

Opinion No. 57-34

February 27, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Fred M. Calkins, Jr.,
Assistant Attorney General

TO: Honorable R. C. Morgan, State Senator, State Senate Building, Santa Fe, New
Mexico

QUESTIONS

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Is dairy equipment, particularly bulk milk tanks, subject to the New Mexico sales tax;
and, if so, what is the tax rate?

CONCLUSION

No. Not if the equipment purchased is used on the purchaser's farm or ranch.

OPINION

ANALYSIS

Section 72-16-4, N.M.S.A., 1953 Compilation, levies, and directs the Bureau of Revenue to collect, a privilege tax against persons doing business in the State. The above section, at sub-section D, exempts all sales of "agricultural implements" from the tax, as follows:

"At an amount equal to two percent of the gross receipts of the business of every person engaging or continuing in the business of selling at retail of goods, wares, materials, equipment, machinery, and commodities, including alcohol and all alcoholic liquors and beverages, for consumption and not for resale, and including receipts from rentals or leasing of tangible personal property; Provided that the gross receipts of all live stock, feeds for live stock or poultry; all seeds, roots, bulbs and plants; all fertilizer, insecticides, fungicides, weedacides applied to land; all agricultural implements, not including tractors used in planting, cultivating, harvesting or processing agricultural products upon the ranch or farm where grown shall be deductible before computing the tax due under this section;"

If dairy equipment can be considered "agricultural implements" the tax apparently cannot be levied on such equipment. Koger vs. A. T. Woods, Inc., 38 NM 231, 31 P2d 255, defines "agricultural implements" and in that case held an irrigation pump to be an agricultural implement. The above case goes on to hold that a machine or tool used on a ranch or farm engaging in agricultural pursuits can properly be considered an

agricultural implement. "Agriculture" has been defined in a broad sense to include farming, horticulture, forestry, dairying, sugar making, etc. See *State vs. Christensen*, 18 Wash. 2d 7, 137 P2d 512, and *Stuart vs. Kilck C.C.A. Ariz.*, 129 F 2d 402, among many others.

In view of the above, we feel that dairy equipment, if used on the purchaser's ranch or farm, should not be subject to the New Mexico sales tax.