

Holiday Notice

Tax Exemptions for Agriculture

August 2004

Sales Tax

See Page 2... containers are subject to Sales Tax.

Although farmers and ranchers are not automatically exempt from paying sales tax, they may claim exemption from sales tax for certain items used in agricultural production.

For sales tax purposes, a farm or ranch is land used wholly or in part in the production of crops, livestock and/or other agricultural products held for sale in the regular course of business. Examples of farms and ranches include commercial greenhouses, feed lots, dairy farms, poultry farms, commercial orchards and similar agricultural operations. A home garden, however, is not considered a farm or ranch.

Always exempt

Sales of some plants and animals are never taxable:

- seeds and annual plants, the products of which either are ordinarily food or are to be sold in the regular course of business;
- animals, including cattle, sheep, poultry and swine, the products of which are ordinarily food;
- horses, mules and work animals; and
- feed for farm and ranch animals or for wild game.

Exempt if used exclusively for agricultural production

Some goods can be exempt from sales tax if they are used exclusively on a commercial farm or ranch in the production of agricultural products. The purchaser must complete an exemption certificate to purchase these items tax-free:

- fertilizer, fungicides, insecticides, herbicides, defoliant and desiccants (drying agents) used *exclusively* in agricultural production;
- all medications, tonics, restoratives or other therapeutic preparations (vaccines and drenches, for example) for farm and ranch animals;
- feed for animals held for sale in the regular course of business; and
- machinery or equipment used exclusively in the production of food, grass, feed and other agricultural products or in building or maintaining farm and ranch roads and water facilities.

Definition of machinery and equipment

Machinery and equipment that can be exempt include:

- expendable agricultural supplies, such as hand tools, baling wire and binder's twine; lubricants for farm

- machinery and for motor vehicles not licensed for highway use; nuts, bolts, washers and other hardware; materials and structural components used to build farm or ranch machinery or equipment;
- items specifically designed to be assembled into a machine used in irrigating crops, such as parts of a pumping system or portable irrigation system;
 - repair and replacement parts for machinery or equipment used exclusively on a farm or ranch, including tractor tires, tires used on motor vehicles not licensed for highway use and tires specifically designated by the manufacturer for farm use only;
 - fence wire, fence posts, pens, gates, vehicle-mounted fertilizer spreaders, cattle guards and chutes used in connection with raising livestock or producing agricultural products;
 - items installed as components of an underground irrigation system on a farm or ranch;
 - automated laying houses, farrowing houses, greenhouses and other structures that are designed for a specific agricultural purpose and cannot be economically used for other purposes without major structural changes (hay barns, machine shops and livestock barns do not qualify); and
 - computers and/or the servicing of computers and software used on farms or ranches and specifically designed to aid the production of plants, animals or food (for example, computer-operated feed mixing devices qualify for exemption, but computers used for record-keeping do not).

Sales tax agricultural exemptions do not apply to logging and timber operations. A phased-in refund applies to some items used exclusively for commercial timber production. For more information on these refunds for timber operations, please see our Rule 3.367, *Timber Items*.

Machinery and equipment used by an original producer

Machinery and equipment can be exempt if used by an original producer of the agricultural products to process, pack or market its product. In order to qualify for this exemption, the original producer must have produced at least 50 percent of the products and own at least 95 percent of the products that are ultimately processed, packed or marketed.

Not exempt

Some items used in agricultural production are not exempt from sales tax:

- general purpose buildings, their structural components, air conditioning or heating systems and the materials used to build, construct or fabricate them;
- houses for farm or ranch employees, barns and portable buildings; and
- machinery and equipment used only part of the time in agricultural production (for example, tractors are subject to tax if used for mowing both production areas like pastures as well as non-production areas around buildings or highway rights-of-ways).

For more information about sales tax exemptions available for Agricultural producers, see Rule 3.296.

Motor Fuels Tax

Tax refunds for gasoline use

A farmer or rancher can get refunds of tax paid on gasoline used in power take-off equipment or auxiliary power units, off-highway equipment, stationary engines and for other non-highway purposes. All claims for refunds must be supported by appropriate records and documentation, which have to be kept available for inspection for four years. Taxpayers who use a distribution log to record removals from bulk storage should note deliveries for off-highway purposes with a description of the equipment. Each entry should show the date and number of gallons, and must be signed. The log must include the taxpayer's stamped or preprinted name and address.

A refund claim must be postmarked within one year from the first day of the month following the date of use (if withdrawn from your storage) or purchase, whichever is later. For example, if the gasoline was purchased or used on January 18, 2004, you must file the claim by February 1, 2005.

Taxpayers can request a refund using the Comptroller's *Texas Claim for Refund of Gasoline or Diesel Fuel Taxes* (form 06-106). The claim should not include original invoices or other supporting documentation unless requested.

Tax refunds for diesel fuel used in power take-off (PTO) and auxiliary power units

Beginning January 1, 2004, taxes paid on diesel fuel used in PTO or auxiliary power units will no longer be eligible for refund. For example, there are no tax refunds for fuel used in diesel-powered tilt bed grain trucks, bulk feed trucks, truck-mounted fertilizer spreaders or cotton module trucks equipped with PTOs.

Tax paid on diesel fuel used in a PTO or auxiliary power unit before January 1, 2004, is eligible for refund, but the refund claim must be postmarked within one year of the date of use. The law prohibits the Comptroller from approving refunds of diesel fuel used in PTOs or auxiliary power units if the claim is postmarked after December 31, 2004.

Diesel used in off-highway equipment, stationary engines and for other non-highway uses

Beginning January 1, 2004, all purchases of undyed (clear) diesel fuel must include payment of state motor fuel tax.

Taxpayers have one year from the date of use to claim a refund of taxes paid on diesel fuel used in non-highway agricultural equipment before January 1, 2004. For diesel used on or after January 1, 2004, taxpayers must file a refund claim by December 31, 2004. The law prohibits the Comptroller from approving refund claims postmarked after December 31, 2004.

Beginning January 1, 2005, tax paid on clear diesel fuel used in off-highway equipment, stationary engines and for other non-highway applications will no longer be eligible for refund.

Tax-free purchases of dyed diesel fuel with a signed statement

A signed statement can be used with an end user number to purchase tax-free dyed diesel fuel. To get an end user number, an applicant must first register with the Comptroller's office (Form AP-197, *Texas Dyed Diesel Fuel End User Signed Statement Number Registration*).

No bonds or reports are required for signed statements.

If the fuel is used exclusively for agricultural purposes, an applicant will receive an Agricultural End User Number, which allows the user to buy up to 25,000 gallons of tax-free dyed diesel per month. The end user must give suppliers and distributors the assigned Agricultural End User Number along with signed statements (Form 06-710, *Texas End User Agricultural Signed Statement for Purchasing Tax-Free Dyed Diesel Fuel*).

Agricultural use means use of diesel fuel to power non-highway agricultural equipment, such as a tractor or combine, on a farm or ranch. The farm or ranch can be a feedlot, dairy farm, poultry farm, commercial orchard, commercial nursery, timber operation or similar commercial agricultural operation. A home garden does not qualify. Agricultural use includes use of fuel for wildlife management as defined by the Property Tax Code, Section 23.51(7), but does not include the processing, packaging or marketing of agricultural products by anyone other than the original producer.

If the fuel will be used for some non-agricultural purposes, the applicant will receive an End User Number, which allows the user to buy up to 10,000 gallons of tax-free dyed diesel per month. The end user must give suppliers and

distributors the assigned End User Number along with signed statements (Form 06-352, *Texas End User Signed Statement for Purchasing Tax-Free Dyed Diesel Fuel*).

Dyed diesel fuel purchased using a signed statement may not be put into the fuel tanks of motor vehicles operating on Texas' public highways.

Tax-free purchases by license

Farmers and ranchers can apply for a Dyed Diesel Fuel Bonded User license to purchase unlimited amounts of tax-free dyed diesel fuel for use in non-highway equipment. License holders must file a quarterly or yearly report that includes dyed diesel fuel inventories, purchases and uses. Under the law, the Comptroller's office may require a minimum bond of \$10,000.

Liquefied gas use

Liquefied gas (LG) users must prepay annually the tax on LG used in highway vehicles licensed in Texas. The tax is based on the vehicle's registered gross weight and miles driven in the state the previous year. The Comptroller's office issues the user an LG tax decal that shows dealers the tax has already been paid. All LG purchased for off-highway use may be purchased tax-free.

Motor Vehicle Tax

The motor vehicle sales tax does not apply to farm machines, trailers and semitrailers used primarily for farming and ranching, including the vehicles used primarily in poultry operations and on feedlots.

A farm machine is a self-propelled motor vehicle specially adapted for primary use on a farm or ranch in the production of crops or raising livestock (including poultry), to dispense feed or to apply fertilizer or other agricultural chemicals.

A farm trailer must be used in the production of food for human consumption, grass, feed or agricultural products to be sold in the regular course of business.

A farm trailer primarily used by a farmer or rancher in processing, packing or marketing of the farmer's own livestock or agricultural products is not subject to tax.

A farm trailer exclusively used by an agricultural cooperative or gin to process, pack or market agricultural products is taxable unless the cooperative can prove that the cooperative is the original producer of all agricultural products being processed, packed or marketed and that those functions are performed at a location operated by the cooperative.

An exemption from motor vehicle sales tax is not granted based on how a vehicle is licensed or titled. For example, a pickup truck is not exempt as a farm vehicle even though it may have farm registration.

Need More Assistance?

- Email us at tax.help@cpa.state.tx.us.
- Call us toll free.
- Visit one of our local field offices.

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