

AGRICULTURAL PRODUCTS - Treatment for taxation purposes of raw sugar beets at sugar refinery;  
TAXATION AND REVENUE - Exemption for business inventory;  
TAXATION AND REVENUE - Treatment for taxation purposes of raw sugar beets at sugar refinery;  
UNIFORM COMMERCIAL CODE - Definition of "goods";  
WORDS AND PHRASES - "Storage";  
MONTANA CODE ANNOTATED - Sections 1-2-107, 15-1-101(1), 15-6-101, 15-6-136(1)(b), 15-6-140(1)(g), 15-6-202, 30-2-105(1);  
MONTANA CONSTITUTION - Article VIII, section 5;  
REVISED CODES OF MONTANA, 1947 - Section 84-301;

SESSION LAWS OF 1975 - Senate Bill 165, chapter 299;  
SESSION LAWS OF 1981 - Senate Bill 283, chapter 613.

HELD: A sugar refinery's piled sugar beets are exempt from taxation as business inventory under section 15-6-202, MCA.

31 December 1984

Harold F. Hanser  
Yellowstone County Attorney  
Yellowstone County Courthouse  
Billings MT 59101

Dear Mr. Hanser:

You have requested my opinion on the following question:

Should a sugar refinery's piled sugar beets be classified as class six property under section 15-6-136, MCA, and taxed accordingly, or does such property fall within the "business inventory" exemption provided in section 15-6-202, MCA?

Section 15-6-101, MCA, provides:

(1) All property in this state is subject to taxation, except as provided otherwise.

(2) For the purpose of taxation, the taxable property in the state shall be classified in accordance with 15-6-131 through 15-6-141. [Emphasis added.]

Piled sugar beets owned by a sugar refinery clearly fit within the definition of the term "property," found in section 15-1-101(1)(j), MCA. They are therefore subject to taxation unless the Legislature has "provided otherwise." Article VIII, section 5 of the Montana Constitution empowers the Legislature to "provide otherwise" by exempting certain classes of property from taxation.

Class six property, which is taxed at four percent of its market value, includes "all unprocessed agricultural products on the farm or in storage except all perishable fruits and vegetables in farm storage and owned by the producer." § 15-6-136(1)(b), MCA. The term "agricultural," when used in connection with taxation, refers to "the raising of livestock, swine, poultry, field crops, fruit, and other animal and vegetable matter for food or fiber." § 15-1-101(1)(a), MCA. Applying the above statutory guideline, and giving the words of section 15-6-136(1)(b), MCA, their ordinary and commonly understood meaning, raw sugar beets obviously constitute "unprocessed agricultural products." However, I conclude that sugar beets temporarily piled at a sugar refinery and intended for use in producing sugar and sugar products are not in "storage" within the meaning of the statute and consequently should not be classified as class six property. The Legislature has not defined the term "storage" in Title 15. The term is generally interpreted as referring to the safekeeping of goods, as in a warehouse or other depository. City of Detroit v. General Foods, 197 N.W.2d 315, 322 (Mich. Ct. App. 1972); Lincoln Savings Bank of Brooklyn v. Brown, 137 F.2d 228, 230 (Emer. Ct. App. 1943). The piling of sugar beets at a sugar refinery is not akin to the safekeeping of goods in a depository, but is more in the nature of an activity incidental to the business of the refinery. Cf. Dugan v. McArdle, 172 N.Y.S. 27, 28 (N.Y. App. Div. 1918) (under state workers' compensation law, produce dealer was not in the business of "storage" when any storage of produce involved was merely incidental to the business of dealing in produce).

The Legislature has created a "catchall" category of taxable property in section 15-6-140(1)(g), MCA, which provides that class ten property includes "all other property not included in the preceding nine classes." Sugar beets piled at a sugar refinery would fall within this class had the Legislature not provided a specific exemption for such property. Section 15-6-202, MCA, provides in relevant part:

(1) Freeport merchandise and business inventories are exempt from taxation.

....

(5) "Business inventories" includes goods primarily intended for sale and not for lease in the ordinary course of business and raw materials and work in progress with respect to such goods....

Prior to 1975, class three property included "stocks of merchandise of all sorts." § 84-301, R.C.M. 1947. In chapter 299 of the 1975 Montana Laws (SB 165), the Legislature amended section 84-301, R.C.M. 1947, to classify business inventories in class seven for the purpose of property taxation. The language "stocks of merchandise of all sorts" was deleted from class three, and language similar to the present language in section 15-6-202, MCA, regarding business inventories was added to class seven. The legislative history of SB 165 provides little help in determining the objectives of the Legislature in creating this newly defined category of taxable property. Minutes of committee hearings on the bill suggest only that it was designed "to take business inventories out of class three and put them into class seven." There was no discussion regarding the fact that the bill placed a new label (business inventories), as well as a comprehensive definition, on property that had previously been labeled simply "stocks of merchandise of all sorts." When the phraseology of a statute is changed, it is presumed that the Legislature intended to change the existing law. State ex rel. Public Service Commission v. Brannon, 86 Mont. 200, 211, 283 P. 202, 207 (1929). Apparently, the Legislature intended to replace the former restrictive phrase with a more broadly defined concept of business property subject to taxation.

In 1981, the Legislature exempted business inventories from taxation by placing them in section 15-6-202, MCA, where they remain today. 1981 Mont. Laws, ch. 613 (SB 283). Generally, statutes creating property tax exemptions must be strictly construed. Cruse v. Fischl, 55 Mont. 258, 263, 175 P. 878, 880 (1918). However, in Montana Bankers Association v. Montana Department of Revenue, 177 Mont. 112, 117, 580 P.2d 909, 912 (1978), the Montana Supreme Court qualified this rule somewhat, stating:

[T]ax statutes granting exemptions and deductions must be strictly construed against the taxpayer claiming them. This rule of

statutory construction, however, applies only to ambiguous statutes where legislative intent is not clear from the language of the statute and has no application where, as here, the meaning of the statute is clear from its language.

Section 15-6-202, MCA, clearly and unambiguously exempts business inventories from taxation, defining business inventories as including "goods primarily intended for sale and not for lease in the ordinary course of business." Although the Legislature has chosen not to define "goods" in Title 15, Montana's version of the Uniform Commercial Code on sales defines goods as "all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities ... and things in action." § 30-2-105(1), MCA. Sugar and sugar products produced by a sugar refinery would clearly fit within the above definition of goods and thus would fall within the business inventory exemption provided in section 15-6-202, MCA. See Lobianco v. Property Protection, Inc., 437 A.2d 417, 419 (Pa. Super. Ct. 1981) (definition of "goods" in UCC embraces every species of property other than real estate, choses in action and investment securities). See also § 1-2-107, MCA. If the products of a sugar refinery qualify as business inventory under section 15-6-202, MCA, then the raw materials (sugar beets) used to produce such products also qualify for the exemption, since the definition of business inventory also includes "raw materials and work in progress with respect to such goods." While not defined by the Legislature, the term raw materials is generally defined as the material or substance out of which other products or the final product is made. See McElhaney Cattle Co. v. Smith, 645 P.2d 801, 806 (Ariz. 1982); State v. Hennessy Co., 71 Mont. 301, 303, 230 P. 64, 65 (1924).

THEREFORE, IT IS MY OPINION:

A sugar refinery's piled sugar beets are exempt from taxation as business inventory under section 15-6-202, MCA.

Very truly yours,

MIKE GREELY  
Attorney General