# MAINE REVENUE SERVICES
# SALES, FUEL & SPECIAL TAX DIVISION
# INSTRUCTIONAL BULLETIN NO. 45

## COMMERCIAL AGRICULTURE

This bulletin is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges. It contains general and specific information of interest as well as interpretations and determinations by Maine Revenue Services regarding issues commonly faced by your business. Portions of the Sales and Use Tax Law referred to in this bulletin can be found at the end of the bulletin in Attachment #1.

### I. General Information

Persons engaged in commercial agricultural production are authorized to use a certificate of exemption card to purchase electricity and depreciable machinery and equipment, exempt from Maine sales and use tax.

Many items originally found in this Bulletin have been incorporated in Rule 323 which defines qualifying activities, establishes guidelines for the issuance of the certificate and places restrictions on the use of the certificate.

**Please read this bulletin including the attachments in order to obtain a clear understanding of your rights under the Law.**

### II. Certificate of Exemption

#### A. Issuance

A certificate of exemption shall be issued to qualifying persons who submit an application to Maine Revenue Services. Applications can be obtained by contacting Maine Revenue Services at the address found at the end of this bulletin. As proof that the person is engaged in commercial agricultural production, the application must be accompanied by one of the following from the person's most recent filing under the United States Internal Revenue Code:

_ If a sole proprietor, Schedule F
_ If a corporation, Form 1120 or Form 1120S, Pages 1 -3
_ If a partnership, Form 1065, Pages 1 & 2
_ If Canadian, Form T2042

Upon the issuance of an exemption card, the purchaser may use the card to purchase electricity and qualifying machinery, equipment and repair parts free of tax. The purchaser

must provide the seller with a copy of the exemption card and a completed affidavit of exemption.

Exemption cards are valid for four years and may only be used by the person or persons named on the certificate.

## B. Affidavit of Exemption

An affidavit of exemption, as provided in this bulletin, along with a copy of the exemption card, must be presented to the seller and retained in the sellers file in order to document that the purchase is exempt from tax. Unlike past practices it is no longer necessary to present an affidavit for each purchase. Only one current copy is needed in the seller's file. Provided these documents are in the seller's file, the seller is relieved of the burden to charge tax on future purchases. However it is necessary that the purchaser inform the seller on each purchase whether the items purchased are exempt or taxable. If non-qualifying items are purchased exempt, it is the responsibility of the purchaser to pay the tax to the seller or be accountable directly to the Maine Revenue Services.

By signing this affidavit, the purchaser is attesting to the fact that the items being purchased from the seller qualify for exemption. Misuse of the affidavit will result in the cancellation of the exemption certificate and may subject the purchaser to prosecution.

## C. Exceptions

Certificates of exemption will not be issued to the following persons:

1. Farmers who are in their first year of operation and cannot provide a copy of their applicable federal form. Farmers in this category must pay tax to their suppliers on all purchases. When the Federal Income Tax Return is filed and a copy of the applicable federal form is available, the farmer may apply to Maine Revenue Services for an exemption certificate. Once the certificate is issued, the farmer may return to the supplier to obtain a refund of tax on qualifying purchases.

2. Farmers who are primarily engaged in a related but non-qualifying business activity. Farmers in this category must pay tax to their suppliers on all purchases and apply to Maine Revenue Services for refunds on qualifying machinery and equipment.

3. Lessors of agricultural production equipment. There is no provision in the Law under which lessors may purchase items for lease to commercial farmers exempt from tax. Accordingly, no certificate of exemption will be issued to lessors of agricultural production equipment. When a lessor purchases items to be leased for use directly and primarily in commercial agricultural production he must pay tax to the seller and apply to Maine Revenue Services for refund of the tax paid.

## III. Use of Certificate

### A. Qualifying machinery and equipment

In order to qualify for this exemption, machinery or equipment must meet three tests. Machinery or equipment must:

1. be used directly in commercial agricultural production; and

2. be used primarily in commercial agricultural production; and

3. be depreciable for Federal Income Tax purposes.

Definitions of "commercial agricultural production", "directly", "primarily" and "depreciable" can be found in Rule 323, Section .01. In addition, the definition of "agricultural production" and "depreciable machinery and equipment" as it relates to commercial agricultural production can be found in Attachment #1, under section 2013, sub-section 1 A and 1 C (1).

Some of the more common items that would typically qualify for exemption are:

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|---|---|---|
| Balers | Harvesters | Roto Tillers |
| Batteries | Hay & Forge Equipment | Seed Cutters |
| Carts | Manure Spreaders | Seeders |
| Combines | Milking Equipment | Sprayers |
| Conveyors | Mowers | Tires |
| Cultivators | Pickers | Tractors |
| Feeders | Planters | Wagons |
| Filters | Plows | Water Bowls |
| Grading Tables | Removable Stalls | |
| Harrows | Rotary Cutters | |

Care should be exercised in determining whether a particular item qualifies under this exemption. Although the seller is relieved from the burden of charging a tax at the time of sale, provided a copy of the exemption card and affidavit are on file, the purchaser is subject to audit and will be assessed tax, including interest and penalties, on the purchase of non-qualifying machinery and equipment. It is suggested that the purchaser write to Maine Revenue Services for a determination on questionable items.

### B. Electricity

Electricity used by commercial farmers in commercial agricultural activities or support operations can be purchased exempt from sales tax. This exemption is applied on a meter-by-meter basis. If a single meter is supplying electricity that will be used in both qualifying and non-qualifying activities, tax should be paid to the utility provider and the

farmer should apply directly to Maine Revenue Services for a refund based on a pro-rata portion of the electricity used in the qualifying activity.

For purposes of this provision, support activities include: storage operations; maintenance operations; and related administrative activities. Support activities **do not** include: activities conducted by a separate business; wood harvesting and/or processing activities; construction activities; and unrelated administrative activities.

### C. Restrictions on Use of Exemption Card

The certificate of exemption may not be used to purchase any of the following items:

1. Non-qualifying machinery and equipment;

2. Motor vehicles, trailers, attachments for motor vehicles such as bulk bodies, fertilizer bodies and motor vehicle repair parts, snowmobiles, and ATV's;

3. Consumable tools and supplies, other than repair parts, such as lubricants, coolants, solvents, cleaning supplies, personal apparel;

4. Fuels;

5. Items incorporated in real property such as fencing, storage buildings, silos, special purpose buildings, heating or ventilation systems and construction materials;

6. Items which are not 100% depreciable as commercial agricultural production equipment;

7. Items which are not commonly used in commercial agricultural production such as lawn and garden tractors, lag tractors, backhoe tractors, fork lift trucks, grain bins, computers and scraper blades.

8. Electricity servicing separate businesses or non-qualifying activities.

See Rule 323, Section .01, sub-section D and Section .02, sub-section E as well as Attachment #1, Section 2013, sub-section 1 (C) 1 for further reference.

## IV. Refunds

Refund of tax paid will still be available in the following situations:

i. Items purchased under Section III, sub-section C (6) & (7) above which qualify as depreciable machinery and equipment but can not be purchased exempt with the exemption card. If during its total time in use, a unit of machinery and equipment is used more than 50% of the time but less than 100% of the time directly in agricultural production, and is only partially depreciable under the United States Internal

Revenue Code because it is used the remainder of the time for personal reasons, any reimbursement of the sales tax will be prorated accordingly.

**EXAMPLE:** If a unit of machinery or equipment is 60% depreciable under the Internal Revenue Code because it is only used 60% of the time in agricultural production, 60% of the sales tax will be refunded, provided that the other requirements are satisfied. If the unit is depreciable at 50% or less under the Internal Revenue Code because it is used 50% or less of the time in agricultural production, the purchaser will not be entitled to any refund of sales or use tax paid;

ii. Electricity and depreciable machinery and equipment which is used in commercial agricultural production by a person who does not qualify for an exemption card;

iii Lessors of depreciable machinery and equipment used directly and primarily in commercial agricultural production.

iv. Portion of electricity being used in qualifying activities, when one meter is supplying electricity for both qualifying and non-qualifying activities.

**A. Refund to User**

A person who falls within one of these situations may obtain a refund of the tax paid upon application to the State Tax Assessor, by submitting proof that the tax was paid and that the item purchased is depreciable for use in commercial agricultural production.

An application for refund must be submitted to Maine Revenue Services, on forms supplied by Maine Revenue Services. The application must be completely filled out and must include a copy (duplicate) of the invoice showing that the tax was paid and to whom, and a copy of the applicable form which was a part of the purchaser's most recent filing under the Internal Revenue Code and which indicates that the purchaser is in fact engaged in commercial agricultural production and that the purchased machinery or equipment is depreciable for those purposes.

Persons who have previously received a refund of tax paid on depreciable machinery and equipment, or who have been issued a certificate of exemption valid on the date of purchase, need not submit a copy of the applicable form with subsequent applications unless there has been a change in the business, or unless specifically requested to do so by Maine Revenue Services.

**Support documents such as invoices and schedules will not be returned to the applicant unless the applicant specifically requests that they be returned.**

**Applications for refund must be filed with the State Tax Assessor within 36 months of the date of purchase.**

### B. Refund to Lessor

Lessors of machinery and equipment for use directly and primarily in commercial agricultural production may make application for refund of Maine sales or use tax in the same manner as persons purchasing such machinery or equipment for their own use. The application must be accompanied by a copy of the lease agreement as well as a copy of the invoice showing that the tax was paid and to whom, a copy of the lessee's certificate of exemption valid on the date of execution of the lease and a properly executed affidavit of exemption. If the lessee has not been issued a certificate of exemption, a copy of the applicable form from the lessee's most recent filing under the Internal Revenue Code must be submitted in support of the lessor's application for refund, either by the lessor or by the lessee directly to Maine Revenue Services.

**Support documents such as invoices and schedules will not be returned to the applicant unless the applicant specifically requests that they be returned.**

**Application for refund must be filed with the State Tax Assessor within 36 months of the date of execution of the lease.**

## V. Credit of Use Tax

Commercial farmers and lessors of agricultural production equipment who purchase tangible personal property outside this State on which a tax would normally be due to the State of Maine, but which would qualify for refund as machinery and equipment for use directly and primarily in commercial agricultural production, may waive payment of the tax but must submit an application for refund in the same manner as when the tax has been paid. It should be indicated on the application that sales or use tax has not been paid but that a ruling as to taxability is being requested. The purchaser will be notified whether or not a tax liability exists.

With the exception of lessors, this section does not apply if the equipment could have been purchased in this State exempt from tax by using the certificate of exemption card.

## VI. Tax paid to Another Jurisdiction

There is no provision in the Maine Sales and Use Tax Law for refund of sales or use tax paid to another state of foreign country and no such refunds will be made.

## VII. ADDITIONAL INFORMATION.

The information in this bulletin addresses some of the more common questions regarding the Sales and Use Tax Law faced by your business. It is not intended to be all inclusive. Re-

quests for information on specific situations should be in writing, should contain full information as to the transaction in question and should be directed to the:

**MAINE REVENUE SERVICES**
**SALES, FUEL & SPECIAL TAX DIVISION**
**P.O. BOX 1065**
**AUGUSTA, ME 04332-1065**
**TEL: (207) 624-9693**
**TTY: (207) 287-4477**

**Or visit our website at www.state.me.us/revenue**

The Department of Administrative and Financial Services does not discriminate on the basis of disability in admission, to access to, or operation of its programs, services or activities.

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**ATTACHMENT #1**
**Excerpts taken from 36 M.R.S.A.**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following words have the following meanings.

A. "Commercial agricultural production" means commercial production of crops for human and animal consumption, including the commercial production of sod, the commercial production of seed to be used primarily to raise crops for nourishment of humans or animals and production of livestock.

A-1. "Commercial aquacultural production" means the commercial production of cultured fish, shellfish, seaweed or other marine plants for human and animal consumption, including:

(1) All cultivating activities occurring at hatcheries or nurseries, from the egg, larval or spore stages to the transfer of the product to a growing site; and

(2) All cultivating activities occurring on water, from the receipt of fish, shellfish, seaweed or other marine plants from onshore facilities to the delivery of harvested products to onshore facilities for processing.

B. "Commercial fishing" means attempting to catch fish or any other marine animals or organisms with the intent of disposing of them for profit or trade in commercial channels and does not include subsistence fishing for personal use, sport fishing or charter boat fishing where the vessel is used for carrying sport anglers to available fishing grounds.

C. "Depreciable machinery and equipment" means that part of the following machinery and equipment for which depreciation is allowable under the code and repair parts for that machinery and equipment:

(1) New or used machinery and equipment for use directly and primarily in commercial agricultural production, including self-propelled vehicles, but excluding motor vehicles as defined in section 1752, subsection 7, attachments and equipment for the production of field and orchard crops; new or used machinery and equipment for use directly and primarily in production of milk, animal husbandry and production of livestock, including poultry;

(2) New or used watercraft, nets, traps, cables, tackle and related equipment necessary to and used directly and primarily in the operation of a commercial fishing venture, but excluding motor vehicles as defined in section 1752, subsection 7; or

(3) New or used watercraft, machinery or equipment used directly and primarily for aquacultural production, including, but not limited to: nets; ropes; cables; anchors and anchor weights; shackles and other hardware; buoys; fish tanks; fish

totes; oxygen tanks; pumping systems; generators; water-heating systems; boilers and related pumping systems; diving equipment; feeders and related equipment; power generating equipment; tank water-level sensors; aboveground piping; water-oxygenating systems; fish-grading equipment; safety equipment; and sea cage systems, including walkways and frames, lights, netting, buoys, shackles, ropes, cables, anchors and anchor weights; but excluding motor vehicles as defined in section 1752, subsection 7.

**2. Refund authorized.** Any person, association of persons, firm or corporation who purchases electricity, or that purchases leases depreciable machinery or equipment, for use in commercial agricultural production, commercial fishing or commercial aquacultural production must be refunded the amount of sales tax paid upon presenting to the State Tax Assessor evidence that the purchase is eligible for refund under this section.

Evidence required by the assessor may include a copy or copies of that portion of the purchaser's or lessee's most recent filing under the United States Internal Revenue Code that indicates that the purchaser or lessee is engaged in commercial agricultural production, commercial fishing or commercial aquacultural production and that the purchased machinery or equipment is depreciable for those purposes or would be depreciable for those purposes if owned by the lessee.

In the event that any piece of machinery or equipment is only partially depreciable under the United States Internal Revenue Code, any reimbursement of the sales tax must be prorated accordingly.

Application for refunds must be filed with the State Tax Assessor within 36 months of the date of purchase or execution of the lease.

**3. Purchase made free of tax with certificate.** Sales tax is not paid on the purchase of electricity or of a single item of machinery or equipment if the purchaser has obtained a certificate from the assessor stating that the purchaser is engaged in commercial agricultural production, commercial fishing or commercial aquacultural production and authorizing the purchaser to purchase electricity or depreciable machinery and equipment without paying Maine sales tax. The seller is required to obtain a copy of the certificate together with an affidavit as prescribed by the assessor, to be maintained in the seller's records, attesting to the qualification of the purchase for exemption pursuant to this section. In order to qualify for this exemption, the electricity or depreciable machinery or equipment must be used directly in commercial agricultural production, commercial fishing or commercial aquacultural production.