**Opinion Letter**

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| **Letter Number:** | **O-2011-004** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Farmers and ranchers selling whole animals to consumers.** |
| **Keywords:** |  |
| **Approval Date:** | **05/09/2011** |

**Body:**

Office of Policy & Research

May 9, 2011

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RE: Your letter dated February 9, 2011

Dear XXXX:

Thank you for your recent letter. Sales tax is levied on retail sales of tangible personal property ("TPP" or "goods") and certain services listed in the sales tax act's imposition section, K.S.A. 79-3603. These taxable services are commonly referred to as "enumerated services" or "listed services." A "retail sale" of goods, including agricultural products, is a sale to the final consumer. *See K.S.A. 79-3602(jj) ("Retail sale" or "sale at retail" means any sale, lease or rental for any purpose other than for resale, sublease or subrent.")*. Retail sales are taxable. "Sales for resale" are not taxable. Sales for resale include farmers' sales of their agricultural products to a food processor and the food processors sales to wholesalers and retailers. As used in this letter, "farmer" includes both farmers and ranchers, and "farm" includes both farming and ranching operations.

Because of today's large scale farm operations, nearly all sales of agricultural products by farmers are nontaxable "sales for resale." Nontaxable sales for resale include farmers' sales of agricultural products to grain elevators, ethanol producers, slaughter houses, food processors, grocers, restaurants, and other similar businesses. A farmer's sales to these businesses are "sales for resale" because the business either resells what it buys from the farmer or processes what it buys into goods the business will resell at retail or wholesale.

When a farmer sells products at retail, the sales often are made at farmers' markets, from roadside stands, or from stands or stores the farmer operates on its land. Taxable sales include sales of vegetables, fruits, eggs, milk and other dairy products, meats, hay, grain, plants, flowers, young trees, and livestock. In fact, there is no limitation on the type of agricultural products that farmers can sell at retail to the public. Most sales made at farmers' markets or from a farm stand are sales to final consumers, although some restaurants and similar businesses buy products for resale directly from farmers. These businesses can claim exemption on their purchases by giving the farmer a completed resale exemption certificate. A farmer that make retail sales is required to register with the department and collect sales tax on its taxable retail sales.

A few Kansas farmers utilize the internet to sell their products. Sales that are arranged over the internet typically are retail sales. Farmers that make these sales are required to register for sales tax purposes and collect Kansas sales tax. Because of interstate commerce laws, a farmer is only required to collect Kansas sales tax on goods delivered to Kansas residents. Kansas farmers should not charge Kansas sales tax on goods mailed or delivered to another state. As with direct sales, a Kansas restaurant or similar business can claim resale exemption by providing the Kansas farmer with a complete resale exemption certificate.

Eggs are a good example of an agricultural product that farmers sometimes sell at retail and sell for resale at other times. A farmer's sales of eggs to a grocer are sales for resale, because the grocer will resell the eggs to customers that buy them and pay sales tax on the purchase price. A farmer's sales of eggs to a baker are also exempt sales for resale. The baker will use the eggs to make baked goods that the baker will sell to customers at retail and to grocers for resale. The farmer does not charge sales tax when it sells eggs to the baker because sales tax will be collected by the baker or grocer when the baked goods are sold to the public.

Some farmers sell eggs directly to the public. These sales are taxable retail sales since the buyer will consume the eggs rather than reselling them or using them to make goods for resale. A farmer that sells eggs directly to the public is required to register with the department as a retailer and collect and remit sales tax on their retail sales.

You specifically ask about retail sales of livestock to the public. As has been discussed, these sales are taxable even though such sales are uncommon. These transactions are uncommon because the vast majority of livestock sales are exempt sales for resale made to slaughter houses, or to feed yards and ranchers who intend to fatten the animal for slaughter. In addition, sales of breeding stock are exempt sales for resale, by definition.

A few skilled individuals still buy live hogs or cattle at retail with the intention of slaughtering the animal and dressing it out for their own use. Others buy hogs or cattle at retail to deliver to a meat locker or small packing plant for slaughter and dressing. Farmers' sales of livestock to these individuals are taxable retail sales to final consumers. A farmer that routinely make such sales is required to register with the department as a Kansas retailer and collect sales tax on its retail sales of livestock.

These direct sales to individuals should be contrasted with a meat locker's purchases of livestock from a farmer that the locker will slaughter and dress out for its customers. In these cases, the locker can claim a resale exemption because the locker will package the meat and sell it to customers. The locker is required to collect sales tax on its retail sales of the packaged meat to customers. All Kansas meat lockers should be registered retailers.

It should be noted that a meat locker's charges for dressing out and packaging a customer's livestock, deer, or other game are taxable, even though the meat locker never acquires ownership of the customer's property. These services are taxable under K.S.A. 79-3603 as altering tangible personal property. This means that certain customers will owe sales tax to the farmer when they buy an animal and will owe sales tax to the locker on the locker's charges for slaughtering and dressing out the animal. One more thing should be noted. Horses technically are livestock. Sales of pleasure horses are subject to sales tax.

I hope this letter clarifies the ambiguous language you found in Publication KS-1550, *Kansas Sales & Use Tax for the Agricultural Industry.*I believe the ambiguities are resolved when the KS-1550 is read with the understanding that Kansas sales tax is imposed on sales to final consumers, and that it is uncommon today for individuals to buy livestock directly from a farmer to slaughter and dress out themselves or to have a meat locker slaughter and dress out. As a result of today's large scale farming operations, the vast majority of sales of agricultural products made by Kansas farmers are nontaxable sales for resale, rather than taxable retail sales made to consumers. In addition, the Kansas sales tax act is filled with exceptions and exemptions. It is impossible to repeat each exception and exemption that may apply each time a general sales tax principle or imposition is being discussed or explained for an industry.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 05/10/2011 Date Modified: 05/10/2011**