

**BEFORE THE BOARD OF TAX APPEALS
STATE OF KANSAS**

IN THE MATTER OF THE PROTESTS
OF REEVE CATTLE CO., INC. FOR THE
YEARS 2013 AND 2014 IN FINNEY
COUNTY, KANSAS

Docket Nos. 2015-7099-PR
and 2015-7100-PR

SUMMARY DECISION

Now the above-captioned matters come on for consideration and decision by the Board of Tax Appeals of the State of Kansas. The Board conducted a hearing in these matters on April 22, 2016. The Taxpayer, Reeve Cattle Co., Inc. appeared by S. Lucky DeFries and Jeff Wietharn, Attorneys. Keith Bryant and Clayton Huseman appeared as witnesses for the Taxpayer. Finney County appeared by Michael Montoya, Attorney. Cheryl Sonnenberg appeared as a witness for the County. Taxpayer Exhibits #1 through #8 are admitted into evidence. The tax years in issue are 2013 and 2014.

After considering all of the evidence and arguments presented, the Board finds and concludes as follows:

The Board has jurisdiction of the subject matter and the parties, as tax protests have been properly and timely filed pursuant to K.S.A. 79-2005.

The subject matter of these tax appeals is as follows:

International Mixer-Feeder Trucks,
ID # 028-PP-090-01-REEVCATTLE.

The subject property consists of the chassis and cabs of mixer-feeder trucks. The subject mixer-feeder trucks mix feed ingredients and then haul the feed within the feedlot from the feed storage area to the cattle. They are equipped with augers to blend the feed ingredients and a hydraulic system to operate the augers; are designed for high torque and low speed; are capable of maximum speeds of 17 mph while mixing and 20 mph when not mixing; have an on-board scale; are outfitted with extra lights; have specialized air intake systems for low speed travel in dusty areas; and are 106" wide (whereas the legal limit for road travel is 102"). The Taxpayer drives the subject mixer-feeder trucks on public roads only rarely when specialized maintenance is necessary. If the governors were removed, the trucks could operate at a maximum speed of 45 miles per hour.

The Taxpayer requests exemption of the subject property pursuant to K.S.A. 79-201j. The Taxpayer noted that a mixer-feeder truck is an "implement of husbandry" pursuant to K.S.A. 8-126(o)(5). As such, the Taxpayer argued the subject properties qualify as "farm machinery and equipment" which is exempt under K.S.A. 79-201j. The Taxpayer acknowledged that K.S.A. 79-201j excludes trucks from exemption, but argued that the subject properties are not trucks as they are not used to transport or deliver freight and merchandise, nor can they transport ten or more passengers. The Taxpayer also asserted that the subject properties cannot be both "implements of husbandry" and "trucks", arguing that the Legislature removed mixer-feeder trucks from the definition of "truck" when it added them to the listing of "implements of husbandry" under a separate and mutually exclusive definition. Further, trucks must be tagged and registered, while implements of husbandry are exempt from such requirements.

The County argued that the subject properties are "trucks" or "passenger vehicles" per the definitions in K.S.A. 8-126 and, as such, are specifically excluded from exemption in K.S.A. 79-201j. The County argued that the legislature's inclusion of mixer-feeder trucks in the definition of "implements of husbandry" served only to exclude them from the requirements of vehicle registration, not to declare the trucks as "farm machinery and equipment", thereby making them eligible for exemption in K.S.A. 79-201j. According to the County, if the legislature had intended to exempt mixer-feeder trucks, it would have done so. The County further argued that these vehicles can be driven on the road and, with a few modifications, they could be used for over the road transport.

K.S.A. 2014 Supp. 8-126 includes the following definitions:

(j) "Farm tractor" means every motor vehicle designed and used as a farm implement power unit operated with or without other attached farm implements in any manner consistent with the structural design of such power unit.

(o) "Implement of husbandry" means every vehicle designed or adapted and used exclusively for agricultural operations, including feedlots, and only incidentally moved or operated upon the highways. Such term shall include, but not be limited to:

- (1) A farm tractor;
- (2) a self-propelled farm implement;
- (3) a fertilizer spreader, nurse tank or truck permanently mounted with a spreader used exclusively for dispensing or spreading water, dust or liquid fertilizers or agricultural chemicals, as defined in K.S.A. 2-2202, and amendments thereto, regardless of ownership;

(4) a truck mounted with a fertilizer spreader used or manufactured principally to spread animal dung;

(5) a mixer-feed truck owned and used by a feedlot, as defined in K.S.A. 47-1501, and amendments thereto, and specially designed and used exclusively for dispensing food to livestock in such feedlot.

(t) "Motor vehicle" means every vehicle, other than a motorized bicycle or a motorized wheelchair, which is self-propelled.

(cc) "Passenger vehicle" means every motor vehicle, as herein defined, which is designed primarily to carry 10 or fewer passengers, and which is not used as a truck.

(mm) "Truck" means a motor vehicle which is used for the transportation or delivery of freight and merchandise or more than 10 passengers.

K.S.A. 79-201j provides an exemption from taxation for:

(a) All farm machinery and equipment. The term "farm machinery and equipment" means that personal property actually and regularly used in any farming or ranching operation. The term "farm machinery and equipment" shall include: (1) Machinery and equipment comprising a natural gas distribution system which is owned and operated by a nonprofit public utility described by K.S.A. 66-104c, and amendments thereto, and which is operated predominantly for the purpose of providing fuel for the irrigation of land devoted to agricultural use; (2) any bed, body or box that is attached to a motor vehicle and is actually and regularly used in any farming or ranching operation, except for a bed, body or box that is attached to the motor vehicle by the motor vehicle manufacturer; and (3) any greenhouse which is not permanently affixed to real estate and which is used for a farming or ranching operation. The term "farming or ranching operation" shall include the operation of a feedlot, the performing of farm or ranch work for hire and the planting, cultivating and harvesting of nursery or greenhouse products, or both, for sale or resale. The term "farm machinery and equipment" shall not include any passenger vehicle, truck, truck tractor, trailer, semitrailer or pole trailer, other than a farm trailer, as the terms are defined by K.S.A. 8-126, and amendments thereto.

Based on the evidence presented at the hearing, duly weighing such evidence, the Board determines that the Taxpayer's request for an exemption of the subject property pursuant to K.S.A. 79-201j should be granted. The Board finds the subject property constitutes "farm machinery and equipment" as it is actually and regularly used in a farming or ranching operation. The subject property does not meet the definition of "truck" as defined in K.S.A. 8-126(mm) as it is not utilized for the transportation or delivery of freight and merchandise or more than 10 passengers. The Board notes that the subject properties have undergone significant modification in order to be suited for actual and regular use in mixing ingredients and feeding cattle in a feedlot operation, and even if the Taxpayer were to remove the aforementioned modifications, the "trucks" would operate at a maximum speed of only 45 miles per hour. Further, the Board notes that while the subject properties may qualify as a "passenger vehicle" this does not preclude its qualification for exemption under K.S.A. 79-201j inasmuch as a farm tractor (which is not a truck) may be defined as a passenger vehicle, but is exempt when actually and regularly used in a farming and ranching operation. The subject properties, once modified, are no longer intended to be used as trucks or passenger vehicles, but are more appropriately defined as "implements of husbandry" pursuant to K.S.A. 8-126(o)(5). The Board finds that due to their specific use and design, the subject properties qualify for exemption from taxation pursuant to K.S.A. 79-201j.

IT IS THEREFORE ORDERED that, for the reasons stated above, the Taxpayer's request for exemption from taxation for tax years 2013 and 2014 should be granted.

IT IS FURTHER ORDERED that the appropriate officials shall correct the county's records to comply with this Order, re-compute the taxes owed by the taxpayer and issue a refund for any overpayment.

This order is a summary decision pursuant to K.S.A. 74-2426(a), and amendments thereto.

Any party who is aggrieved by this order may file a written petition for reconsideration with this Board as provided in K.S.A. 77-529, and amendments thereto. See K.S.A. 74-2426(b), and amendments thereto. The written petition for reconsideration shall set forth specifically and in adequate detail the particular and specific respects in which it is alleged that the Board's order is unlawful, unreasonable, capricious, improper or unfair. Any petition for reconsideration shall be mailed to the Secretary of the Board of Tax Appeals. The written petition must be received by the Board within 15 days of the certification date of this order (allowing an additional three days for mailing pursuant to statute).

Rather than filing a petition for reconsideration, any aggrieved person has the right to appeal this order of the Board by filing a petition with the court of appeals or the district court pursuant to K.S.A. 74-2426(c)(4)(A), and amendments thereto. Any person choosing to petition for judicial review of this order must file the petition with the appropriate court within 30 days from the date of certification of this order. See K.S.A. 77-613(b) and (c) and K.S.A. 74-2426(c), and amendments thereto. Pursuant to K.S.A. 77-529(d), and amendments thereto, any party choosing to petition for judicial review of this order is hereby notified that the Secretary of the Board of Tax Appeals is to receive service of a copy of the petition for judicial review. Please note, however, that the Board would not be a party to any judicial review because the Board does not have the capacity or power to sue or be sued. See K.S.A. 74-2433(f), and amendments thereto.

Rather than filing a petition for reconsideration or appealing this order, any aggrieved party may request, within 14 days of receiving this order, a full and complete opinion be issued by the Board pursuant to K.S.A. 74-2426(a), and amendments thereto.

If both parties are aggrieved by this order, and one party timely appeals this order to the district court (which necessitates a trial de novo pursuant to K.S.A. 74-2426(c)(4)(A)) and amendments thereto, then this order will be deemed final and will render moot any pending petition for reconsideration or request for a full and complete opinion filed by the other party. If both parties are aggrieved by this order, one party timely appeals this order to the court of appeals (which would involve appellate review under the Kansas judicial review act), and the other party timely files a petition for reconsideration or request for a full and complete opinion, then this order will be deemed non-final and the Board will proceed to render an order regarding reconsideration or a full and complete opinion, as applicable.

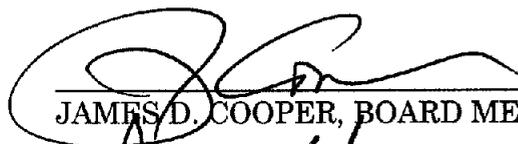
Unless an aggrieved party files a timely written request for a full and complete opinion or a timely petition for reconsideration as set forth herein, this order will be appealable by that party only by timely appeal to the district court or the court of appeals as set forth above.

The address for the Secretary of the Board of Tax Appeals is Board of Tax Appeals, Eisenhower State Office Building, 700 SW Harrison St., Suite 1022, Topeka, KS 66603. A party filing any written request or petition shall also serve a complete copy of any written request or petition on all other parties. Please be advised that the administrative appeal process is governed by statutes enacted by the legislature and no further appeal will be available beyond the statutory time frames.

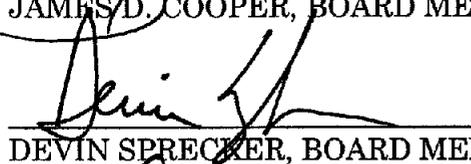
IT IS SO ORDERED

THE KANSAS BOARD OF TAX APPEALS





JAMES D. COOPER, BOARD MEMBER



DEVIN SPRECKER, BOARD MEMBER



ARLEN SIEGFREID, MEMBER *PRO TEM*



JOELENE R. ALLEN, SECRETARY

CERTIFICATION

I, Joelene R. Allen, Secretary of the Board of Tax Appeals of the State of Kansas, do hereby certify that a true and correct copy of this order in Docket Nos. 2015-7099-PR and 2015-7100-PR and any attachments thereto, was placed in the United States Mail, on this 5th day of May, 2016, addressed to:

Reeve Cattle Co Inc
PO Box 1036
Garden City, KS 67846

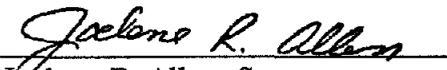
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IN TESTIMONY WHEREOF, I have hereunto subscribed my name at Topeka, Kansas.


Joelene R. Allen, Secretary