**Private Letter Ruling**

|  |  |
| --- | --- |
| **Ruling Number:** | **P-2001-063** |

|  |  |
| --- | --- |
| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Lagoon construction for a dairy.** |
| **Keywords:** |  |
| **Approval Date:** | **06/22/2001** |

**Body:**

Office of Policy & Research

June 22, 2001

XXXXXXXXXXXXXX
XXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

The purpose of this letter is to respond to your letter dated May 31, 2001. In it, you ask if the construction of a lagoon for a dairy farmer is exempt from Kansas retailers’ sales tax.

In your letter you stated:

This correspondence is requesting a private letter ruling for one of our clients. XXXXXXX operate a dairy farm and have recently had a new livestock lagoon built. The construction company was not sure whether to charge sales tax on this or not. As a result, XXXXXX asked our office to check if this should have sales tax added to the cost of building the lagoon or not. After calling the Kansas Department of Revenue, I was told that it was unclear if this is taxable and that I should request a private letter ruling.

In addition, XXXXXXXXX are in the process of filing a claim with the ASCS office to get a refund for building the new lagoon. As a result, they have a deadline to meet for claiming the refund and would appreciate a timely response. The private letter ruling may be sent to our office or to XXXXXXXXXXXXXXXXXXXXXXXXXX.

The Kansas retailers’ 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:

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;

It is the opinion of the Kansas Department of Revenue that a livestock lagoon is an improvement to real property. As such, the lagoon cannot qualify for exemption as farm equipment. Therefore, the construction of a livestock lagoon does not qualify for exemption from Kansas retailers’ sales, as farm machinery or equipment.

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.

Sincerely,

Mark D. Ciardullo
Tax Specialist

MDC

**Date Composed: 06/26/2001 Date Modified: 10/11/2001**