

Law Bulletin



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Ohio's Agricultural Sales Tax Exemption Laws

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To “provide revenue with which to meet the needs of the state,” Ohio law authorizes a sales tax on retail goods. At the same time, the law also exempts certain goods and services from the sales tax. Several of these sales tax exemptions apply to agriculture, providing an important tax benefit to farmers.

Ensuring that a sale is exempt from the sales tax can be challenging, however, as retailers, purchasers and the state may not agree on whether an exemption applies to a situation. In this bulletin, we explain the sales tax law and the agricultural sales tax exemptions contained in the law. We also describe the process for obtaining a sales tax exemption. Importantly, we explain the factors that determine when both the purchaser and the purchased items qualify for an agricultural sales tax exemption.

Ohio's sales tax law

All retail sales in Ohio begin as taxable sales. Ohio Revised Code (ORC) Section 5739.02 states that “...an excise tax is hereby levied on each retail sale made in this state.” The law also contains a presumption of taxability in ORC 5739.02(C), which states that “[F]or the purpose of the proper administration of this chapter, and to prevent the evasion of the tax, it is presumed that all sales made in this state are subject to the tax until the contrary is established.” This presumption that a sale is taxable places a burden on a purchaser to

Ohio Department of Taxation
tax.ohio.gov

STEC 8
Rev. 3/15

Reset Form

**Sales and Use Tax
Blanket Exemption Certificate**

The purchaser hereby claims exception or exemption on all purchases of tangible personal property and selected services made under this certificate from:

(Vendor's name)

and certifies that the claim is based upon the purchaser's proposed use of the items or services, the activity of the purchase, or both, as shown hereon:

Purchaser must state a valid reason for claiming exception or exemption.

Purchaser's name _____
Purchaser's type of business _____
Street address _____
City, state, ZIP code _____
Signature _____ Title _____
Date signed _____
Vendor's license number, if any _____

prove that a purchase is not subject to the sales tax. The state's presumption of taxability highlights the importance of understanding the agricultural sales tax exemptions.

Agricultural sales tax exemptions in Ohio law

Ohio's legislature determines which sales are not subject to the state sales tax. Ohio Revised Code Section 5739.02 currently contains 56 types of goods and services the legislature has declared not taxable. A good handful of the exemptions apply to agriculture. Additionally, regulations in the Ohio Administrative Code (OAC) provide further guidance on the agricultural sales tax exemptions. It's necessary to examine both the statute and the regulations to understand each agricultural exemption. We present them in the chart below and cite to the relevant sections of the sales tax law and its regulations.

Agricultural sales tax exemptions in the Ohio Revised Code

<p>Tangible personal property for producing or holding agricultural products ORC 5739.02(B)(17) OAC 5703-9-23(B) OAC 5703-9-23(C)</p>	<p>Sales of tangible personal property to persons engaged in farming, agriculture, horticulture, or floriculture, if the property is not incorporated into real property but is:</p> <ol style="list-style-type: none"> 1. Used primarily in farming, agriculture, horticulture, or floriculture to produce tangible personal property for sale, or 2. Purchased for incorporation into tangible personal property produced for sale by farming, agriculture, horticulture, or floriculture, or 3. Used primarily in the production of tangible personal property that will be used to produce products for sale by farming, agriculture, horticulture, or floriculture; or 4. Used primarily in the conditioning or holding of products produced for sale by farming, agriculture, horticulture, or floriculture.
<p>Materials for horticulture and livestock structures ORC 5739.02(B)(13) and 5739.02(B)(36)</p>	<ol style="list-style-type: none"> 1. Building and construction materials sold to construction contractors for incorporation into a horticulture or livestock structure built for a person engaged in the business of horticulture or producing livestock. 2. Sales to persons engaged in the business of horticulture or producing livestock of materials to be incorporated into a horticulture or livestock structure.
<p>Agricultural land tile ORC 5739.02(B)(30)</p>	<p>Sales and installation of agricultural land tile, defined as fired clay or concrete tile or flexible or rigid perforated plastic pipe or tubing, if incorporated into a subsurface drainage system on land used primarily for farming, agriculture, horticulture, or floriculture, but not if the drainage system is appurtenant to a building or structure.</p>
<p>Grain bins ORC 5739.02(B)(31)</p>	<p>Sales and erection or installation of portable grain bins, defined as structures used by a person engaged in farming or agriculture to shelter the person's grain and designed to be disassembled without significant damage to component parts.</p>
<p>Preparation of eggs for sale ORC 5739.02(B)(24)</p>	<p>Sales to persons engaged in preparing eggs for sale of:</p> <ol style="list-style-type: none"> 1. Tangible personal property used for cleaning, sanitizing, preserving, grading, sorting, and classifying eggs by size. 2. Packages, machinery, equipment, and material used in packaging eggs for sale. and material and parts for packages. Packages includes containers, cases, baskets, flats, fillers, filler flats, cartons, closure materials, labels, and labeling materials and materials and parts for packages. 3. Handling and transportation equipment and parts used to ship and transfer eggs between plants in the process of preparation for sale if the plants are operated by the same person.

Goods that do and don't qualify for the agricultural exemptions

Beyond the statutory language, additional explanation can help us understand the practical application of the agricultural sales tax exemption. A closer look at the regulations and guidance from

the Ohio Department of Taxation aid in determining whether a specific good fits within a sales tax exemption. Certain goods easily qualify for the exemption, while others do not.

Goods that qualify. The exemption that likely applies to agriculture most often is the tangible personal property exemption in ORC

5709.02(B)(17). Both the regulations and additional explanation from the Department of Taxation emphasize that how the item will be used determines whether its purchase can be exempt from the sales tax. “The taxability or non-taxability of sales is determined by the use of the articles sold” and the articles must “be used in an exempt manner” according to OAC 5703-9-03. Using a good to cultivate or stimulate the growth of crops or flowers or purchasing livestock or poultry to be sold would qualify, according to the regulation.

The Department of Taxation further explains that the good must be used “directly” in producing the product for sale. According to the Tax Commissioner, direct use means the item directly acts upon the product being produced for sale. A list of qualifying exempt items offered by the agency includes seeds; fertilizers; insecticides; pesticides; hand tools and tillers to cultivate soil; hoses to water produce; field tiles; tractors; plows; combine; and specially designed motor vehicles with PTO applicator units that travel from farm to farm to apply chemicals and fertilizers.

Goods that don’t qualify. OAC 5703-9-03(C) clarifies that building materials such as lumber, nails, glass, and similar items for constructing or repairing buildings are not exempt because the items are incorporated into real property rather than used directly to cultivate a product for sale. But note that if the items are used to build livestock or horticultural structures, the items could be exempt under two other exemptions, ORC 5739.02(B)(13) and 5739.02(B)(36).

The Department of Taxation also lists types of goods that would not qualify for the sales tax exemption because they are not directly used in the production of a product for sale. These items include almost all motor vehicles licensed to operate on the highway (such as passenger cars, pickup trucks, larger trucks and trailers used to haul people, animals or raw materials such as seeds, fertilizers, insecticides, and pesticides to the farm or haul finished goods from the farm to market); lawn mowers; weed eaters; items used to maintain set-a-side fields; chain saws; all purpose vehicles that are primarily used for recreation; and home garden equipment.

Who can claim an agricultural sales tax exemption

To claim the agricultural sales tax exemptions, a person must be engaged in “farming, agriculture, horticulture and floriculture.” The regulations in OAC 5703-9-03(A) define these terms. Each term contains a “production” component and a “business” component, as follows:

“**Farming**” means the occupation of tilling soil to produce crops as a business and includes raising livestock, bees, or poultry, if the purpose is to sell such livestock, bees, or poultry, or the products thereof as a business.

“**Agriculture**” means the cultivation of the soil for the purpose of producing vegetables and fruits and includes gardening or horticulture, together with the raising and feeding of cattle or livestock for sale as a business.

“**Horticulture**” means the growing, cultivation, and production of flowers, fruits, herbs, vegetables, sod, mushrooms, and nursery stock for sale as a business and includes the operation of commercial vegetable greenhouses or nurseries.

“**Floriculture**” means the production of flowers and plants for sale as a business, either in the field or greenhouse.

The production component. It is necessary to be engaging in agricultural production activities to qualify for the exemption. Production activities include tilling soil for crops, producing vegetables or fruits, gardening; growing, cultivating, or producing flowers, fruits, herbs, sod, mushrooms, and nursery stock; and raising livestock, cattle, poultry, or bees.

The business component. The above definitions of farming, agriculture, horticulture, and floriculture include several important terms: “occupation,” “as a business,” and “for sale as a business.” These terms create a “business” requirement for receiving the agricultural sales tax exemptions. Under the sales tax law, a “business” is “any activity engaged in by a person with the object of gain, benefit, or advantage, either direct

or indirect.” ORC 5739.01(F). The Ohio Department of Taxation advises that it interprets this language as requiring “for profit” farming to qualify for the sales tax exemptions.

A common question we hear is “how do I prove that I’m a “for profit” farm?” The Ohio Department of Taxation advises that filing a federal Schedule F (Form 1040, Profit or Loss from Farming) indicates that the farm is “for profit.” On the other hand, the agency advises that filing a federal Form 4835, Farm Rental Income and Expenses, does not meet the for profit business requirement and would not qualify a farmer for the sales tax exemptions. Note that both courts and the Department of Taxation have determined that beginning farmers who have not yet filed a Schedule F are entitled to the tax exemption if they will file the Schedule F in the next year.

Service providers can also claim sales tax exemptions. Another provision in OAC 5703-09-03(D) expands the above terms to include persons who render farming, agricultural, horticultural, or floricultural services to those engaged in farming, agriculture, horticulture, or floriculture. The regulation gives the example of a veterinarian providing services to a farmer’s livestock and concludes that the veterinarian is therefore also engaged in farming. Purchases by the veterinarian of tangible personal property primarily used for treating the livestock would be exempt from the sales tax.

How to claim a sales tax exemption

For farmers, claiming an agricultural sales tax exemption begins with completing a tax exemption certificate for a vendor, available on the [Ohio Department of Taxation’s forms page](#). Form STEC-B is for a blanket exemption for all items to be purchased from a vendor over time and STEC-U is for a one-time exemption. The forms require the vendor’s name; purchaser’s name, address, and type of business; the purchaser’s vendor license number, if any, and an explanation of the proposed use of the items or services to be purchased. The explanation of proposed use should state the valid reasons for claiming the tax exemptions. Simply writing “to be used for farming” may raise some eyebrows at the

Department of Taxation, while giving sufficient details about the use of the items will help ensure that the purchase qualifies for an agricultural exemption. Keep in mind that information about the “purchaser’s type of business” should support the requirement for the purchase to be by a “for profit” farming, horticultural or floricultural business. Note that the lack of a vendor’s license number does not invalidate the form, but some retailers hesitate to accept forms that don’t contain this information. Farmers that don’t have a vendor’s license, which is only required if engaging in retail sales to others, can avoid confusion by completing the line with “not applicable to this business” or “not necessary for this business.”

A different exemption certificate is necessary to receive the exemption for construction materials for horticulture and livestock structures under ORC 5739.02(B)(13) and 5739.02(B)(36). Both the farmer and the contractor must complete and sign Form STEC-CC, the Construction Contract Exemption Certificate. The form requires the owner’s name, location of the project, name of the project, and a certification that the materials are being purchased for incorporation into a horticulture or livestock structure for a person engaged in the business of horticulture or livestock production.

A purchaser who claims a tax exemption must present the fully completed exemption certificate to the vendor, either electronically or in hard copy, and the vendor must keep the certificate on file. OAC 5703-9(B). Even when a vendor has a tax exemption certificate, however, it can be helpful to remind the vendor or salesperson when the sales tax exemption applies to a purchase.

Refunds for purchases that didn’t receive a sales tax exemption

Sometimes a farmer pays sales taxes on a purchase that should have received the sales tax exemption. There can be many reasons for this outcome: the farmer hadn’t submitted a tax exemption certificate, the vendor refused to accept or had no record of the tax exemption certificate, the salesperson or register assessed the tax by mistake, or the vendor disagreed that

the items should be tax exempt. In these situations, the taxpayer may submit a Sales/Use Tax Application for Refund, Form STAR, to the Ohio Department of Taxation. Supporting documentation is necessary, explained in Form STAR C, the Sales and Use Tax Refund Checklist. Both are available online on the state's [Tax Forms page](#). If the Department determines that the sales tax was assessed in error, it must refund the amount plus applicable interest.

Liability for unpaid sales taxes

Ohio law places liability on both the purchaser and the vendor for sales taxes that should have been paid. If a purchaser presents a tax exemption certificate to a vendor and improperly claims an exemption, the purchaser is liable for the unpaid sales taxes and ORC 5739.03(B)(1)(b) relieves the vendor of liability. The situation is different if a vendor improperly fails to collect the sales tax. In that case, ORC 5739.13 states that both the vendor and the purchaser are liable for the unpaid tax. The Department of Taxation may assess either party but an assessment against the vendor doesn't relieve the purchaser of liability. If held liable, the vendor may seek payment from the purchaser. Another section of law, ORC 5739.33, establishes personal liability for a vendor that fails to pay its sales taxes.

Tax assessments and appeals

What if the State of Ohio believes a farmer should not have received a sales tax exemption? There are legal procedures for assessing and appealing a tax liability. Ohio's Tax Commissioner has the authority under Ohio law to "assess" a person or business that should have paid sales taxes. The Commissioner will provide a Legal Notice of Assessment for the amount of tax due, which could also include penalties and interest. If a person does not make full payment on an assessment within 60 days of receiving the notice, the State will begin collection proceedings. A person who disagrees with an assessment may file a Petition for Reassessment and supporting documentation within 60 days of receiving an assessment notice. The Tax Commissioner will review the petition and may correct, cancel, or

deny it and issue a Final Determination. A person may appeal a Final Determination to the Ohio Board of Tax Appeals, but most do so within 60 days. Ohio's Board of Tax Appeals is an administrative agency that functions somewhat like a court. It will review the Tax Commissioner's Final Determination and hold a hearing, if necessary or requested by a party. A person who disagrees with a decision of the Board of Tax Appeals may appeal that decision within 30 days to the appropriate Ohio Court of Appeals.

Closing thoughts: navigating the agricultural sales tax exemption

There are several considerations and steps a farmer can take to obtain the full benefits of Ohio's agricultural sales tax exemptions.

1. Complete tax exemption certificate forms and submit the forms to vendors from whom you regularly purchase tax exempt goods and be prepared to submit a certificate whenever purchasing from a new or one-time vendor.
2. If constructing or repairing horticulture or livestock structures, be sure that you and your construction contractor complete Form STECC to receive the sales tax exemption for tangible personal property incorporated into the structure.
3. Become familiar with the items you purchase that should receive the sales tax exemption and monitor whether you properly receive the exemption on your qualified purchases.
4. If you pay a sales tax for an item that should be exempt, use the STAR form to request a refund of the tax from the Department of Taxation.
5. If you're not filing a federal Schedule F for income tax purposes, should you be? Discuss the situation with an accountant. Remember that if the Department of Taxation challenges a sales tax exemption you received, you must document that you file (or will file, if you're new) a Schedule F to qualify as a "for-profit farm" eligible for the sales tax exemption.

For more information from the OSU Agricultural & Resource Law Program



Visit our website and the Ag Law Library at farmoffice.osu.edu.



Read and subscribe to the [Ohio Ag Law Blog](#), available on our website.



Contact us by e-mail at aqlaw@osu.edu.



Contact us by telephone at 614.688.0466.

Resources and references

Federal Law

Code of Federal Regulations, 26 C.F.R. § 1.183-2

https://www.ecfr.gov/cgi-bin/text-idx?SID=2c8c515e70d79f99314ab3dd0c63c6f4&mc=true&node=se26.4.1_1183_62&rgn=div8

Ohio Board of Tax Appeals

<https://bta.ohio.gov/>

Ohio Department of Taxation

Assessments

<https://tax.ohio.gov/wps/portal/gov/tax/help-center/faqs/assessments/assessments>

Sales and Use Tax

<https://tax.ohio.gov/wps/portal/gov/tax/business/ohio-business-taxes/sales-and-use/sales-use-tax>

Sales and Use – Applying the Tax

<https://tax.ohio.gov/wps/portal/gov/tax/help-center/faqs/sales-and-use-applying-the-tax-what-is-and-isnt-taxable/sales-and-use-applying-the-tax>

Tax Forms

<https://tax.ohio.gov/wps/portal/gov/tax/business/get-a-form/tax-forms>

Ohio Laws

Ohio Administrative Code Chapter 5703-9 , Sales and Use Tax

<https://codes.ohio.gov/ohio-administrative-code/chapter-5703-9>

Ohio Revised Code Chapter 5739, Sales Tax

<https://codes.ohio.gov/ohio-revised-code/chapter-5739>

Ohio Revised Code § 5717.02, Appeal from final determination of tax commissioner

<https://codes.ohio.gov/ohio-revised-code/section-5717.02>

Publications

Chris Bruynis, *Ohio Agricultural Sales Tax Exemption Rules*

<https://ohioline.osu.edu/factsheet/OAM-2>

Larry R. Gearhardt, *The Legal and Practical Aspects of the Agricultural Sales Tax Exemption*

<https://farmoffice.osu.edu/sites/aglaw/files/site-library/taxpdf/LegalAspectsAgSalesTax.pdf>