or aquaculture production. Farming and ranching shall include the operation of a feedlot and farm and ranch work for hire and the operation of a nursery;

Aside from the farm machinery and equipment sales tax exemption, farmers and ranchers must usually pay sales tax on items purchased for use in farming and ranching operations. Thus, purchases of boots, gloves, work clothes, fencing materials, building materials, baling twine and wire, hand tools, etc., are subject to sales tax in the state of Kansas. In the context of your letter, welding rod falls into this category.

Welding rod is not farm machinery and equipment, nor is it a repair or replacement part. It is a welding supply. As a result, it does not fall within the exemption provided by K.S.A. 79-3606(t) and, accordingly, your purchase of welding rod will be subject to sales tax.

Please be advised it is the opinion of this department that, as used in the statute, the phrase “repair and replacement parts” refers to items which would be found on a manufacturer’s parts list, service parts list, or similar parts listing for a given piece of machinery or equipment, or the generic equivalent of such listed part. It includes such items as bolts, nuts, washers, cotter keys, etc., used in the repair of combines, tractors, etc., but only if these items are included on the original parts listing. Items not included in such a listing would not qualify for the exemption as a repair or replacement part.

In your letter you argue that because welding rod becomes part of the machine it fixes it is “consumed” in the process of welding, and that it is therefore “consumed in production.” As you may know, the phrase “consumed in production” is a term of art. The controlling statute, 79-3606(n), provides an exemption for:

(n) all sales or 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; and any purchaser of such property may obtain from the director of taxation and furnish to the supplier an exemption certificate number for tangible personal property for consumption in such production, manufacture, processing, mining, drilling, refining, compounding, treating, irrigation and in providing such services;

Farm production includes such things as the raising of crops, animal husbandry, etc. Repairs to farm machinery are several steps removed from farm production. Therefore, it is the opinion of this department that welding rod does not fall within the exemption provided by K.S.A. 79-3606(n) and, accordingly, that your purchase of welding rod will be subject to sales tax.

This private letter ruling is based solely on the facts provided in your request. If it is determined that undisclosed facts were material or necessary to make an accurate determination by the department, this ruling is null and void. This private letter ruling will be revoked in the future by operation of law without further department action if there is a change in the statutes, administrative regulations, or case law, or a published revenue ruling, that materially affects this private letter ruling.

I trust this information is of assistance. If I can be of further service, please feel free to contact me.

Sincerely,

Jim Weisgerber
Attorney
Tax Specialist

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**Date Composed: 08/04/1999 Date Modified: 10/11/2001**