



MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 59

COMMERCIAL AGRICULTURAL PRODUCTION COMMERCIAL AQUACULTURAL PRODUCTION COMMERCIAL FISHING AND COMMERCIAL WOOD HARVESTING

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 persons involved in commercial agricultural production, commercial aquacultural production, commercial fishing, and commercial wood harvesting, hereafter referred to collectively in this bulletin as "qualified activities."

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, and applications and affidavits referenced in this bulletin can be found on the MRS website, www.maine.gov/revenue.

1. GENERAL INFORMATION

Persons engaged in qualified activities are authorized by 36 M.R.S. § 2013 and by MRS Rule 323 ("Commercial Agricultural Production, Commercial Aquacultural Production, Commercial Fishing, and Commercial Wood Harvesting") to use a certificate ("exemption card") to purchase certain fuel, electricity, and depreciable machinery and equipment without paying sales and use tax.

2. DEFINITIONS

A. COMMERCIAL. For purposes of this bulletin, "commercial" means an activity engaged in as a business venture and does not include any activity engaged in primarily as a hobby or avocation.

B. COMMERCIAL AGRICULTURAL PRODUCTION. "Commercial agricultural production," as defined in 36 M.R.S. § 2013(1)(A), means commercial production of crops, maple syrup, honey, plants, trees, compost and livestock, and includes:

- The growing of flowers, shrubs, trees and other plants by commercial nurseries and greenhouses;
- The production of field and orchard crops, including the clearing of the land intended for the field or orchard;
- The production of milk and livestock, including poultry; and
- Animal husbandry.

"Commercial agriculture production" does not include:

- Subsistence farming;
- Forestry and lumber operations of any sort;
- The digging of drainage ditches and installation of drainage tile or other drainage materials;
- Boarding, riding, racing and training of horses;
- Severance of sand, gravel, loam or peat moss; or
- Transportation, storage, preparation, or packaging for market of agricultural products by a person who did not grow or raise them.

"Livestock" includes animals kept or raised primarily to produce:

- Meat for human or animal consumption;
- Other food products for human or animal consumption (e.g., dairy cattle, bees); and
- Other agricultural products (e.g., llamas and alpacas that produce wool).

"Livestock" also includes animals kept or raised primarily to breed animals other than pets.

C. COMMERCIAL AQUACULTURAL PRODUCTION. "Commercial aquacultural production," as defined in 36 M.R.S. § 2013(1)(A-1), means the commercial production of cultured fish, shellfish, seaweed or other marine plants for human and animal consumption, and includes:

- 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
- 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.

"Harvesting" includes the removal of marine and freshwater organisms from the water and conveyance of them to an aquacultural storage area, but does not include storage operations and equipment used for transportation.

"Commercial aquacultural production" does not include:

- Subsistence water farming;

- Preparation or packaging for market of aquacultural products by a person who did not grow or raise them; or
- Processing of marine and freshwater organisms.

While processing of marine and freshwater organisms is not considered commercial aquacultural production, the sales and use tax law provides an exemption for machinery and equipment used directly and primarily in the production of tangible personal property, which includes food processing. See Instructional Bulletin No. 22 ("Manufacturers") for more information regarding production.

D. COMMERCIAL FISHING. "Commercial fishing," as defined in 36 M.R.S. § 2013(1)(B), 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.

“Commercial fishing” does not include:

- Transportation, storage, preparation, or packaging of fish or other marine animals or organisms by a person who did not catch them; and
- The operation of a lobster pound.

E. COMMERCIAL WOOD HARVESTING. "Commercial wood harvesting," as defined in 36 M.R.S. § 2013(1)(B-1), means the commercial severance and yarding of trees for sale or for processing into logs, pulpwood, bolt wood, wood chips, stud wood, poles, pilings, biomass or fuel wood or other products commonly known as forest products.

Commercial wood harvesting begins with the severance of trees and includes all activities thereafter that are an integral and essential part of commercial wood harvesting up to, but not including, the loading of forest products for transport to market.

Commercial wood harvesting includes the construction and maintenance of skid roads, skid trails, and winter haul roads. A "skid road" or "skid trail" is a route that is primarily used for hauling or dragging forest products from the stump to the yard or landing and requires minimal excavation for construction.

A "winter haul road" is a route or track across frozen ground or compacted snow and ice that is used primarily for access to a yard or landing, but does not include a road with a gravel surface.

The construction and maintenance of land management and travel roads is not commercial wood harvesting. "Land management and travel roads" consist of a bed of exposed soil or gravel with other improvements, which may include ditching, culverts, bridges, etc. These roads are at least semi-permanent and maintained to provide various uses including transport of forest products, forest management, agricultural, recreational, and other transport activities. Construction equipment purchased for constructing and maintaining land management and

travel roads is not equipment traditionally used in wood harvesting and is not eligible for exemption. Sales tax should be paid to the seller or use tax should be paid directly to MRS (as in the case of a casual purchase).

F. PRIMARILY. "Primarily," as defined in 36 M.R.S. § 1752(9-A), 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 two 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.

3. EXEMPTION CARD

A. ISSUANCE. An exemption card will be issued to qualifying persons who submit a properly completed application (Form APP-159, "Combined Commercial Exemption Application") to MRS. As proof that the person is engaged in a qualified activity, the application must be accompanied by the person's most recent federal income tax filing.

- If a sole proprietor, complete federal income tax return, including Schedule C, pages 1 and 2 or Schedule F; or
- If a corporation, Federal Form 1120 or Form 1120S, pages 1-4; or
- If a partnership, Federal Form 1065, pages 1-5.

In addition, a person engaged in commercial fishing must also attach the person's current commercial fishing license and boat registration.

Canadian applicants must submit a copy of their Canada Revenue Agency Form T2121 or T2125.

The purchaser may use the exemption card to make qualified tax-free purchases of fuel, electricity, machinery, equipment and repair parts. The purchaser must provide the seller with a copy of the exemption card and a completed Affidavit of Exemption (Form ST-A-126, referred to as the "Affidavit" herein).

The exemption card is valid for a maximum of four years and may be used only by the person named on the card.

B. EXCEPTIONS. Exemption cards will not be issued to the following persons:

(1) Persons who are in their first year of commercial activity and cannot provide a copy of their applicable federal income tax return. 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 return with all relevant attachments is available, the person may apply to MRS for an exemption card and for refunds on any qualifying purchases made during the first year of operation. Once the card is issued, the person may begin making qualifying purchases using the card as described in Section 5 below.

(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 may apply to MRS for refunds on qualifying purchases.

(3) Lessors of equipment. A lessor that purchases items to be leased for use directly and primarily in a qualified activity must pay tax to the seller and apply to MRS for refund of the tax paid. See Section 6(C) below for additional information on refunds to lessors.

(4) Persons who are engaged primarily in an activity that does not constitute a qualified activity even if the activity is conducted in support of a qualified activity or by a person who is also engaged in a qualified activity. See the definitions in Section 2 above as well as MRS Rule 323 for examples of activities that are not qualifying activities. Persons in this category must pay tax to their suppliers on all purchases and may apply to MRS for refunds on qualifying purchases.

4. QUALIFYING MACHINERY AND EQUIPMENT, FUEL AND ELECTRICITY

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

- Used directly in a qualified activity;
- Used primarily in a qualified activity; and
- Depreciable for federal income tax purposes.

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

Care must be exercised in determining whether a particular item qualifies for exemption. Although the seller is relieved from the burden of charging tax at the time of sale provided that a copy of the exemption card and purchaser's Affidavit (Form ST-A-126) are on file and were accepted in good faith, the purchaser is subject to audit and will be assessed tax, including interest and penalties, on the purchase of non-qualifying machinery and equipment. If there is doubt whether tax is due on a particular item, contact MRS for a determination.

Listed below are examples of machinery and equipment that typically qualify for exemption:

A. COMMERCIAL AGRICULTURAL PRODUCTION

| | | |
|--------------------|------------------------|-------------------------|
| Balers | Carts | Combines |
| Conveyors | Cultivators | Feeders |
| Grading tables | Grow lights | Harrows |
| Harvesters | Hay & forage equipment | Herd management systems |
| Irrigation benches | Manure spreaders | Milking equipment |
| Pickers | Planters | Plows |
| Pruners | Removable stalls | Rotary cutters |
| Rototillers | Seed cutters | Seeders |

| | | |
|--|---------------------|------------------------|
| Seeding machines | Soil mixers | Sprayers |
| Tractors | Transplant machines | Tree spades |
| Wagons | Water bowls | Water system injectors |
| Machinery and equipment used in the removal and storage of manure | | |
| Machinery and equipment used to transport potatoes from a truck into a storage location, such as bin pilers. | | |

In addition to qualifying machinery and equipment, certain other products used in commercial agricultural production are also exempt from sales tax. See Instructional Bulletin No. 14 ("Seed, Feed, Fertilizer and Other Items Used in Agricultural and Aquacultural Production").

B. COMMERCIAL AQUACULTURAL PRODUCTION

| | |
|---------------------------------|---|
| Anchor weights for cage systems | Boilers and related pumping equipment |
| Buoys for cage systems | Cables |
| Diving equipment | Fish feeders and related equipment |
| Fish grading equipment | Fish processing equipment on watercraft |
| Fish tanks | Generators |
| Intake water pumping system | Liquid oxygen tanks |
| Piping (Above ground) | Power generating equipment |
| Safety equipment | Sea cages |
| Sea cage netting | Shackles and rope for cage systems |
| Tank water level sensors | Water heating systems |
| Water oxygenating systems | Watercraft |

C. COMMERCIAL FISHING

| | | |
|----------------|--------------------------------------|------------------------|
| Anchors | Bait bags | Boats |
| Bow thrusters | Buckets | Buoys |
| Cables | CB radios/antennas | Chains |
| Color sounders | Communication radios | Depth finders |
| Depth sounds | Draggers | Engines |
| Fasteners | Fiberglass and cloth (Boat Building) | Fire extinguishers |
| First aid kits | Fish scanners | Fish totes |
| Flares | Foghorns | Foul weather gear |
| Gloves | Haulers | Heaters (Boat) |
| Hooks | Hoops | Horns |
| Hoses | Hydraulics | Insulation (Boat) |
| Life equipment | Life rafts | Lights |
| Long lines | Lorans | Lumber (Boat Building) |
| Motors | Net floats | Nets |
| Paint | Plotters | Pneumatic controls |
| Pot haulers | Pumps | Radar equipment |
| Resin | Rope | Rub rails |
| Rubber mats | Scanners | Seine nets |
| Shackles | Survival suits | Tackle |
| Tags | Traps and trap stock | Vent |

Materials incorporated in the construction and repair of a boat used in commercial fishing qualify for exemption. The purchaser must provide a properly completed Boat Building Affidavit ("Products to be Incorporated into a New Commercial Fishing Vessel," Form ST-A-122) to the seller for purchasing construction materials for a qualifying commercial fishing vessel.

D. COMMERCIAL WOOD HARVESTING

| | |
|---------------|-----------------|
| Chainsaws | Chippers |
| Delimbers | Feller bunchers |
| Felling heads | Forwarders |
| Harvesters | Mulchers |
| Skidders | Slashers |

Chippers qualify as wood harvesting equipment when used in the yard. Chippers used in the production or manufacture of wood chips may qualify as machinery and equipment used in manufacturing; see Instructional Bulletin No. 22 ("Manufacturers") for more information.

While construction equipment used primarily in the construction and maintenance of skid roads, skid trails, and winter haul roads is exempt, it is not equipment that is customarily used in wood harvesting. Sales tax should therefore be paid to the seller, or use tax paid directly to MRS (as in the case of a casual purchase), and the wood harvester should follow the refund procedure as explained below in Section 6.

E. FUEL AND ELECTRICITY. Fuel and electricity used in qualified activities or support operations may be purchased exempt from sales tax. This exemption is applied on an account basis for fuel purchases and a meter-by-meter basis for electricity purchases. If a single fuel tank or single meter supports both qualifying and non-qualifying activities, tax must be paid to the fuel or utility provider and the purchaser must apply directly to MRS for a refund based on a pro-rated portion of the fuel or electricity used in qualified activities.

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, reselling products procured or produced by someone else, retail store operations, or unrelated administrative activities.

F. UNCOMMON MACHINERY AND EQUIPMENT. Tax paid on items that are not (as determined by MRS) customarily used in qualified activities may be eligible for a refund if the items are actually used directly and primarily in a qualified activity. Reasonable documentation of the percentage of use in qualified activities is required. See Section 6 below for more information regarding refunds.

5. USE OF EXEMPTION CARD

A. BURDEN OF PROOF - AFFIDAVIT OF EXEMPTION. A completed Affidavit (Form ST-A-126), together with a copy of the exemption card, must be provided to the seller 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 and that the item purchased is intended 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 a copy of a 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 qualified activities.

The seller must retain an Affidavit and a copy of the exemption card held by each person to whom exempt sales are made. A separate Affidavit or copy of the exemption card is not required 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 the Affidavit, the purchaser is attesting to the fact that the property being purchased from the seller qualifies for exemption. The purchaser is responsible for payment of use tax on any non-qualifying property purchased using the Affidavit. Misuse of the Affidavit may result in the cancellation of the exemption card. Intentional misuse of the Affidavit and/or card may subject the purchaser to criminal prosecution.

B. RESTRICTIONS ON USE OF EXEMPTION CARD. The exemption card may not be used to purchase any of the following items:

- (1) Non-qualifying machinery and equipment;
- (2) Motor vehicles, trailers, bulk or fertilizer bodies, snowmobiles, ATVs, utility vehicles, or attachments or repair parts for any of these items;
- (3) Consumable tools and supplies such as motor oil and other lubricants, coolants, solvents, cleaning supplies, clothing, hydraulic fluid, welding supplies, and welding gases,
- (4) Items that are not 100% depreciable as equipment used in qualified activities (see Section 6(B) below for circumstances where refunds may be allowed);
- (5) Items that are not (as determined by MRS) customarily used in qualified activities such as lawn and garden tractors, lag tractors, golf carts, backhoe tractors, fork lift trucks, grain bins, computer hardware and software, utility vehicles, scraper blades, etc. See Section 6 below for circumstances where refunds may be allowed; or
- (6) Fuel or electricity servicing separate businesses or non-qualifying activities.

Generally, land, buildings, and construction materials or other items incorporated in real property such as docks, fencing, storage buildings, special purpose buildings, and heating or ventilation systems do not qualify as "machinery and equipment" and may not be purchased using the exemption card. However, certain property that is attached to a building or other structure may qualify as "machinery and equipment" if the item is readily removable without causing significant damage to the building or other structure. The following items may qualify for exemption if they are purchased by a person engaged in qualified activities and the equipment is used directly and primarily in qualified activities:

- 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, shade systems, film, and coverings used in greenhouses.

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 qualified activities. See also Instructional Bulletin No. 4 ("Contractors and Subcontractors").

6. REFUNDS

A refund of sales or use tax may be requested in connection with the purchase of the following:

A. PURCHASES MADE PRIOR TO OBTAINING AN EXEMPTION CARD. Tax paid on qualifying purchases made prior to obtaining an exemption card may be eligible for refund if the following criteria are met:

- (1) The purchase was made on or after the start of the qualified activity; and
- (2) The item meets the qualifications outlined in this bulletin and MRS Rule 323.

B. MULTI-USE MACHINERY AND EQUIPMENT; ELECTRICITY AND FUEL USED IN QUALIFIED ACTIVITY. Reimbursement of sales tax will be prorated accordingly when otherwise qualifying machinery and equipment is also used in non-qualifying activities. To qualify the machinery or equipment must still be used primarily (more than 50% of the time) directly in qualified activities.

For example, if machinery or equipment is 60% depreciable under the Internal Revenue Code because it is only used 60% of the time in qualified activities, 60% of the sales tax will be refunded, provided that the other requirements are satisfied. Machinery or equipment used 50% or less of the time directly in qualified activities does not qualify for exemption.

When one electric meter or a single fuel tank is supporting both qualifying and non-qualifying activities, the portion of electricity or fuel being used in qualified activities is eligible for refund. Reasonable documentation of the percentage of use in qualified activities is required.

C. MACHINERY AND EQUIPMENT PURCHASED BY LESSORS AND USED DIRECTLY AND PRIMARILY IN QUALIFIED ACTIVITIES. Lessors of machinery and equipment used directly and primarily in qualified activities may submit an application for refund of sales and 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 exemption card valid on the date of execution of the lease, and a properly executed Affidavit. If the lessee has not been issued an exemption card, 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.

Supporting documents such as invoices and schedules that accompany a refund application will not be returned to the applicant. The applicant may request copies.

7. ITEMS PURCHASED OUTSIDE OF MAINE

The purchase of tangible personal property outside the State that is brought into and used in Maine is subject to Maine's use tax. There is no provision in the Maine sales and use tax law for refund of sales or use tax paid to another state or a foreign country. Such a refund must be obtained from the state or country in which the item was purchased.

8. ADDITIONAL INFORMATION

The information in this bulletin addresses some of the more common questions regarding the sales and use tax law faced by those engaged in commercial agriculture, commercial aquaculture, commercial fishing, and commercial wood harvesting. It is not intended to be all-inclusive. Requests for information on specific situations must be in writing, must contain full information as to the transaction in question, and must be directed to:

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