



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 Title 36 of the Maine Revised Statutes ("M.R.S."). Title 36, MRS rules, instructional bulletins and affidavits referenced in this bulletin may be viewed on the MRS website, www.maine.gov/revenue.

1. PRODUCTS USED IN COMMERCIAL AGRICULTURAL PRODUCTION

Sales of seed, fertilizers, pesticides, insecticides, fungicides, herbicides, and defoliant for use in commercial agricultural production are exempt from sales and use tax. See 36 M.R.S. §1760(7-B). "Commercial agricultural production" means commercial production of crops (for either human or animal consumption), maple syrup, honey, plants, trees, compost, and livestock. See 36 M.R.S. § 2013(1)(A). For purposes of this exemption, "commercial agricultural production" includes commercial tree farming (for example, Christmas tree farms), as well as the growing of flowers, shrubs, and other plants by commercial nurseries and greenhouses.

Sales of plant seedlings other than tree seedlings used in commercial forestry (see 36 M.R.S. § 1760(73)) or plant seedlings purchased for resale are subject to tax.

The exemption only applies to sales of items that are purchased for use in commercial agricultural production. Items purchased 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 preparations intended to kill, repel, or otherwise control rodents and other animals that are harmful to commercial crops, plants, or

trees, including rat poisons, woodchuck bombs, and any other substances intended for destroying or controlling pests.

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 or personal use, such as mothballs, ant traps, or any mixture of agents in aerosol containers.

D. FUNGICIDES, HERBICIDES, AND DEFOLIANTS. The exemption covers sales of preparations intended to kill, repel, or otherwise control weeds or fungi harmful to commercial crops, plants, or trees. 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 other areas, such as in a sales area or in parking lots.

2. 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 for use in aquacultural production are exempt from sales or use tax. See 36 M.R.S. § 1760(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.

3. PRODUCTS USED IN ANIMAL AGRICULTURAL PRODUCTION

Sales of breeding stock, semen, embryos, feed, hormones, antibiotics, medicine, pesticides, and litter for use in animal agricultural production are exempt from sales and use tax. See 36 M.R.S. § 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).

Aquariums, the breeding or raising of pets, carnivals, circuses, or zoos do not constitute animal agricultural production.

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

Medicine includes, but is not limited to:

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 AND 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:

- Sales by pet stores of animals and fish;
- Sales by animal breeders of animals such as dogs, cats, and horses;
- Sales of horses at claiming races; and
- Sales of bait used in sport fishing (but sales of bait to commercial fishermen are exempt).

5. FUEL

Sales of fuel used in qualified commercial agricultural and commercial aquacultural production or support operations are exempt. If a single tank supports both qualifying and non-qualifying activities, tax must be paid to the fuel provider and the purchaser must apply directly to MRS for a refund based on a pro-rated portion of the fuel used in qualified activities.

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.

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 Bulletin No. 59 ("Farming, Fishing & Wood Harvesting").

7. AFFIDAVIT FOR CLAIM OF EXEMPTION

An Affidavit Regarding Purchases of Certain Products for Use in Commercial Agricultural Production, Commercial Fishing, Aquacultural Production and Animal Agriculture (Form 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. This affidavit is only valid for qualifying items and the seller can be held liable for any misuse.

The burden of proving that a sale is for use in a qualified activity is on the person making the sale. This burden of proof will be met if the seller obtains in good faith from the purchaser a signed Affidavit and, if the Affidavit is being used to purchase items to be used in commercial agricultural or commercial aquacultural production, a copy of the purchaser's valid exemption card, issued by MRS. This good faith requirement is not met if the seller knows or could reasonably infer that the purchaser is not the holder of the exemption card, or that the merchandise will not be used by the purchaser directly and primarily in a qualified activity.

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 by the purchaser. 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.

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 1060
AUGUSTA, ME 04332-1060
TEL: (207) 624-9693
V/TTY: 7-1-1
www.maine.gov/revenue**

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