**Opinion Letter**

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| **Letter Number:** | **O-2000-030** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Sales of water used exclusively to water livestock held for resale.** |
| **Keywords:** |  |
| **Approval Date:** | **10/30/2000** |

**Body:**

Office of Policy & Research

October 30, 2000

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XXXX

RE: Your letter dated October 19, 2000

Dear XXXX:

I have been asked to answer your letter that we received earlier this month. In it, you ask if sales of water used to water cattle should be taxed or exempted. Please be advised that sales of water used exclusively to water livestock held for resale is exempt from state and local tax. This water is considered to be “consumed in production.” See K.S.A. 79-3602(m) and K.S.A. 79-3603(n). This same rule exempts sales of water used exclusively to irrigate of crops. See K.S.A. 79-3602(m). Other water sold to farmer for residential and general agricultural use is subject to local sales tax in place at the farmer’s place of residence and farm operations.

K.S.A. 79-3606(w), which is found in the retailers’ sales tax act, exempts piped water, electricity, and piped natural gas that is sold “to a residential premise for noncommercial use by the occupant” and “for agricultural use.” This provision exempts such sales from state sales tax. K.S.A. 12-189a(a), which is found in the local sales tax act, specifies that local sales tax is imposed on sales of piped natural gas, electricity, and piped water delivered though mains “to a residential premise for noncommercial use by the occupant” and for “agricultural use.” These two provisions means that piped water sales for residential and agricultural use are subject to local sales tax in place at the place of residence but exempt from the 4.9% state sales tax.

The local sales tax act also directs:

Except as otherwise specifically provided in K.S.A. 12-189a, and amendments thereto, such tax shall be identical in its application, and exemptions therefrom, to the Kansas retailers' sales tax act and all laws and administrative rules and regulations of the state department of revenue relating to the Kansas retailers' sales tax shall apply to such local sales tax insofar as such laws and rules and regulations may be made applicable.

This provision requires the state and local sales tax acts to be administered the same, except for the exceptions set forth in K.S.A. 12-189a. Administering the provisions of these two acts the same means the department must recognize that the consumed in production exemption, which is found at K.S.A. 79-3606(n), applies for local tax purposes. The department has read this as requiring that water that is sold to farmers and ranchers that is consumed in production is exempt from both state and local sales tax but that water sold for general agricultural use is subject to local sales tax,. As noted, water consumed in production includes water used to irrigate crops or water used to water livestock held for market.

The sales tax exemptions for irrigation and watering livestock are not automatic. To claim them, the farmer or rancher must apply to you in writing using a form produced by the department. I have enclosed a form that you may duplicate and provide to those farmers and ranchers who want to claim the exemption.

I hope that this adequately answers all of your questions. If not, you can call me at (785) 296-3081 or visit our web site at www.ink.org/public/kdor/ .

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

Enclosure

**Date Composed: 10/30/2000 Date Modified: 10/10/2001**