

## **Agricultural Equipment Exemption**

Presented Issue: The committee would like to increase the nonagricultural use of the agricultural equipment exemption above 4%.

Current State: The 4% mirrors the manufacturing exemption and is a rebuttable presumption. The tax regulations provide detailed guidance and examples of what meets this requirement (see below for statute and regulations). Changing the percentage is unlikely to significantly impact enforcement.

Actual Issue: The agricultural equipment exemption requires one exemption certificate for each piece of machinery purchased. Some retailers applied one exemption certificate to all machinery purchased, which caused auditing problems.

Recommendation: Tax is working on the exemption certificate to make the requirement of a certificate per purchase more clear. Tax believes that this, along with outreach and education will help solve the issues the committee has identified.

If the committee would like to clarify the exemption further, Department of Tax recommends changing the regulations, where there is detailed information about the exemption. Tax may be able to add language clarifying that work for the public good is exempt(?).

### Statute

32 VSA § 9741(25) provides that the following sales are exempt:

“[s]ales of agricultural machinery and equipment for use and consumption directly and exclusively, except for isolated or occasional uses, in the production for sale of tangible personal property on farms (including stock, dairy, poultry, fruit, and truck farms), orchards, nurseries, or in greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities for sale. **It shall be rebuttably presumed that uses are not isolated or occasional if they total more than four percent of the time the machinery or equipment is operated.**”

### Regulations

Reg. § 1.9741(25)-3 Direct and Exclusive Use

For agricultural equipment and machinery to qualify as being used “directly and exclusively” in production for sale of tangible personal property on a farm, it must be used solely for farm purposes except for isolated or occasional uses such as limited production for personal consumption. It shall be rebuttably presumed that uses are not isolated or occasional if they total more than four percent of the time the machinery or equipment is operated. The exemption status is dependent upon the actual use of such machinery and equipment; the machinery and equipment is not exempt solely on the basis that it is used on a farm.

**Reg. § 1.9741(25)-4 Examples of Direct and Exclusive Use**

Machinery and equipment in the following categories are directly and exclusively used in an agricultural operation, and the purchase or use of such property is exempt from tax:

1. Machinery and equipment used to cause other property to become a constituent or component of a farm product, or used to cause other property to be consumed by productive animals or to foster plant growth; equipment used to feed and water livestock and to administer medication to livestock, and machinery and equipment used to maintain sanitary conditions or health conditions in the immediate area of agricultural production;
2. Machinery and equipment used to test and inspect the agricultural product during the actual farm production cycle;
3. Machinery and equipment used in agriculture to handle and preserve agricultural products upon the premises, and to prevent or deter the destruction, injury or spoilage of agricultural products, livestock or plants. This category includes but is not limited to property such as automatic cattle oilers used to groom farm animals so as to preserve their health, manure gutter cleaners, refrigerating devices used upon the premises to cool raw milk or to preserve perishable vegetables or other agricultural products, but does not include items such as fences, silos, and barns;
4. Machinery and equipment used to extract or separate an agricultural product from livestock, the soil or plants, including but not limited to harvesters, combines, binders, forage blowers, milking equipment, egg collecting equipment, pickers and feed handling equipment;
5. Replacement parts used to replace worn parts upon exempt machinery and equipment including but not limited to motors, belts, screws, bolts, cutting edges, tractor batteries, tractor tires, and air filters or gears;
6. Machinery and equipment used to convert animal waste or other farm byproducts into energy when that energy is used for agricultural purposes, except for isolated or occasional uses not to exceed four percent of total usage. Note, however, that machinery and equipment used to convert animal waste or other farm byproducts into energy for sale at retail may be exempt under the manufacturing exemption. See 32 V.S.A. § 9741(14); Reg. § 1.9741(14).

**Reg. § 1.9741(25)-5 Machinery and Equipment Not Directly and Exclusively Used**

Machinery and equipment in the following categories are not directly and exclusively used in an agricultural operation, and the purchase or use of such property is subject to tax:

1. Machinery and equipment used in some manner prior to the actual commencement of production or in some manner after production has terminated, including, but not limited to machinery and equipment used to collect, convey, or transport property prior to its use in the actual agricultural operation, and storage facilities or devices used to store property such as sheds, barns, or silos;

2. Machinery or equipment purchased or used by one engaged in agriculture for use in the construction, reconstruction, alteration, remodeling, servicing, repairing, maintenance, or improvement to real estate, even though the structure may house or otherwise contain equipment or other facilities used directly and exclusively in agriculture;
3. Machinery or equipment purchased or used for land reclamation, land clearing, landscaping, and similar activities that are intended to improve or preserve real estate;
4. Machinery and equipment predominately used in maintaining facilities, including, but not limited to equipment used in general cleaning and maintenance of agricultural property, chain hoists, welding equipment, sprayers, and oilers;
5. Property used in managerial, marketing and sales or other non-operational activities including, but not limited to office furniture, supplies and equipment, textbooks and other educational materials, books and records, and all other property used in agricultural administration and management, and machinery and equipment used in advertising agricultural products for sale;
6. Property used in the exhibition of agricultural products or agricultural operations including, but not limited to blankets, halters, prods, leads, harnesses, dressings, ribbons, clippers and similar show or grooming and display equipment;
7. Property used to prevent or fight fires and equipment and supplies used for safety, accident prevention or first aid programs, even though such equipment or property is required by law;
8. Property used for the personal comfort or convenience of a person engaged in agriculture, or his or her family, employees, or business associates, such as beds, mattresses, blankets, tableware, stoves, refrigerators, and other equipment used in conjunction with the operation of a migrant labor camp, or facilities for agricultural employees;
9. Machinery and equipment used in making butter, sausage, canned goods, jellies, flour, juices, cheeses, ice cream and other like items. Note, however, that such machinery and equipment may be exempt under the manufacturing exemption. See 32 V.S.A. § 9741(14); Reg. § 1.9741(14);
10. Machinery and equipment used solely to control odor or to remove pollutants is not exempt, notwithstanding that its use may be required by law, when such equipment is not used in the immediate area of agricultural production to maintain sanitary or health conditions. See Reg. § 1.9741(25)-4(1).