

~~MAINE REVENUE SERVICES
SALES, FUEL AND SPECIAL TAX DIVISION
RULE NO. 323~~

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

18 DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES

125 MAINE REVENUE SERVICES

Chapter 323: COMMERCIAL AGRICULTURAL PRODUCTION, COMMERCIAL
AQUACULTURAL PRODUCTION, COMMERCIAL FISHING,
COMMERCIAL WOOD HARVESTING, AND COMMERCIAL MINING

SUMMARY: Explains 36 M.R.S. § 2013 as it pertains to the issuance of refunds and certificates of exemption to persons who are engaged in commercial agricultural production, commercial aquacultural production, commercial fishing, ~~and~~ commercial wood harvesting, and, effective January 1, 2026, commercial mining.

SECTION 1. ~~DEFINITIONS~~ Definitions.

- 1. 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.

- 2. 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, including:
 - A. 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**

 - B. 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.**

- 3. 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.

4. Commercial mining. “Commercial mining,” as defined in 36 M.R.S. § 2013(1)(B-2), means the commercial extraction or removal of metallic minerals or overburden or the preparation, washing, cleaning or other treatment of metallic minerals and includes the bulk sampling, advanced exploration, extraction or beneficiation of metallic minerals within a mining area. “Commercial mining” does not include:

A. Exploration;

B. The physical extraction, crushing, grinding, storage or heating of calcium carbonate or limestone to produce cement;

C. The exploration for or physical extraction, crushing, grinding, sorting or storage of borrow, topsoil, clay or silt; or

D. The exploration for or physical extraction, crushing, grinding, sorting or storage of gemstones, aggregate, dimension stone or other construction materials from a quarry.

As used in this rule, “advanced exploration,” “beneficiation,” “cement,” “exploration,” and “metallic mineral” have the same meanings as in 38 M.R.S. § 490-MM.

5. 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.

6. Depreciable. “Depreciable” refers to property that has a normal life expectancy of more than one year and is depreciable for federal income tax purposes.

27. Directly. “Directly” refers to those activities or operations that constitute an integral and essential part of commercial agricultural production, commercial aquacultural production, commercial wood harvesting, ~~or commercial fishing,~~ or commercial mining, as contrasted with and distinguished from those activities or operations that are simply incidental, convenient, or remote to those activities. Except in the case of electricity and fuel, items used in support operations (including construction or repair facilities, machine shops, storage activities, administration, or highway transportation) are not used directly in commercial agricultural production, commercial aquacultural production, commercial wood harvesting, ~~or commercial fishing,~~ or commercial mining.

38. Livestock. “Livestock” includes:

A. Animals kept or raised primarily to produce meat for human or animal consumption;

B. Animals kept or raised primarily to produce other food products for human or animal consumption, such as laying hens, dairy cattle, and bees;

C. Animals kept or raised primarily to produce other agricultural products, such as sheep, llamas and alpaca that produce wool and domestic deer that produce antler velvet; and

D. Animals kept or raised primarily to breed animals other than pets.

49. Machinery and equipment. “Machinery and equipment” means tangible personal property necessary to commercial agricultural production, commercial aquacultural production, commercial fishing, ~~or~~ commercial wood harvesting, or commercial mining, including repair parts and attachments for qualifying machinery and equipment. “Machinery and equipment” includes property that may, on account of its nature, be attached to a building or other structure without losing its identity as a particular piece of machinery or equipment and that, if attached, is readily removable without significant damage to the unit or to the realty.

To qualify under 36 M.R.S. § 2013, “machinery and equipment” must be used primarily 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 purchaser, whichever occurs first.

“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. Trailers, parts, and attachments that are used or designed for use in conjunction with a motor vehicle;
- D. Foundations for machinery and equipment, and special purpose buildings used to house or support machinery and equipment; or
- E. Items, other than repair parts, that are used in or with qualifying machinery and equipment, such as fuel, lubricants, coolants, solvents, tools, and supplies used for cleaning and maintenance, and personal apparel.

510. Primarily. “Primarily” means more than 50% of the time.

611. Qualifying activity. “Qualifying activity” means commercial agricultural production, commercial aquacultural production, commercial fishing, ~~or~~ commercial wood harvesting, or commercial mining.

712. Related but non-qualifying business activity. “Related but non-qualifying business activity” means an activity that does not constitute commercial agricultural production, commercial aquacultural production, commercial fishing, ~~or~~ commercial wood harvesting, or commercial mining, but in which it is customary to employ machinery and equipment that is suitable for use in those activities.

813. Yarding. “Yarding” means the hauling of felled trees to the landing or temporary storage site at which they are loaded onto trucks for transport on a public or private way, and does not

include loading the felled trees onto the trucks. Yarding includes slashing, delimiting, bucking, and staging, whether performed in the yard or at the site where the trees were harvested.

SECTION 2. ~~COMMERCIAL AGRICULTURAL PRODUCTION~~ Commercial agricultural production.

The following activities do not constitute commercial agricultural production, even if they are conducted in support of commercial agricultural production or by a person who is also engaged in commercial agricultural production:

- ~~A~~1. Subsistence farming;
- ~~B~~2. Any activity engaged in primarily as a hobby or avocation rather than as a commercial venture;
- ~~C~~3. Forestry and lumber operations of any sort;
- ~~C~~4. The digging of drainage ditches and installation of drainage tile or other drainage materials;
- ~~D~~5. Boarding, riding, racing, and training of horses;
- ~~E~~6. Severance of sand, gravel, loam, or peat moss; and
- ~~F~~7. Transportation, storage, preparation, or packaging for market of agricultural products by a person who did not grow or raise them.

SECTION 3. ~~COMMERCIAL AQUACULTURAL PRODUCTION~~ Commercial aquacultural production.

The following activities do not constitute commercial aquacultural production, even if they are conducted in support of commercial aquacultural production or by a person who is also engaged in commercial aquacultural production:

- 1. Transportation, storage, preparation, or packaging for market of aquacultural products by a person who did not grow or raise them; and
- 2. Any activity engaged in primarily as a hobby or avocation rather than as a commercial venture.

SECTION 4. ~~COMMERCIAL FISHING~~ Commercial fishing.

The following activities do not constitute commercial fishing, even if they are conducted in support of commercial fishing or by a person who is also engaged in commercial fishing:

1. Transportation, storage, preparation, or packaging of marine organisms by a person who did not catch them;
2. Any activity engaged in primarily as a hobby or avocation rather than as a commercial venture; and
3. The operation of a lobster pound.

SECTION 5. ~~COMMERCIAL WOOD HARVESTING~~ Commercial wood harvesting.

“Commercial wood harvesting” does not include any activity engaged in primarily as a hobby or avocation rather than as a commercial venture. The following activities do not constitute commercial wood harvesting, even if they are conducted in support of commercial wood harvesting or by a person who is also engaged in commercial wood harvesting:

1. Any activity engaged in primarily as a hobby or avocation rather than as a commercial venture; and
2. Transportation, storage, preparation, or packaging of trees by a person who did not harvest them.

SECTION 6. Commercial mining.

The following activities do not constitute commercial mining, even if they are conducted in support of commercial mining or by a person who is also engaged in commercial mining:

1. Exploration;
2. Any activity engaged in primarily as a hobby or avocation rather than as a commercial venture; and
3. Transportation, storage, preparation, or packaging of metallic minerals by a person who did not mine them.

SECTION 67. ~~PURCHASES OF ELECTRICITY AND FUEL~~ Purchases of electricity and fuel.

1. Exempt purchases. Electricity and fuel used directly in a qualifying activity, including support operations, may be purchased exempt from sales tax by persons who have been issued a certificate of exemption, provided that an affidavit of exemption and a copy of the certificate of exemption card has been provided to the seller. In the case of electricity, the seller, acting in good faith, may continue to bill electricity sold to that person through that meter exempt from tax until notified that the person is no longer the holder of a certificate of exemption, or that

the electricity sold through that meter is no longer used exclusively in a qualifying activity (including support operations). For purposes of this subsection, “support operations” means storage activities, maintenance activities, and administrative activities related to a qualifying activity. “Support operations” does not include activities that constitute, or are conducted by, a separate business; construction activities; or reselling or transporting products that are procured or produced by someone other than the purchaser else.

2. Refund of tax paid. The following persons may not purchase electricity or fuel without payment of tax, but may apply to Maine Revenue Services for a refund of sales or use tax paid on purchases of electricity and fuel used directly in a qualifying activity, including support operations:-

- A. Persons who have not been issued a certificate of exemption; and
- B. Persons who purchase fuel or electricity that will be used in both qualifying and non-qualifying activities. These persons must pay tax to the seller-supplier based on the entire amount billed and apply to Maine Revenue Services for a refund of the tax paid on that portion of the fuel or electricity that was used in the qualifying activity.

SECTION 78. ~~CERTIFICATE OF EXEMPTION~~ Certificate of exemption.

1. Application. Any person claiming exemption under 36 M.R.S.A § 2013(3), ~~sub §3~~ must apply to the State Tax Assessor (“assessor”) for a certificate of exemption. The application must be on a form prescribed by the ~~State Tax Assessor~~ assessor and must include a copy of the portion of the person’s most recent federal income tax return that shows the person is engaged in a qualifying activity.

2. Issuance. A certificate of exemption will be issued by the ~~State Tax Assessor~~ assessor to persons who have submitted an application that shows they are engaged in a qualifying activity. The certificate of exemption is effective for a maximum of four years from the date of issuance.

3. Exceptions. A certificate of exemption will not be issued to the following persons:

- A. Persons whose most recent federal income tax return does not show that the person was engaged in a qualifying activity; or
- B. Persons who are primarily engaged in a related but non-qualifying business activity.

4. Use restricted. The certificate of exemption may not be used to purchase the following items without payment of sales tax:

- A. Items that are less than 100% depreciable-; or
- B. Items that are not commonly used directly in a qualifying activity as determined by the ~~State Tax Assessor~~ assessor, including lawn and garden tractors of less than 20

horsepower, backhoe tractors, fork-lift trucks, snowmobiles, all-terrain vehicles, and computers.

5. Refund of tax paid. The following persons may apply directly to Maine Revenue Services for a refund of sales or use tax paid on purchases of depreciable machinery and equipment used directly and primarily in a qualifying activity:

- A. Persons who have not been issued a certificate of exemption;
- B. Purchasers of items that are less than 100% depreciable; and
- C. Purchasers of items that are not commonly used directly in a qualifying activity.

6. Requirements of seller. The burden of proving that a sale is to a person that has been issued a certificate of exemption is upon 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 certificate of exemption issued by Maine Revenue Services in accordance with the provisions of this Rule.

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

7. Good faith requirement. The certificate of exemption must be taken in good faith by the seller. This good faith requirement is not met if the seller knows or could reasonably infer that the purchaser is not the holder of the certificate of exemption, or that the merchandise will not be used by the purchaser directly and primarily in a qualifying activity.

8. Misuse of certificate of exemption. Misuse of the certificate of exemption will result in its cancellation. The certificate must be surrendered at the request of the ~~State Tax Assessor~~ assessor.

~~Authority~~ STATUTORY AUTHORITY:

36 M.R.S.A §§_112, 2013

~~Effective date~~ EFFECTIVE DATE:

July 14, 1990

~~Repealed and replaced~~ REPEALED AND REPLACED:

January 29, 2007

~~Amended~~ AMENDED:

January 22, 2017