**Private Letter Ruling**

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| **Ruling Number:** | **P-2014-002** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Taxibility of items fabricated and sold to Kansas farmers and ranchers.** |
| **Keywords:** |  |
| **Approval Date:** | **04/22/2014** |

**Body:**

Office of Policy & Research

April 22, 2014

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RE: Your letter dated March 19, 2014

Dear XXXXX:

Thank you for your recent letter. You request a private letter ruling that determines the taxability of items that YYYYYYYYY fabricates and sells to Kansas farmers and ranchers. The items are portable corral panels, round-bale livestock feeders, and livestock shelters.

Corrals panels, which as sometimes called range panels, are used to corral livestock. A typical panel is made up of four or more lengths of 2", 16 gauge horizontal metal tubing that are welding to two vertical end tubes, with one or more vertical reinforcement tubes centered between them. The vertical end pieces extend below the lowest horizontal tubes and are bent in a half circle. The end is then welded to the bottom of the lowest horizontal tube to create "mud legs" for the panel. The vertical tubes at the ends of a panel typically have pin-and-tube connectors welded to them so that the panels can be attached to one another. These panels are designed to be quickly set up for livestock confinement in an open field and quickly taken down once they are no longer needed.

The panels are available in different lengths and heights, and can be configured as round or square corrals or as animal cutes or stalls. Specialty trailers are engineered and manufactured for the sole purpose of racking the panels and hauling them from place to place. The department has ruled corral panels qualify for sales tax exemption as farm equipment when sold to a farmer, rancher, or feedlot operation for use in their production agriculture operations. See KDOR Publication KS-1550, *Kansas Sales and Use Tax Guide for the Agricultural Industry,* p. 6,*"Corral panels (portable),"*Dec. 1, 2012. Nearly identical fencing panels that are fabricated and installed as permanent fencing on a farm, ranch, feedlot, or other area are taxable.

Portable round-bale livestock feeders are designed to accept round bales of hay and allow livestock to access them as feed. Round-bale feeders commonly are constructed from welded metal tubing and sheet steel. These feeders often incorporate vertical tubes that form "feeding stations" to separate the animals when feeding.

Some feeders support an elevated bale, which allows smaller livestock to walk underneath the bale to feed. Others have elevated floors that hold the bale a few inches off the ground to protect it from ground moisture. Some feeders consist of quarter-circle panels of plastic polymer or steel that are assembled to accept the round bales. These panels have drop pins and hinges to allow them to be opened and then be closed around a bale. This eliminates the need to lift the bale and drop it into a feeder. Some feeders are delivered to buyers as complete units. Others are delivered in sections that must be assembled and set up on site.

The department has ruled that portable round-bale livestock feeders qualify for exemption as farm equipment when sold to a farmer, rancher, or feedlot operation for use in their production agriculture operations. See KDOR Publication KS-1550, *Kansas Sales and Use Tax Guide for the Agricultural Industry,* p. 6,*"Feeders,"*Dec. 1, 2012. However, farmers, ranchers, and livestock feeders are required to pay sales tax when they buy lumber, steel, or other material to fabricate their own portable or permanent livestock feeders or to fabricate roofs or enclosures to cover and protect the feeders from the elements, unless the work qualifies for a project exemption certificate pursuant to Section 8 of 2014 Senate Bill 265, which is effective July 1, 2014.

Your third question concerns the taxability of portable-livestock sheds, which are sometimes referred to as "loafing sheds" or "run-in shelters." Typically, portable-livestock sheds are placed on grazing land to provide livestock on open land with cover from the elements. These structures can be used for hay storage, as well as a livestock run in shelter. See *Hay Storage Facility Construction Guidelines,*University of Tennessee, <http://www.tn.gov/> agriculture/enhancement/ pdf/ storageguidelines.pdf. Some sheds are set up for calving.

You provided photographs of two livestock sheds that YYYYYYYYY fabricated. Each shed has a welded steel-tube frame. The roofs and three of the exterior walls established by the frame design are covered with corrugated metal, similar to the metal used on the exterior of a Morton Building. One of the long sides is left open. The roof slops away from the open side except for approximately two feet that slopes down to skirt the opening at the top. The sheds' interiors are lined with plywood panels to protect the exterior metal from damage by livestock in the shed and to protect the livestock from injury from if sharp metal becomes exposed on the interior side of the corrugated metal walls. One of the sheds appears to be set up for calving since it has livestock panels that run across the length of the open side to keep livestock inside the shed and block ingress by other animals.

YYYYYYYYY fabricates the sheds at its shop and delivers them to buyers on flat bed trailers. The buyer selects the location where the shed is to be placed, and YYYYYYYYY positions the trailer and unloads the shed, which rests on the ground. A shed may be tied to the ground with four or more earth anchors. A typical earth anchor consists of a steel rod that is 3 or 4 feet long with a loop on one end, and a point on the other. Near the pointed end is a 4" to 6" wide round steel disc that has a single cut that runs to a center hole. The disc bent at the cut to form an auger that sharpened and welded to the rod. Earth anchors are corkscrewed into the ground near the livestock shelter, and then secured to the shelter to anchor it in place during high winds.

A portable-livestock shed can be moved from its original location by untying it from the earth anchors, loading it on to a flatbed trailer, moving to the new location, and unloading it. Some fabricators and dealers of portable building engage in a separate business of moving portable building for third-parties. Because of their sales and deliveries, fabricators and dealers already have the required flatbed trailers, wenches, block and tackle, and experience needed to move portable buildings safely and efficiently.*See e.g. www.hendersonsbuildings.com; www.millersheds.com.;www. timsstoragebuildings.com/ portablebuildingmover.* In some localities, Yellowpages.com has a section devoted to "Portable building movers."*See e.g. www.yellowpages.com/san-antonio-tx/portable-building-movers; www.yellowpages.com/san-antonio-tx/portable-building-movers;*[*http://www.yellowpages.com/oklahoma-city-ok/portable-building-movers*](http://www.yellowpages.com/oklahoma-city-ok/portable-building-movers)*.*This suggests there is a ready market for portable-building moving services. This tends to confirm the fact portable-livestock shelters are indeed portable, and are purchased with the intention to move them as needed.

The sales tax exemption for farm machinery and equipment is found at K.S.A. 2012 Supp. 79-3606(t). This subsection also defines the term "farm machinery and equipment":

The following shall be exempt from the tax imposed by this act:

(t) all sales of farm 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 the term “farm machinery and equipment . . . shall include a work-site utility vehicle, as defined in K.S.A. 8-126, and amendments thereto, and is equipped with a bed or cargo box for hauling materials, . . . but shall not include any passenger vehicle, truck, truck tractor, trailer, semitrailer or 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 . . . purchased will be used only in farming, ranching or aquaculture production. Farming or ranching shall include the operation of a feedlot and farm and ranch work for hire and the operation of a nursery;

The property tax exemption for farm machinery and equipment is found at K.S.A. 2012 Supp. 79-201j(a). Like the sales tax exemption, it too defines "farm machinery and equipment." The property tax exemption provides:

The following described property, tot he extend specified by this section, shall be exempt from all property or ad valorem taxes levied under the laws of the state of Kansas:

(a) 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: . . . (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.

Kansas uses a three-part test to determine whether tangible personal property (TPP) has become a real property fixture for property tax purposes:

The test to be applied in determining whether or not personal property becomes a fixture is: First, annexation to the realty; second, adaptation to the use of that part of the realty with which it is connected; third, the intention of the party making the annexation to make the article a permanent annexation to the freehold. *Dodge City Water & Light Co. v. Alfalfa Land & Irr. Co.,* 64 Kan. 247, 67 P. 462, 464 (1902)

See also *Bd. of Educ., Unified Sch. Dist. No. 464 v. Porter,* 234 Kan. 690, Syl Par. 6, 676 P.2d 84, 86 (1984);*In re Equalization Appeals of Total Petroleum, Inc.,* 28 Kan. App. 2d 295, 16 P.3d 981 (2000).

When a farmer or rancher buys and takes deliver of a portable-livestock shelter, he or she has no intention of permanently affixing the building to real property, unless a foundation or concrete pad has been constructed that the shelter will be placed on and affixed to. The use of earth anchors does not transform the shelter into a real property fixture since earth anchors can be easily removed, relocated, and reused whenever a shelter is moved. Accordingly, portable-livestock shelters are considered to be TPP under Kansas property tax law.

Kansas retailers' sales tax is imposed on retails sales of TPP that are made in Kansas. *K.S.A. 2012 Supp. 79-3603(a); K.S.A. 2012 Supp. 79-3602(pp)*. This means the sale and delivery of prefabricated portable buildings are taxable as the sale of TPP, *unless the buyer can claim an exemption.*The sales tax exemption you're concerned with is the farm machinery and equipment exemption found at K.S.A. 2012 Supp. 79-3606(t), which is quoted above. It shows that a farmer or rancher's purchase and use of a portable-livestock shelter can qualify for exemption from sales tax.

To document the exemption, YYYYYYYYY is required to secure a completed Agricultural Exemption Certificate (ST-28F) from the farmer or rancher claiming exemption, or use invoices that allow the farmer or rancher to claim exemption on the face of the invoice. Exemption can also be established by the use of a rubber stamp that contain the exemption statement that is discussed in K.S.A. 2012 Supp. 79-3606(t) and certified by the buyer.

The fact YYYYYYYYY is a fabricator and registered retailer allow it to claim a resale exemption when it buys materials for incorporation into a portable-livestock shelter that is fabricated for resale. YYYYYYYYY may claim the resale exemption even though it knows the portable-livestock shelter it is fabricating will be sold to a farmer or rancher exempt from sale tax.

This is a private letter ruling pursuant to K.A.R. 92-19-59. It is based solely on the facts provided in your request. If it is determined that undisclosed facts were material or necessary to an accurate determination by the department, this ruling is null and void. This ruling will be revoked in the future by the operation of law without further department action if there is a change in the statutes, administrative regulations, or case law, or published revenue ruling, that materially effects this private letter ruling.

Sincerely,

Thomas E. Hatten
Attorney/Policy & Research

**Date Composed: 04/22/2014 Date Modified: 04/22/2014**