

TO: Lester K. Fryer, Chairman
FROM: John H. Broujos, Counsel
SUBJECT: SB 1031, PN 1403 - Silo Exemption @ 3rd class counties
(HB 2016, PN 2624 - Silo Exemption - 4th to 8th class counties)
REF: 72 PS 5020-204; (72 PS 5453.202)

Section 1, (Section 201): The exemption of certain property from assessment for taxation purpose for county, city, borough, town, township, school, and other purposes presently excludes machinery, tools, appliances and other equipment contained in any mill, mine, manufactory, or industrial establishment.

COMMENT: The apparent origin of this exemption was in the inclusion of machinery tools and equipment as part of real estate for the purpose of inclusion in a mortgage. When property used for industrial purposes was mortgaged, the question arose as to whether, upon foreclosure of mortgage for purposes of recovering amounts lost as the result of default of a loan, all of the equipment within the buildings on the land could be sold as part of the real estate. Then developed the industrial plant doctrine which included fixtures and equipment attached to and used in the manufacturing process as part of the real estate. The general test applied was whether the equipment was part of the manufacturing process. This was some time referred to as the "Assembled Industrial Plant Doctrine." Equipment which has been exempted included structures and equipment in steel mill operations, mining operations, oil storage tanks, railroad operations, and other manufacturing procedures. This type of procedure marks manufacturing establishments. With respect to agricultural products, the machinery and equipment used by a processor of raw milk to make or produce a wide variety of milk products is includible for tax purposes as part of the complete plant. *City of Erie vs. Erie County Milk Association*, 38 Erie 185, 1956.

Lately courts have defined improvements which are exempt as those necessary and integral to the manufacturing process and which are used solely for effectuating such purpose. Material handling devices for equipment such as conveyor belts, pipe systems, crane rails, and railroad tracks are not included as real estate insofar as they are exclusively, immediately, directly, and integrally used for the purpose for the assemblage and transportation within the plant of various component parts, materials, products, byproducts in the course of manufacture. 1964 case. In the same case processing containers and equipment such as stock bins come within the category of machinery or equipment exclusively necessary for manufacturing.

Thus, the test that the court would apply to the silo exemption is similar in that it would have to be used solely and necessarily for processing or storing of waste or feed on a farm, except that the test would be modified to be "primarily" used.

The bill provides for exemption from real estate assessment of silo or other structures used for processing or storage of animal feed or animal waste, in determining the value of a farm.

COMMENT: Proposed amendment to this bill to qualify the silo or structure as used primarily for processing or storage would insure that the processing or storage is not incidental to the operation. This may be subject to attack because it is in opposition to the court standard of exclusive use in the manufacturing process. The court standard would appear to exclude something used partially all be it primarily in processing and storage. However, this matter should be resolved in favor of the use of the "Primarily" standard, since it is a legislative prerogative.

COMMENT: Article 8, Section 5, states that "all laws exempting property from taxation other than the property above enumerated shall be void." A similar section was in the Constitution of 1874. The cases appear to indicate that exemptions from subjects of taxation as set forth in Section 201 are constitutional. Although no specific case holding such was found, it was clearly implied in a case as late as 1951 (N.S. Laundry Company vs. Board of Property Assessment, 366 Pa. 636). There it was held that in execution of a tax law to permit the levy of a tax, a base on which it is to be applied is found by assessing authorities in accordance with a standard fixed by the Legislature. The finding of a base is purely an executive function delegated to a municipal agency and is not an unlawful delegation of power by the General Assembly. The industrial plant doctrine was thus applied in terms of exemption of industrial equipment from assessment of taxation.

COMMENT: Concern has been expressed that stock yards and feed companies may be eligible for exemption of their storage facilities. Such exemption should not be allowed under the wording of the bill, since it specifically refers on Page 2, Lines 13 and 14, to "real estate in determining the value of a farm." Consequently, it would not be eligible for exemption if it is not part of a farm. The same tests that the court has applied to manufacturing and industrial establishments should be applied to a farm, in terms of requiring the equipment to be used actively in the processes of a farm. A question which may arise in this respect is whether this storage of animal feed is for resale to other persons as a commercial activity by a farm owner. Then the storage of the feed would not be part of the agricultural process.

Except for the purpose distinguishing between processing agricultural products and sale of agricultural products, there appears to be no need to define further the purposes of the processing or storage.

Section 1, Section 201 a): The effective date of the exclusion in the bill on page 3, line 24, is January 1, 1972. Since assessments have already been made and test duplicates delivered to most of the taxing bodies for the County and Township Taxes for 1972, the effective date should be changed.

September 29, 1972 Updated. Reported out of Committee May 2, 1972, as amended to provide for "primary" use for storage and to limit other structures to storage bins. Bill was only amended in part and was amended further to correct deficiency.