



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

COMMERCIAL AGRICULTURAL 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 addresses issues commonly faced by taxpayers involved in commercial agriculture.

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 rule, 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 the Maine Revised Statutes, Title 36, Part 3. Both Title 36 and all MRS rules may be seen by clicking on “laws and rules” at the top of the MRS website.

1. GENERAL INFORMATION

Persons engaged in commercial agricultural production are authorized by 36 MRSA §2013 and by Maine Revenue Services Rule 323 to use a certificate of exemption in order to purchase electricity and depreciable machinery and equipment without paying Maine sales and use tax. Rule 323 includes definitions, exclusions to qualifying activities, establishes guidelines for the issuance of the certificate and places restrictions on the use of the certificate. This bulletin does not address the sales tax exemptions for certain products used in commercial agricultural production and animal agricultural production; see Instructional Bulletin No. 14.

“Commercial agricultural production” means the commercial production of crops (including seeds), plants, trees, compost and livestock. “Commercial agricultural production” includes the growing of flowers, shrubs, trees and other plants by commercial nurseries and greenhouses.

A lessor that purchases items to be leased to another person for use directly and primarily in commercial agricultural production must pay tax to the seller and apply to MRS for refund of the tax paid.

2. CERTIFICATE OF EXEMPTION

A. Issuance

A certificate of exemption in the form of a card will be issued to qualifying persons who submit a properly completed application to MRS. 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 or Schedule C
- If a corporation, Form 1120 or Form 1120S, Pages 1 -3
- If a partnership, Form 1065, Pages 1 & 2
- If Canadian, Form T2042 or T2125

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 (but see Paragraph C below for restrictions). The purchaser must provide the seller with a copy of the exemption card and a completed affidavit of exemption (see Paragraph B below).

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

B. Burden of Proof – Affidavit of Exemption

A completed affidavit of exemption, together with a copy of the exemption card, must be presented to the seller in order to document that a purchase is exempt from tax.

The burden of proving that a sale is to a person that has been issued an exemption card is on the person making the sale. This burden of proof will be met if the seller obtains from the purchaser a signed affidavit and a copy of a valid exemption card issued to the purchaser by MRS.

The seller must retain an affidavit and a copy of the exemption card held by each person to whom exempt sales are made, but need not obtain a separate affidavit or copy of the card for each individual sale. Invoices must be appropriately marked to indicate that they are exempt sales. This requirement is satisfied by the purchaser's exemption number and the words "Maine Sales Tax Exempt."

By signing this affidavit, the purchaser is attesting to the fact that the items being purchased from the seller qualify for exemption. If non-exempt items are purchased, the purchaser will be subject to a use tax assessment. Misuse of the affidavit may result in the cancellation of the exemption certificate and intentional misuse may subject the purchaser to criminal prosecution.

C. Exceptions

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

1. Persons engaged in commercial agricultural production but who are in their first year of operation and are unable to provide a copy of their applicable federal form. Persons 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 person may apply to MRS for an exemption card. Once the card is issued, the person may begin using the card on an ongoing basis. The person may apply to MRS to obtain a refund of tax on any qualifying purchases made during the first year of operation.

2. Persons who are primarily engaged in a related but non-qualifying business activity. Persons in this category must pay tax to their suppliers on all purchases and apply to MRS for refunds on qualifying machinery and equipment.
3. Lessors of agricultural production equipment. There is no provision in the law whereby lessors may purchase items for lease to persons engaged in commercial agricultural production exempt from tax. Accordingly, no exemption card will be issued to equipment lessors. When a lessor purchases items to be leased to another person for use directly and primarily in commercial agricultural production, the lessor must pay tax to the seller and apply to MRS for refund of the tax paid.

3. USE OF EXEMPTION CERTIFICATE

A. Qualifying machinery and equipment

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

1. Used directly in commercial agricultural production;
2. Used primarily in commercial agricultural production; and
3. Depreciable for Federal Income Tax purposes.

See 36 MRS §2013 and MRS Rule 323 for the definitions of “commercial agricultural production”, “directly”, “primarily”, “depreciable” and “depreciable machinery and equipment”.

Additionally, “primarily” means more than 50% of the time during the period that begins on the date on which the machinery or equipment is first placed in service by the purchaser and ends 2 years from that date or at the time that the machinery or equipment is sold, scrapped, destroyed or otherwise permanently removed from service by the taxpayer, whichever occurs first.

Some common items of machinery and equipment that typically qualify for exemption are:

Balers	Hay & Forge	Pickers	Seeders
Carts	Equipment	Planters	Seeding machines
Combines	Herd management	Plows	Soil mixers
Conveyors	system equipment	Pruners	Sprayers
Cultivators	Irrigation benches	Removable Stalls	Tractors
Feeders	Manure Spreaders	Rotary Cutters	Transplant machines
Grading Tables	Milking Equipment	Roto Tillers	Tree spades
Grow lights	Mowers	Seed Cutters	Wagons
Harrows			Water Bowls
Harvesters			Water system injectors

Repair and replacement parts for exempt machinery and equipment, including items such as batteries, filters, tires, starters, alternators and belts are also exempt.

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 that 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. The purchaser should write to MRS for a determination on questionable items.

B. Electricity

Electricity used in commercial agricultural production, and in support operations, may 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 purchaser should apply directly to MRS 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 in, or related to, a retail store; activities conducted by a separate business; wood harvesting and/or processing activities (but see Instructional Bulletin No. 58 for rules regarding machinery, equipment and electricity used in commercial wood harvesting); 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 items listed below:

1. Non-qualifying machinery and equipment;
2. Motor vehicles, trailers, attachments for motor vehicles or trailers such as bulk bodies, fertilizer bodies, motor vehicle repair parts, snowmobiles, and ATVs ;
3. Consumable tools and supplies, other than repair parts, such as motor oil and other lubricants, coolants, solvents, cleaning supplies, clothing, hydraulic fluid, welding supplies and welding gases;
4. Fuels;
5. Items purchased and incorporated in real property by a third-party contractor such as fencing, storage buildings, silos, special purpose buildings, heating or ventilation systems and construction materials;
6. Items purchased for use in the erection or construction of real property improvements;
7. Items that are not 100% depreciable as commercial agricultural production equipment (but see Section 5, Paragraph A below);
8. Items that are not (as determined by MRS) commonly used in or not solely designed for commercial agricultural production, such as lawn and garden

tractors, lag tractors, golf carts, backhoe tractors, fork lift trucks, grain bins, computer hardware and software, utility vehicles and scraper blades (but see Section 5, Paragraph B below); or

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

4. TANGIBLE PERSONAL PROPERTY VS. REAL PROPERTY

“Machinery and equipment” does not include:

- A. Land, buildings and other inherently permanent structures such as docks and silos;
- B. Materials and components, such as lumber, plumbing and wiring, that become an integral part of a building or other structure;
- C. Foundations for machinery and equipment (excluded by 36 MRSA § 1752(7-B)); or
- D. Special purpose buildings used to house or support machinery and equipment (also excluded by 36 MRSA § 1752(7-B)).

Property that is attached to a building or other structure may still qualify as “machinery and equipment”. This may be the case, for example, if the item is readily removable without causing significant damage to the building or other structure to which it is attached. Therefore, items such as the following may qualify for exemption (but only if they are purchased by the person engaged in commercial agricultural production and the equipment is used directly and primarily in commercial agricultural production). The exemption for depreciable machinery and equipment does not pass through to a contractor making purchases of building materials and real property fixtures in the performance of a realty contract with a person engaged in commercial agricultural production.

- Heating, venting, air conditioning and refrigeration units (including ductwork, control equipment, fans, roll up systems, ridge vents, etc.).
- Irrigation system and supplies (clocks, pipe, fittings, pumps etc.)
- Shade structures and shade systems in greenhouses, and greenhouse film and coverings.

See also Instructional Bulletin No. 28 (“Installing Tangible Personal Property in Real Property”).

5. REFUNDS OF TAX TO USER

An application for a refund of sales or use tax may be made by a user of depreciable machinery or equipment in any of the following circumstances:

- A. Items purchased under Section 3, sub-section C (7) above that qualify as depreciable machinery and equipment but are not 100% depreciable. 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 commercial agricultural production, and is only partially depreciable under the United States Internal Revenue Code 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 commercial agricultural production, 60% of the sales tax will be refunded, provided that the other requirements of 36 MRSA § 2013 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 commercial agricultural production, the purchaser will not be entitled to any refund of sales or use tax paid;

B. Items purchased under Section 3, Paragraph C (8) above that cannot be purchased exempt with the exemption certificate, but are actually used directly and primarily in a qualifying activity. Multi-use equipment qualifies for refund if it meets the conditions required for exemption as discussed in this bulletin. In order to qualify for a refund, reasonable documentation of the percentage of use in commercial agricultural production is required.

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

D. A portion of electricity is being used in qualifying activities, when one meter is supplying electricity for both qualifying and non-qualifying activities;

An application for refund must be submitted on an official form supplied by MRS. 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. A copy of the applicable form that was a part of the purchaser's most recent filing under the Internal Revenue Code must be attached, showing that the purchaser is engaged in commercial agricultural production and that the purchased machinery or equipment is depreciable for that purpose.

Persons who have previously received a refund of tax paid on depreciable machinery or equipment, or who have been issued an exemption card 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 MRS.

Please note that supporting documents such as invoices and schedules will not be returned to the applicant. However, the applicant may request that copies of the documents be made and provided to the applicant.

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

6. REFUND OF TAX TO LESSOR

Lessors of machinery and equipment for lease to another person 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 MRS.

Please note that supporting documents such as invoices and schedules will not be returned to the applicant. However, the applicant may request that copies of the documents be made and provided to the applicant.

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

7. 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 or foreign country and no such refunds will be made.

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:

**MAINE REVENUE SERVICES
SALES, FUEL & SPECIAL TAX DIVISION
P.O. BOX 1065
AUGUSTA, ME 04332-1065
TEL: (207) 624-9693
TTY: 7-1-1**

Or visit our website at www.maine.gov/revenue

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