

Opinion No. 34-756

May 10, 1934

BY: E. K. NEUMANN, Attorney General

TO: Honorable Byron O. Beall, State Tax Commission, Santa Fe, New Mexico.

{*131} Referring to your letter of May 3, 1934, with relation to the School Emergency Tax Act and the exemptions therein set forth in Section 212 (B).

It is our opinion that the exemption is valid in so far as it effects the validity of the Act. A wide discrimination in classification for applying an excise tax is admittedly in the Legislature and usually sustained if grounded upon any valid reasons. The Supreme Court of Illinois held a similar exemption unconstitutional in *Winter vs. Barrett*, 352 Ill. 441, as denying equal protection and violating the requirements of uniformity. The reasoning in the case is unsatisfactory from an economic standpoint. There are strong economic reasons for exempting farmers, ranchers and the like and the Washington court, presented with an agricultural exemption in *Stiner vs. Yelle*, 25 Pac. (2nd) 91, held such exemption constitutional. As one text writer puts it, "Washington refused to repeat the Illinois mistake."

Agricultural exemptions are frequently upheld in both the State and Federal Courts and, most foreign sales taxes contain such exemption.

The extent of the exemption presents a more difficult question upon cursory examination, but a careful study of said Section, gives the student a clear conception of the Legislative intent. The Section in question is as follows:

"(b) The proceeds from the {*132} sale of poultry and products of the farm, ranch, grove, or garden when made by the grower or producer thereof, and of live-stock or any growth or product derived therefrom, including wool, hides, and pelts, whether such sales shall be made by the grower, producer, feeder, trader, or any other re-seller, or any co-operative marketing association the members of which are the growers or producers of such commodities."

The Legislature intended, in my opinion, to exempt sales of farm, garden, grove and ranch products, including live stock, from the tax imposed, when such sales were sales of products in the hands of the grower or a re-seller thereof, when such resales were in the condition and form as when sold by the grower or producer.

For example, a rancher kills a beef, sells the meat and hide. His sale of those products is exempt and the sale of the identical products by the purchaser thereof is exempt also. Should a grower sell wheat, cattle or sheep to a trader, a feeder or packer, his sale is exempt, and so also is the sale by the trader, feeder or packer if the identical wheat, cattle or sheep is sold by such person.

If the trader makes flour out of the wheat, however, his sale of such flour is taxed, as is the sale of the trader or packer if he butchers the cattle or sheep and sells them in the form of beef or mutton ready for consumption. The sale of by-products of each of such operations is also taxable.

Believing the foregoing clearly indicates the validity, nature and extent of the exemptions allowed by the Section in question, I am