**Opinion Letter**

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| **Letter Number:** | **O-2008-002** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Sales of lawnmowers to farmers.** |
| **Keywords:** |  |
| **Approval Date:** | **06/26/2008** |

**Body:**

Office of Policy & Research

June 26, 2008

XXXX
XXXX
XXXX

RE: Your letter received June 24, 2008

Dear XXXX:

I have been asked to answer your recent letter. You operate an implement dealership that sells lawn and garden equipment as well as agriculture equipment. You have established a business practice of charging sales tax on sales of lawnmower to farmers. You adopted this practice after your business was audited and assessed the sales tax that had gone uncollected on past sales of lawnmowers to farmers.

One of your customers is a dairy farmer who want to sign an agricultural exemption certificate that states that he will only use the lawnmower "for the dairy farm." You ask if this would allow you to exempt the sale. The answer is no. The sale is taxable.

The exemption for agricultural machinery and equipment is limited to machinery and equipment that is used exclusively in agriculture to produce products for resale. Here, the dairy farmer has advised you that he will use the lawnmower to cut areas near buildings where plant growth needs to be managed because of the fire threat. The plants in question appear to be weeds. Weeds are not crops that are planted and grown for resale. While cattle eat weeds, farmers typically do not cut or mow these weeds with a lawnmower that is dedicated to such use. Weed management on farms typically is accomplished by the use of power takeoff equipment or by the use of herbicides.

The sales tax exemption for farm machinery and equipment requires exclusive use. Farmers typically use lawnmowers to mow lawn grass and manage weed growth around farm homes, barns, and storage buildings. Mowing these areas is not something that is done to produce farm products that are intended for resale. I have a farm background and cannot envision a situation in which a farmer would buy a lawnmower to use exclusively in his wheat fields, corn fields, or other fields where crops are grown.

If a farmer buys a lawnmower and anticipates that the mower will be used on occasion to manage weed growth around farm buildings, the sale of the lawnmower is taxable. If a farmer buys a lawnmower and anticipates that the mover will be used on occasion to mow grass that grows around a farm home and buildings, the sale of the lawnmower is taxable. Because of this, the department routinely advises lawnmower dealers to not exempt sales of lawnmowers to farmers who claim exemption. This is a reasonable practice that helps assure that lawnmower dealers are not saddled with paying sales tax that a farmer should have paid.

If a farmer wishes to contest payment of sales tax to a dealer on a lawnmower purchase, the farmer's remedy is to file a refund request with the department using a form ST-21. This form can be downloaded from our web site. (www.ksrevemue.org). The farmer can then appeal any refund denial and receive his or her due process rights to a hearing. These hearing are conducted by telephone as a convenience to the taxpayer and the department. Kansas law provides for interest to be paid on many sales tax refunds. This approach is eminently fair to Kansas lawnmower dealers and does not impose a hardship on a farmer who believes he is entitled to exemption on a lawnmower purchase. If a farmer can establish entitlement to exemption at the administrative hearing, the department will refund the sales tax that the farmer paid to the dealer on the purchase plus interest that accrued on the refund amount for the periods between the date of purchase and the date of the refund.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 07/07/2008 Date Modified: 07/07/2008**