

Law Bulletin



Law you need to know from OSU Extension's Farm Office

March 2019

Vendor's Licenses and Sales Taxes at Ohio Farmers Markets

*Eric Barrett, Asst. Professor & Extension Educator
Peggy Kirk Hall, Assoc. Professor & Field Specialist
Evin Bachelor, Law Fellow
OSU Extension Agricultural & Resource Law Program*

Farmers markets in Ohio continue to grow in number, and the types of vendors and products offered by those vendors have greatly diversified over the years. Along with this growth come new questions about vendor's licenses and the collection of sales taxes. Many market vendors may know that traditional market items like fresh fruits and vegetables do not require a vendor's license or sales tax. But what about beverages, cottage foods, plants and flowers, ready to eat foods, soaps, crafts, and similar items that contribute to the success of today's farmers markets? Read on to learn more about vendor's licenses and sales taxes for farmers market activities.

Do vendors at a farmers market need a vendor's license?

The answer depends on the products being sold by the individual vendor. If the vendor is not required to charge tax, then a vendor's license is not required. For example, a vendor that is only selling items that fit within the food exemption from sales tax is not required to have a vendor's license. The food exemption is defined as "food for human consumption off the premises where sold (food does not include alcoholic beverages, dietary supplements, soft drinks, or tobacco)." This exemption covers fruits, vegetables, cut herbs, and more.

However, a vendor is required to have a vendor's license in order to sell items that do require the collection of sales tax in the state of Ohio. Vendors who sell products that are subject to the tax will most likely need a transient vendor's license if they sell at more than one location (i.e., several farmers markets in more than one taxing authority). When applying for a vendor's license, the details provided by the vendor will determine when filing and payments are due.

What items do not require the collection of sales tax?

Sales tax applies to every purchase of a good unless a specific exception applies. "Sales of food for human consumption off the premises where sold" are specifically excepted from the collection of Ohio sales taxes. Essentially, if a person is buying a food item to eat elsewhere, this definition applies and no sales tax must be collected. This generally includes:

- Fresh fruits and vegetables
- Herbs cut and packaged for consumption
- Seeds sold for eating
- Baked goods, including cakes, cookies, and pastries
- Candy, chewing gum, and breath mints
- Cocoa, tea bags, and coffee beans
- Nuts
- Popcorn
- Chips and similar snacks like mixes
- Pudding and gelatin
- Popsicles and snow cones
- Cereals and cereal products
- Condiments, such as ketchup and mustard
- Extracts and cooking oils
- Bottled water, unsweetened flavored water, and carbonated water
- Juices that contain greater than 50-percent vegetable or fruit juice by volume
- Teas and coffees that contain no natural or artificial sweetener when sold to the consumer
- Milk, milk products, and milk substitutes
- Any beverage product, such as coffee or hot chocolate, that contains a milk product, including whipped cream, and *even if sweetener has been added* by the vendor
- Non-alcoholic beers under .5% alcohol by volume
- Table salt, canning salt, and sea salt
- SNAP eligible purchases when SNAP EBT is used

The Ohio Department of Taxation includes these products on its no-tax list based upon the assumption that they are sold for human consumption and are to be eaten at a different place. If these foods are sold with the intent to be consumed on location, then the sales tax exception does not apply.

What items require the collection of sales tax?

Sales tax is to be collected in any transaction that transfers title or possession of property for a price unless an item is specifically excepted by a statute, regulation, Ohio Department of Tax ruling, or a court decision. The Ohio Department of Taxation considers the following goods to generally require the collection of sales taxes:

- Fresh flowers
- Container plants, transplants used to produce food, and seeds for gardening. (Unless using SNAP EBT)
- Ready to eat items that will be consumed on site, such as food eaten at a restaurant
- Soft drinks and lemonades
- Bottled water flavored with natural or artificial sweeteners
- Teas and coffees with any natural or artificial sweeteners either as a standard ingredient or for a charge if the customer requests its addition
- Alcoholic beverages, including beer and wine, that are intended for drinking rather than as an ingredient in cooking
- Dietary supplements
- Tobacco products
- Pet food
- Toothpaste, mouthwash, and soaps
- Crafts

Neither of the lists provided are exclusive, but rather are common examples. For additional details and lists of examples of items that are taxable or non-taxable, visit the Ohio Department of Taxation's Frequently Asked Questions webpage at www.tax.ohio.gov/faq.aspx. In the "Category" drop down menu, select "Sales and Use - Applying the Tax: What Is and Isn't Taxable" for regularly updated lists. Many of the items listed above were specifically found in the Ohio Department of Taxation's publication ST 2004-01, a link to which can be found in the "Resources" section of this law bulletin. Further, the relevant phone number at the Ohio Department of Taxation to ask questions about sales and use taxes is (888) 405-4039. When there is no clear answer on whether or not sales tax should be collected, a best practice is to charge tax on the item.

How do I obtain a vendor's license in Ohio?

Vendors seeking a license should start the process by visiting the Ohio Department of Taxation's website. Vendors may learn about the types of licenses available and which ones fit their needs at www.tax.ohio.gov/sales_and_use/license.aspx. Vendors then may register for the appropriate license(s) on the Department of Tax's online "Ohio Business Gateway" at

www.tax.ohio.gov/sales_and_use/registration.aspx, or they may register in person by visiting their county auditor's office.

Is a vendor's license the same as a retail food establishment license?

No. A retail food establishment license focuses on food safety, while a vendor's license focuses on the collection of taxes. Farmers market vendors with questions about whether they need a retail food establishment license should refer to their local county health department and the Food Law Library on the OSU Extension Farm Office's website at: <https://farmoffice.osu.edu/our-library/food-law>.

What if I want to sell products in other states?

Just like our own state, Ohio's neighboring states do not require the collection of sales tax on fresh fruits and vegetables; however, the states may vary on just about any other product such as fresh cut flowers. Pennsylvania, West Virginia, Kentucky, Indiana, and Michigan each has its own set of rules that must be followed in order for a vendor to legally sell products in that state.

Because each state has unique laws and rules, farmers market vendors who travel outside of Ohio to sell their goods should contact that state's department of taxation to learn about its vendors license and sales tax requirements. Farmers market vendors may first want to talk to the farmers market organizer in that state or the relevant county auditor/tax assessor about the state's requirements. See the "Resources" section of this law bulletin for some additional resources.

Can vendors include sales tax in the price of the product?

Ohio law allows the state tax commissioner to authorize certain vendors to prepay sales taxes and then include the sales tax in the price that the consumer pays. Generally, the price listed on a product does not include tax and the customer must calculate the additional tax or wait until the checkout to know the ultimate price with tax. However, there are some transactions where the state recognizes that this is impracticable.

Unfortunately, the average farm market vendor is unlikely to qualify for prepayment of sales taxes. The Ohio Department of Taxation authorizes predetermined and prearranged authority. Predetermined authority is available to vendors whose business would make the collection of tax difficult to administer and risk frequent non-compliance, such as vending machines and large spectator events. Prearranged authority applies to licensed food service operations. For more information, contact the Department of Taxation.

Do I need to pay sales tax on my purchases relating to my farm or food business?

Whether a farmer must pay sales taxes on purchases depends upon the reason for purchasing the item. Farmers are exempt from paying sales taxes on items that are somehow incorporated into or used in the production of an agricultural product as described in Ohio Administrative Code § 5703-9-23. This is the exemption that allows farm businesses to request payment back from the Ohio Department of Taxation for taxes paid on gasoline and diesel fuel that is used off-road for farm production.

While this exemption has led many to believe that farmers are exempt from having to pay sales taxes, farmers are not totally exempt because of the incorporation and use requirements. Sometimes this means that farmers are not charged sales taxes when they should have been charged. This is common at agricultural supply stores and with online purchases. When the farmer is the end user of the item, the sales tax must be paid.

In this case, the farmer is supposed to send a voluntary payment of the amount due to the Ohio Department of Taxation along with a description of the purchase and the date. The farmer can also report the information on his or her income tax return, or file an Ohio Use Tax Voluntary Payment Form. See the Resources section of this law bulletin for a link to the Ohio Use Tax Voluntary Payment Form, as well as the References section for more resources about Ohio's Agricultural Sales Tax Exemption.

Final thoughts to ensure compliance with Ohio law

The vendor has the responsibility to ensure his or her compliance with Ohio's laws regarding licensing and sales tax collection. Nonetheless, a best practice for farmers markets would be to include in the organization's bylaws or rules a requirement that vendors comply with Ohio laws. Specifically, the bylaws or rules could address vendors who need a license and address when and how sales tax should be collected and paid. Since not all vendors will think about the tax aspect of selling their products, including such information and requirements in the farmers market bylaws or rules would at least provide all vendors with notice that they should determine whether or not they need a license and to collect sales tax.

Ultimately, all farm direct marketers should research their specific products to ensure that they are in compliance with the law. It is better to spend a little time up front determining whether the vendor needs a license and to collect sales tax,

than to find out after the fact and face fines or other penalties.

While this law bulletin covers vendor's licenses and sales taxes fairly in depth, there is always more to learn. The following resources provide additional information for those looking to sell their products at a farmers market. First are resources from the Ohio Department of Taxation's website. These discuss Ohio's sales and use tax, when it must be collected, how to apply for a vendor's license, and more. Second are a number of first stop resources from Ohio's neighboring states for those farmers market vendors who wish to sell beyond Ohio's borders. Third are some additional references used in creating this law bulletin.

Resources

- Ohio Department of Taxation
 - *Sales & Use Taxes*, Ohio Department of Taxation, https://www.tax.ohio.gov/sales_and_use.aspx.
 - *FAQs – Sales & Use Tax: General Information*, Ohio Department of Taxation (under the "Category" drop down menu, select "Applying the Tax: What Is and Isn't Taxable") https://www.tax.ohio.gov/sales_and_use/faqs/sales_basics/tabid/3095/Default.aspx?QuestionID=424&AFMID=9887.
 - "ST 2004-01 – Food Definitions," Ohio Department of Taxation (revised 2015) https://www.tax.ohio.gov/portals/0/sales_and_use/information_releases/st200401.pdf.
 - *License & Filing Requirements*, Ohio Department of Taxation, https://www.tax.ohio.gov/sales_and_use/license.aspx.
 - *Register for a Vendor's License*, Ohio Department of Taxation, https://www.tax.ohio.gov/sales_and_use/registration.aspx.
 - "Ohio Use Tax Voluntary Payment Form," Ohio Department of Taxation, https://www.tax.ohio.gov/portals/0/forms/sales_and_use/generic/st_vpuse.pdf.
- Out-of-State Resources
 - Indiana
 - "Farmers Market Vending: A Guide for Indiana Specialty Crop Producers," Indiana Cooperative Development Center, Purdue Extension, page 18, <https://www.cdext.purdue.edu/wp-content/uploads/2016/03/indiana-farmers-market-vending.pdf>.
 - "Information Bulletin #29: Sales Tax on Sales of Food," Indiana Department of Revenue (2016) <https://www.in.gov/dor/reference/files/sib29.pdf>.
 - *Farmer's Markets/Value Added Foods*, Indiana State Department of Health Food Protection Division, <https://www.in.gov/isdh/21054.htm>.

- Kentucky
 - “Kentucky Farmers’ Market Manual and Resource Guide 2018-2019,” Kentucky Department of Agriculture, page 39, http://www.kyagr.com/marketing/documents/FM_Manual_and_Resource_Guide.pdf.
 - “Sales and Use Tax: Application to Kentucky Farmers,” University of Kentucky Cooperative Extension Service (1993) https://www.uky.edu/Ag/AgEcon/pubs/aec_ext105.pdf.
- Michigan
 - *Food Sales at Farmers Markets: FAQ*, Michigan Department of Agriculture & Rural Development, https://www.michigan.gov/mdard/0,4610,7-125-1568_2387_46671-169336--00.html.
 - *Licensing at Farmers Markets – Detailed Information*, Michigan Department of Agriculture & Rural Development, https://www.michigan.gov/mdard/0,4610,7-125-1569_16958-169359--00.html.
 - “Revenue Administration Bulletin 2009-8: Sales Tax – Food for Human Consumption,” Michigan Department of the Treasury (2009) https://www.michigan.gov/documents/treasury/RAB_2009-8_Food_for_Human_Consumption_Oct_09_299470_7.pdf.
- Pennsylvania
 - *Farmers Markets*, Pennsylvania Department of Agriculture Consumer Protection Division, https://www.agriculture.pa.gov/consumer_protection/FoodSafety/Retail%20Food/Pages/Farmers-Markets.aspx.
 - “Farm Market Guide to Licensing and Sales Tax,” Pennsylvania Department of Agriculture (2014), https://www.agriculture.pa.gov/consumer_protection/FoodSafety/Retail%20Food/Documents/Farmers%20Market%20Guide%20to%20Licensing%20and%20Sales%20Tax.pdf.
 - *Sales, Use, and Hotel Occupancy Tax*, Pennsylvania Department of Revenue, <https://www.revenue.pa.gov/GeneralTaxInformation/Tax%20Types%20and%20Information/SUT/Pages/default.aspx>.
 - “Retailer’s Information: State and Local Sales, Use, and Hotel Occupancy Tax,” Pennsylvania Department of Revenue, page 20 (2016) <https://www.revenue.pa.gov/FormsandPublications/FormsforBusinesses/SUT/Documents/rev-717.pdf>.
- West Virginia
 - *Farmers’ Market*, West Virginia Department of Agriculture, <https://agriculture.wv.gov/divisions/marketinganddevelopment/Pages/Farmers'-Market.aspx>.
 - “2018-2019 Farmers Market Vendor Guide,” West Virginia Department of Agriculture, [https://agriculture.wv.gov/divisions/marketinganddevelopment/Documents/Farmers%20Market%20Vendors%20Guide_12.3.18%20\(003\)%20\(02\).pdf](https://agriculture.wv.gov/divisions/marketinganddevelopment/Documents/Farmers%20Market%20Vendors%20Guide_12.3.18%20(003)%20(02).pdf).
 - *Sales and Use Tax*, West Virginia State Tax Department, <https://tax.wv.gov/Business/SalesAndUseTax/Pages/SalesAndUseTax.aspx>.

References

- Ohio Sales Taxes Generally
 - Ohio Revised Code § 5739.02
- Including sales tax in price of the good
 - Ohio Revised Code § 5739.05
 - Ohio Administrative Code § 5703-9-08
- Agricultural Sales Tax Exemption
 - Ohio Administrative Code § 5703-9-23
 - Larry Gearhardt, “The Legal and Practical Aspects of the Agricultural Sales Tax Exemption,” Ohio State University Extension (2016) <https://farmoffice.osu.edu/blog/fri-02122016-123pm/legal-and-practical-aspects-agricultural-sales-tax-exemption>.
 - Chris Bruynis, “Ohio Sales Tax Exemption Rules,” *Factsheet OAM-2*, Ohio State University Extension (2012) <https://ohioline.osu.edu/factsheet/OAM-2>.
- SNAP Purchase Sales Tax Exemption
 - Ohio Administrative Code § 5703-9-48
 - *Retailer Sales Tax Notice*, USDA Food and Nutrition Service, <https://www.fns.usda.gov/snap/retailer-sales-tax-notice>.
 - “What Can SNAP Buy?,” USDA Food and Nutrition Service (2017) <https://www.fns.usda.gov/snap/eligible-food-items>.

FOR MORE INFORMATION FROM OSU EXTENSION’S AGRICULTURAL & RESOURCE LAW PROGRAM:

- Visit our website at <http://farmoffice.osu.edu>.
- Sign up at <http://farmoffice.osu.edu/blog> to receive our blog postings by e-mail with timely articles on legal issues of importance to Ohio agriculture.
- Contact us by e-mail at aglaw@osu.edu.