

EXEMPTION OF AGENCY  
OF THE STATE:-

MISSOURI TRAINING SCHOOL AT BOONVILLE BEING AN-  
strumentality of the State and carrying on  
governmental function, shall not be required to  
pay Federal processing tax on wheat raised or  
purchased by it and milled.

December 28, 1933.

12-30 ✓  
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43

Hon. Stephen B. Hunter,  
Director of Penal Institutions,  
Jefferson City, Missouri.

Dear Sir:

We are acknowledging receipt of your letter in which  
you state as follows:

"Your letter of November 10, relative to process-  
ing tax on wheat raised by the Missouri Training  
School, received, and I am convinced that I should  
have been more explicit in my inquiry.

The Missouri Training School made arrangements to  
have the mill at Boonville process the wheat  
raised by the Missouri Training School, reducing  
it to flour, and the flour that was to be made  
out of this wheat raised by the Training School  
was to be used in bread making at the institution,  
and the offal, or the bran, was to be used in  
feeding the dairy cows belonging to the Missouri  
Training School.

The processing tax that the Collector of Internal  
Revenue, at Kansas City, said we would have to  
pay was on the flour that would be made from the  
wheat raised on the lands farmed by the Missouri  
Training School. I felt quite sure that if we  
milled this wheat ourselves there would be no  
processing tax, but when we take the wheat to the  
mill at Boonville and pay them to reduce the  
wheat to flour, the Government demands a process-  
ing tax.

You might look at the question even in this way:  
suppose that the penal institutions bought wheat,  
then made a contract with the milling company  
here in Jefferson City to grind this wheat and  
reduce it to flour, and all the flour and bran  
that is made in the processing of the wheat into  
flour would be used by the penal institutions;  
then, would we owe the processing tax on the  
flour made from this wheat in this way?

If we owned the mill and ground the wheat our-

selves, it seems we would not, but the Internal Revenue Collector contends we owe it if the wheat is ground in some mill not owned by the penal institutions. It should not make any difference whether we grew the wheat or bought it as to whether we should pay the processing tax.

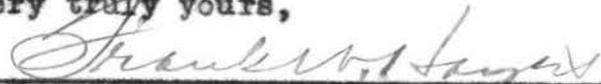
I am making this explanation so that you may better understand what I had in mind as to processing tax."

On November 10th, in our first opinion upon this question, we called your attention to some Federal decisions which held that the Federal Government has no right to levy or exact a tax from the states or their political subdivisions. This general proposition is well recognized. We do not believe that it would serve any useful purpose to requote those decisions in this reply.

As pointed out in the first opinion, the processing tax is levied against the individual who does the milling or other processing. There cannot be any question but that the Missouri Training School at Boonville, as covered fully in the first opinion, is a department of the State of Missouri, and a tax of any nature against this institution would be a tax against the State of Missouri. If the Missouri Training School at Boonville were subject to a processing tax, then we believe it would be subject to that tax on wheat which it milled, regardless of whether it grew the wheat or whether it purchased the wheat. On the other hand, since it is exempt from taxation as being an instrumentality of the State of Missouri it makes no difference whether the wheat which is milled is raised upon its farm, or whether the wheat is purchased from an individual and then milled. The processing tax is levied upon the actual milling and it is immaterial where the wheat is grown or where the wheat is milled. The levying of this tax on wheat purchased and milled by you is just as much a tax upon the State of Missouri as if the wheat had been produced by the institution.

We are therefore of the opinion that in view of the Federal Government's lack of power to tax the State of Missouri or its institutions, the Missouri Training School at Boonville cannot be required to pay a processing tax upon wheat which it mills, regardless of where the wheat is grown and regardless of where the wheat is milled. In view of the position of the Internal Revenue Collector on this matter, I believe it would be proper for you to suggest to him that in as much as the Attorney General of Missouri has advised you that no tax is due from your institution, that he obtain an opinion from the Attorney General of the United States upon this question with the view of avoiding any difficulty over the collection of this tax.

Very truly yours,

  
Assistant Attorney General.

APPROVED:

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Attorney General.