

House Agriculture and Forest Products – List of Concerns

May 5, 2015

Introduction – Past Issues

One of the issues that has caused problems with the purchase/sale of agricultural machinery and equipment in recent years is misuse of the agricultural exemption certificate. The agricultural machinery and equipment exemption is a use-based exemption – the intended use of each individual piece is relevant. Therefore, a separate exemption certificate explaining the intended use must be provided for each piece of machinery or equipment purchased.

What is the agricultural machinery and equipment exemption? The machinery or equipment must be used “directly and exclusively” in production of agriculture for the sale of tangible personal property. 32 V.S.A. § 9741(25). As defined in statute, “not direct and exclusive” is if it is used for other purposes more than 4% of the time the machinery or equipment is operated. 32 V.S.A. § 9741(25).

Statute states that for something to be exempt under this exemption, it must be used directly and exclusively. We define directly and exclusively in our regulation (last updated in 2010).

Sales and Use Tax

1. Does item fall within one of the statutory categories and is item typically used in agriculture – items are not typically used for agriculture when they are more commonly used for non-farming activities.
 - a. If it is an item typically used in agriculture, the items is ALWAYS exempt.
 - b. If it is an item typically NOT used in agriculture, but will be used in agriculture, then it is exempt with a properly executed exemption certificate.
 - c. If the item does not fall into one of the categories in the agriculture exemption, it is NEVER exempt as an agricultural supply.
2. Fertilizer and pesticides are only exempt if they are used to produce tangible personal property for sale on farms.
 - a. This falls into the SOMETIMES category. These items are only exempt if a properly executed exemption certificate is provided to the seller.
3. Protective gear is taxable.
 - a. Protective equipment is explicitly excluded from the definition of clothing by statute. 32 V.S.A. §9741(45). By excluding it from the definition of clothing, it is subject to sales tax.
4. Items used for producing crops, dairy products, maple syrup, or raising livestock are exempt.

Items That Need Addressing

1. Grass seed used to produce forage that is used in production should not be taxable.
 - a. Grass seed is not typically used in agriculture and is therefore not exempt.

- b. Grass seed sold to a turf farmer would be exempt with a properly executed exemption certificate.
 - c. Grass seed blends that are specifically created for foraging have been, as a matter of practice, exempt.
- 2. Maple sugar equipment should be exempt.
 - a. If the equipment is used directly and exclusively for producing maple syrup *for sale*, it is exempt.
 - b. If it is NOT directly and exclusively used, or if it is used to produce maple syrup for personal use, it is not exempt.
- 3. Gates used inside barn should be exempt – gate used outside should be treated the same.
 - a. Gates are not directly used in producing an agricultural product for sale and are therefore not exempt.
 - b. The exempt category “does not include such items as fences, silos, barns, and other like items.” This language was originally enacted in 1974 and remains the in the current regulation.
- 4. Free stalls should be exempt.
 - a. Free stalls are not directly used in producing an agricultural product for sale and are therefore not exempt.
 - b. The exempt category “does not include such items as fences, silos, barns, and other like items.” This language was originally enacted in 1974 and remains the in the current regulation.
- 5. Fencing supplies are an essential part of production – they should be exempt.
 - a. Fencing supplies are not directly used in producing an agricultural product for sale and are therefore not exempt. Reg. § 1.9741(25)-4(3).
 - b. The exempt category “does not include such items as fences, silos, barns, and other like items.” This language was originally enacted in 1974 and remains the in the current regulation.
- 6. Cattle feeders and round bale feeders should be exempt.
 - a. Cattle and round bale feeders ARE exempt under Reg. § 1.9741(25)-4(3).
- 7. Handkerchiefs are taxable – why?
 - a. These are listed as a “clothing accessory” under 32 V.S.A. § 9741(25)(E). Clothing accessories are specifically excluded from the clothing exemption, and therefore subject to sales tax.
- 8. Manure spreaders are taxable if used to stack manure – why?
 - a. The Department is not aware of any issues regarding manure spreading. The Department would generally not question whether a manure spreader is being used directly and exclusively in the production of an agricultural product for sale.
- 9. Tax exempt forms are confusing. There are several different forms – these forms should be consolidated and checked box entries provided so that one form would cover more than one exemption.

- a. There are many tax exemptions and they all have specific complexities. The Department recently revised some of its key exemption certificates and is finalizing the S-3A (Ag certificate).
 - b. Putting them on one form would result in an incredibly long and likely confusing form and instructions.
10. Business owners [sellers] are responsible for knowing how product is to be used by purchaser; if purchaser signs exemption form than the responsibility of how that product is used remains with purchaser.
- a. Retailers are given by the state the authority to grant exemptions to its customers that qualify. In exchange for this authority, the retailers are required to exercise good faith in the granting of exemptions. If a purchaser claims they are entitled to an exemption and the retailer does not know or have any reason to suspect that the purchaser is not entitled to the exemption, the retailer can accept the certificate in good faith and will be held harmless. If a reasonable person would know or would have reason to suspect that the purchaser is not entitled to the exemption claimed, the acceptance of a certificate is not in good faith and the retailer may be held liable.
11. There needs to be clarity as to the frequency exemption forms needs to be completed; what is the life of a blanket form? Identify the reason a new form needs to be filled out on any individual purchase.
- a. As part of our effort to update our S-3A, we make it clear on the form which purchases require a new certificate.
 - b. When a taxpayer is going to buy the same types of products and use them the same way repeatedly (fertilizer and pesticide, for example), a multiple purchase exemption certificate may be provided.
 - c. For exemptions that are being claimed based on the use of the product (machinery and equipment), an exemption certificate must be provided for each product based on how that product will be used.
 - d. There is currently no expiration of exemption certificates, but retailers are encouraged to review and obtain current exemption certificates periodically.
12. Clearly identify what merchant is required to have on file for items that can be considered both taxable and non-taxable depending on use. Examples include wood pellets, propane, fertilizer, etc. If a merchant sells a single bag of 10-5-10 for growing vegetables is the merchant responsible for maintain that exemption file?
- a. If a product may taxable or non-taxable depending on use, the retailer should have an exemption certificate on file for that product from the purchaser.

Tax Department Procedure

- 1. At least some auditors should have a background in what is Vermont agriculture and how it operates. A basic acknowledgement by the department that grass seed is used in the production of dairy products should be a minimum requirement.
 - a. We have 16 field auditors covering the entire state – which works out to about 1 auditor for every 2,000 sales and use taxpayers. Our auditors must have a wide range of knowledge since they are tasked with all tax types. Some auditors do have agriculture background, but

they must work within the statutes as they exist.

2. Auditors should keep their appointments or notify those being audited of any change. There seems to be a common theme of auditors not being on time or not showing up at all once a scheduled appointment is made.
 - a. We agree about the importance of keeping scheduled appointments or notifying a taxpayer of schedule changes. When these issues have come up, we have addressed it with the individual involved as a performance matter.
 - b. We have also started work with HR to create a training that specifically focuses on home-based employees (field auditors).
3. Testimony before our House Ag committee acknowledged that it may take over three years to complete an audit; that appears to be an excessive amount of time under normal circumstances.
 - a. Three years is an excess time to complete an audit under normal circumstances. We are taking steps to expedite the process with a new SOP. The SOP will address timeline and expectations on both the Tax Department and the taxpayer for correspondence and next steps in an audit.
4. Once an audit has started, there should not be long lapses of time when there is no correspondence between those being audited and the Tax Department. Our committee received testimony that in more than one case, there was no correspondence from the Tax Department for more than nine months.
 - a. We agree that long lapses of no communication should not be happening. Our new ITS allows for better tracking of open audits and appeals. This tool will allow for supervisors to keep track of accounts that need follow up and will remind auditors each morning. This is a tool that we have not previously had.
5. The Tax Department should establish procedures for workshops to inform merchants on how to implement the VT Sales and Use Tax.
 - a. We attend many industry events throughout the year – NOFA, Farm Show, Chamber Expo, etc. Our education specialists are on hand to answer questions and point folks in the right direction.
 - b. We are open to doing more workshops, but in the past they have not been well attended. Perhaps a partnership with other organizations could help with attendance (or webinars).
6. The Tax Department maintains a website; it needs to be updated as needed and should serve as a great tool for the merchant. The information on the website should mirror audit format.
 - a. We are actively working to create a new website. We have a full time staff member focusing on updating the website and relaunching it with the new template (see the Speaker’s site as an example).
 - b. On this website, we anticipate having sections for “unique” business situations and envision there being an agricultural section. This new website is modern and easy to update, so we will not have the same issues as we do on our current site.

We all need to recognize that the merchant is providing a service for the state and is not reimbursed for his/her time and expense. He/she should be thanked for that. That does not mean merchants should not follow the intent of the law and cooperate with auditors; it does mean that we all should treat each other with respect.