



MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 14

SEED, FEED, FERTILIZER AND OTHER ITEMS USED IN AGRICULTURAL AND AQUACULTURAL PRODUCTION

This bulletin is intended solely as advice to assist persons in determining and complying with their obligations under Maine tax law. It is written in a relatively informal style and is intended to address issues commonly faced by taxpayers with respect to sales of agricultural and aquacultural products. Taxpayers are responsible for complying with all applicable tax statutes and rules. Although bulletins issued by Maine Revenue Services (“MRS”) do not have the same legal force and effect as rules, justifiable reliance upon this bulletin will be considered in mitigation of any penalties for any underpayment of tax due. This bulletin is current as of the last revision date shown at the end of the document.

The Sales and Use Tax Law is found in Part 3 of M.R.S.A. (“Maine Revised Statutes Annotated”) Title 36. Both Title 36 and all MRS rules may be seen by clicking on “Laws and Rules” at the left side of the MRS website: www.maine.gov/revenue/.

1. PRODUCTS USED IN AQUACULTURAL PRODUCTION

Aquaculture is the farming of freshwater or saltwater organisms such as salmon, oysters, mussels, and seaweed for human or animal consumption. Also known as “aquafarming,” aquaculture involves the cultivating of aquatic populations under controlled conditions, as contrasted with commercial fishing, where the conditions are not controlled. Aquaculture does not include aquariums or zoos.

Sales of feed, hormones, pesticides, antibiotics, and medicines used in aquacultural production are exempt from sales or use tax. 36 M.R.S.A. § 1752(7-A).

A. Feed. Feed includes feed for lobsters in tidal circulating lobster pounds. The exemption does not apply to sales of water or feed for lobsters kept in tanks for sale.

B. Antibiotics and medicines. Sales of medicines used for the treatment of animals, fish, and shellfish in the course of aquacultural production, including antibiotics used for the treatment of lobsters kept in tidal circulating lobster pounds, are exempt.

2. PRODUCTS USED IN COMMERCIAL AGRICULTURAL PRODUCTION

Sales of seed, fertilizer, defoliants, pesticides, insecticides, fungicides, and weed killers for use in commercial agricultural production are exempt from sales or use tax. 36 M.R.S.A. § 1760(7-B). “Commercial agricultural production” means commercial production of crops (for either human or animal consumption), plants, trees, compost, and livestock. 36 M.R.S.A. § 2013(1)(A). For purposes of this exemption, “commercial agricultural production” includes commercial silviculture (tree farming), as well as the growing of flowers, shrubs, and other plants by commercial nurseries and greenhouses.

Sales of plant seedlings are not exempt, except for tree seedlings used in commercial forestry (36 M.R.S.A. § 1760(73)) or when being purchased for resale.

The exemption only applies to sales of items that are purchased for use in commercial agricultural production. In comparison, items purchased by a farmer or any other individual for use in a home garden or other noncommercial use are subject to tax.

A. Seed. “Seed” includes tubers, bulbs, and corms used as seeds. The exemption includes all seed sold for the commercial production of plants that ultimately and primarily produce a product for human or animal consumption. The term “seed” does not include seedlings.

B. Pesticides. The exemption covers sales of poisons intended to kill, repel, or otherwise control rodents and other animals that are damaging to commercial crops, plants or trees such as rat poisons, woodchuck bombs, and pesticides.

C. Insecticides. The exemption covers sales of preparations intended to kill, repel, or otherwise control insects harmful to commercial crops, plants, or trees. The exemption does not apply to products intended for household use, such as mothballs, ant traps, and insecticides in aerosol containers, or to preparations intended for personal use.

D. Fungicides, weed killers, and defoliants. Mulch used for the purpose of weed suppression by a commercial farmer qualifies as an exempt herbicide when used around crops. The exemption does not apply to herbicides used for weed management in a sales area or in parking lots.

3. PRODUCTS USED IN ANIMAL AGRICULTURE

Sales of breeding stock, semen, embryos, feed, hormones, antibiotics, medicine, pesticides, and litter for use in animal agricultural production are exempt from sales or use tax. (See 36 M.R.S.A. § 1760(7-C)). The exemption also covers antiseptics and cleaning agents used in commercial animal agricultural production. “Animal agricultural production” includes:

- The keeping and raising of animals that are producers of food or that will become food products themselves, such as cows, pigs, chickens, bees, deer, game birds, and goats;
- The keeping and raising of animals that are producers of other products, such as fur-bearing animals, sheep, llamas, alpacas, or deer for fleece or antler velvet; and
- The keeping and raising of equines (horses).

The following types of businesses or activities do not constitute animal agricultural production:

- Aquariums
- Breeding or raising of pets
- Carnivals
- Circuses
- Zoos

A. Medicine. Medicine means a substance or preparation used in the prevention, diagnosis, or treatment of disease or injury. Medicine includes:

Antiseptics	Electrolytes	Propylene glycol
Banamine	Enrofloxin	Resorb
Calcium	Gentamycin	Silver sulfadiazine cream
Carbocaine	Keto-gel	Torbugesic
Chap-shield and Chap-guard	Lactated ringers	Vitamin B (when used to prevent metabolic disorders)
Chlorhexidine solution	Metronidazole	
CMPK gel	Neo/poly B/Bact Ophth ointment	
Detomidine	Penicillin G	

Medicine does not include:

Booster Calf	Orbeseal
California Mastitis Test	Stronghold
Ointments, creams, and salves that do not contain medicine	Vitamins

B. Pesticides. A pesticide is any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pests, including insects. Traps, such as fly tapes, are not pesticides.

C. Litter. "Litter" includes wood shavings, sawdust, and organic bedding materials.

D. Hay. All sales of hay are exempt regardless of who is purchasing the hay or how the hay is being used.

4. SALES OF ANIMALS, FISH & SHELLFISH

The retail sale of an animal, except one being raised as a food product or for food production or one that is a producer of another product, is taxable. The sale of any animal by a person not engaged in making retail sales is considered a casual sale that is not subject to tax. Some examples of taxable transactions are:

- A.** Sales by pet stores of animals and fish;
- B.** Sales by animal breeders of animals such as dogs, cats, and horses;
- C.** Sales of horses at claiming races; and
- D.** Sales of bait used in sport fishing.

5. FUEL

Fuel used in agricultural and aquacultural production is taxable except under the following situations:

A. Fuel for burning blueberry fields. Sales of all fuels used in burning blueberry lands are exempt. In order to document the exempt sale, the retailer should obtain a signed statement from the purchaser describing its business activity and the fact that the fuel being purchased is to be used in burning blueberry fields.

B. Fuel used in certain greenhouse facilities. Ninety-five percent of the sale price of all fuel purchased for use at a greenhouse facility occupying at least 1,000,000 square feet of indoor space operated by an agricultural employer that employs at least 100 employees and is engaged in the year-round commercial production of fruits or vegetables.

6. OTHER ITEMS PURCHASED FOR USE IN COMMERCIAL AQUACULTURAL, OR AGRICULTURAL PRODUCTION

A. Supply items. There is no exemption for sales of supply items. This category includes items such as paper towels, rags, office supplies, lubricants, syringes, and cleaning products.

B. Baling Twine. Purchases of baling twine are exempt as packaging material when the twine is used to bale hay that is held for sale (see Rule 301, “Sales for Retail and Sales of Packaging Materials”). Twine used to bale hay that will be used by the farmer is taxable.

C. Machinery and equipment. For information regarding purchases of certain depreciable machinery and equipment and electricity used in commercial agriculture and commercial aquaculture, see Instructional Bulletins No. 45 and No. 49.

7. AFFIDAVIT FOR CLAIM OF EXEMPTION

An affidavit (ST-A-103) must be presented to the seller and retained in the seller’s file in order to document that the purchase is exempt from tax. The purchaser need not present an affidavit for each purchase as long as one copy of the purchaser’s current affidavit is retained by the seller. Provided these documents are in the seller’s file, the seller is relieved of the burden to charge tax on future purchases. The purchaser must inform the seller with each purchase whether the items purchased are exempt or taxable. 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 may subject the purchaser to prosecution. A copy of the ST-A-103 can be found at <http://www.maine.gov/revenue/forms/sales/salesforms.htm>.

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

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V/TTY: 7-1-1**

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