

**OPINION
59-14**

September 23, 1959 (OPINION)

AGRICULTURE

RE: Dairy Products Promotion Commission - Assessment - Milk Destined
for Out-of-State Milk Plants

This is in reply to your request for an opinion on the provisions of House Bill 620 which is Chapter 93 of the 1959 Session Laws. The question relates to fluid milk being picked up by bulk tankers for out-of-state milk plants. More specifically, the milk is produced on North Dakota farms or dairy farms and is placed in bulk tanks from which the milk is picked up by tanker trucks owned and operated by an out-of-state milk plant and delivered to such plant. The query is whether or not such milk is subject to the 1/4 cent per pound assessment.

Section 6, subsection 1, provides for a levy and an assessment of 1/4 cent upon each pound of butterfat produced and sold in the State of North Dakota. Subsection 2 of the same section provides that such assessment is to be collected by the first dealer or processor by deducting it from the price paid for such butterfat. It also provides that where the producer sells directly to the consumer the assessment is to be collected from the producer.

The assessment or tax is levied on the butterfat or milk. The time when such assessment attaches is when it is sold - either to a dealer, processor or consumer. A dealer is defined by subsection 5 of section 3 chapter 93 to mean ". . . . any person who handles, ships, buys or sells dairy products, or who acts as sales or purchasing agent of dairy products." A processor is defined in subsection 6 of same chapter to mean ". . . . every person and every place to whom or to which milk or cream is delivered, for the purpose of canning, drying, manufacturing " The term producer is defined in subsection 7 of the same chapter to mean ". . . . every person who produced milk from cows and thereafter sells the milk or some product therefrom.

There seems to be no doubt that the farmer from whom the milk is obtained is the producer. The tax or assessment is on the milk produced by the farmer. The tax or assessment is on the milk produced by the farmer. The tax or assessment attaches when it is sold. Ordinarily a product like milk or cream is considered sold when it is delivered to the purchaser. Delivery can take place in various ways. However, where such products like milk or cream are commingled with like products of the purchaser, it is considered a delivery or sale as opposed to a bailment. In this instance the sale takes place (on the farm) where the milk is transferred from the farm bulk tank into the tanker truck where it is commingled with other milk in the tank of the truck. The actual transfer of title and possession of the milk takes place at this point, even though a condition on price or value might exist which is to be determined later. The truck tanker is not the agent of the farmer. He is

considered the agent of the plant. Even if the farmer were to send his milk in his own containers with such truck, it would still be considered a sale for this would amount to shipping the milk which by statute means to be consigned or delivered to a person dealing in processing, etc. of milk. By delivering the milk to the agent of the dealer, the sale was accomplished.

The out-of-state dealer or processor when buying milk within this state must comply with the law relating thereto. The tax is not upon the dealer, but merely imposes upon him the duty to collect the tax.

It is therefore our opinion that the milk which is picked up by the tank trucker from the farmer's bulk tank is considered sold at that point and is subject to the tax or assessment which must be collected as provided for under Chapter 93 of the 1959 Session Laws.

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