

AGRICULTURE SALES AND USE TAX

The House Agriculture and Forest Products would like to recognize and thank the Vt. Tax Dept. for working with our committee over the last two years to clarify language and guidelines regarding the the Vt. Agriculture Sales and Use Tax.

Before we get to our proposed changes we need to start with a brief history as to where we started and the route we traveled to get to these proposals.

In the past, many of us on the House Ag & Forest Products Committee have had difficulty understanding how Sales and Use tax was applied in the agriculture community. When the Vt. Legislature [] authorized the hiring of additional field auditors and as those audits developed; our committee became more involved. Retail business owners contacted us individually and collectively , to ask for help and clarification. We found that businesses who dealt with the agricultural community; when audited; were being threatened with fines, interest charges, as well as paying to the state any sales tax that was not collected. Many business owners who collect the sales tax for the state at no charge, were assessed penalties totaling thousands of dollars.

Our committee learned the following about tax audits:

Appointments to meet with businesses were made, yet not always kept

Many auditors were late for appointments

Most businesses were told that audits would be for the previous 3 years

There was confusion about S 3 forms [exempt forms] and their use; our committee learned there were at least 12 versions of the S 3 form yet only 1 or 2 were used.

Businesses were expected to maintain S 3 forms; it was unclear to many businesses that S 3 forms had to be renewed

Many businesses were relying on bulletins received in 08 – 09 era and had no updates

The website was poorly maintained and difficult to interpret

There was very little outreach and education to businesses

Businesses were responsible to pay [and not the purchaser] if audits exposed unpaid sales tax

Once auditors made a contact to the business owner they were told the process would take up to a few weeks; in reality; some audits have lasted several years.

Early on, our committee realized that there was confusion on the tax departments understanding of what should be taxed. Current statues use the term direct or direct and exclusive when relating to exemption of machinery and equipment used in agriculture production. The tax department , in their audits, were taxing items such as grass seed, gates, free stalls, fencing, and nursery materials used to grow, maintain and make ready for sale certain greenhouse items. In addition there was confusion on how the 96% rule was interrupted. The 96% rule, presently in current statue, states the item purchased may be exempt only if it is used a minimum of 96% of the time in agricultural production. The tax department said that such items as fencing;and equipment used to clean free stalls or plow snow; such as skidsteers, were taxable; our committee felt such items were directly used in agriculture production and were tax exempt.

Mr. Speaker, this past summer our committee asked the Agency of Agriculture to coordinate visits to farms so that the Tax Dept. could better understand the term agricultural production as it applies to our Vermont agriculture. Two visits were completed. Your House Ag and Forest Products Committee would like to thank the Agency and the Tax Dept for arranging and completing these visits which resulted in a much better informed and knowledgeable tax department; our committee was enlightened as well.

After numerous meetings with the Tax Department we have agreed to several changes. These include the revision of the S-3A exemption certificate that clarifies agricultural fertilizers, pesticides, supplies, machinery and equipment that are exempt from sales tax. The exemption certificate; which is to be retained by the seller for a minimum of three years; that is accepted in good faith by the seller, relieves the seller of liability for tax due. This certificate also clearly states that it must be renewed every three years. The S-3A form lists exemptions of agricultural supplies and fees as well as noting those items that are not tax exempt such as grass lawn seed, flowering plants and pet food. These changes

have been agreed on by the Tax Department and can be made without statutory change and your House Committee on Agriculture and Forest Products supports these changes.

Now let's look at changes made on House Bill found on page of today's journal. This Bill refers to 32 VSA, subsection 9741. Section 9741, titled SALES NOT COVERED, identifies sales that should be exempt from tax on retail sales, and section 9771 identifies those items that should have a sales tax imposed, and section 9773 identifies where the use tax should be imposed.

Section 3 [A] proposes changes by deleting the words – breeding and other livestock and replacing that with the words replacement livestock; deletes the words semen breeding fees and suggests new language of semen, liquid nitrogen and breeding supplies. It also proposes new language adding the words-washing, cleaning, and sanitizing supplies.

A new section B changes the word DIRECTLY to the word PREDOMINATELY; so the new wording would read: Fertilizers and pesticides for use and consumption predominantly 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.

Line 25 ?? which relates to agricultural machinery and equipment for use and consumption in the production for sale of tangible personal property on farms etc; deletes the words –DIRECTLY and exclusively, except for isolated or occasional uses;-- and replaces those words with the word predominantly. The last sentence in this section which reads“ It shall be rebuttably presumed that uses are not isolated or occasional if they total more than four percent of the time the machinery and equipment is operated is deleted.

Mr. Speaker; our committee also recommends replacing the words ‘directly and exclusively’ with the term predominately as it refers to the sale of electricity, oil, gas, and other fuels as used for farming purposes as set forth on line 27??

The PURPOSE is redefined as shown in Section 2. New wording is proposed to read:

This Act replaces the requirement that an item be used “directly’ or ‘indirectly and exclusively” in the production of tangible personal property on farms to qualify for a sales and use tax exemption with a requirement that the item be used “predominantly” in the production for sale of tangible personal property on farms in order to qualify for an exemption. The changes also remove the requirement that machinery and equipment be used 96 per cent of the time for farming purposes to be exempt. It is the intention of the General Assembly to clarify that certain agricultural items are exempt from Vermont’s sales and use tax; including items that are used less than 96% of the time for farming.

The effective date of this act is July 1; 2016