## FYI - For Your Information

# Special Regulation: Agricultural Producers

## LIMITED FARM EQUIPMENT EXEMPTIONS

Effective July 1, 1999, and as modified effective July 1, 2000, a sales tax exemption is provided for certain qualifying farm and ranch vehicles and certain other items when used in qualifying activities. All these exemptions apply to state sales and use tax only, and are not available for RTD tax or local taxes unless specifically adopted by the taxing authority.

The activities qualifying for exemption are agricultural, viticultural, fruit, vegetable, milk, honey, poultry, egg and livestock production. Livestock means cattle, horses, mules, burros, sheep, lambs, poultry, swine, ostrich, llama, alpaca and goats or other animal raised for food, fiber or hide production, and alternative livestock under §35-41.5-102, C.R.S. but not pet animal as defined in §35-80-102(10), C.R.S.

An "agricultural commodity" means any agricultural commodity as defined in §35-28-104(1) C.R.S. except that, for purposes of this sales tax exemption, "agricultural commodity" shall also include sugar beets, timber, and timber products, oats, malting barley, barley, hops, rice milo, and other feed grain.

While the broad term "farm equipment" is used in the exemption statute, only non-registered vehicles, trailers and towables are included as exempt. The exemption law defines farm equipment to be farm tractors and implements of husbandry as defined in motor vehicle statutes. These motor vehicle definitions are based on the segregation of vehicles into registered and non-registered classifications.

"Farm tractor" means every motor vehicle which is designed and used as a farm implement, and "implement of husbandry" means every vehicle that is designed, adapted or used for agricultural purposes. Thus, other than irrigation equipment, no fixed equipment is exempt, regardless of how movable or how often it is moved. Where plants, crops or livestock are brought to the equipment, the equipment remains taxable. [§§42-1-102(33) and 42-1-102(44) C.R.S.]

Vehicles taken into fields, corrals, etc., and moved about on the land to perform work with plants, crops or livestock are the items considered for exemption, with the other restrictions as noted below. Any vehicle licensed for highway use is disqualified.



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PAGE 1 OF 4 SALES 13 (10/02) The purchased or leased property must be used directly and primarily on a farm, ranch or at a "livestock production facility." It cannot be used incidentally for agricultural use, and not for janitorial, building maintenance, office, sales, distribution (even of farm products), research or transportation use. A "livestock production facility" means any structure used predominantly for the housing, containing, sheltering, or feeding of livestock, including, without limitation, barns, corrals, feedlots, and swine houses. [§39-26-102(5.7)].

NOTE: Materials to construct barns, corrals, feedlots, etc., are **not** exempt from taxation.

For farm equipment to be exempt, there must be primary use with plants or livestock produced for profit. It does not include, for example, home gardens with incidental sales, weed mowing, petting zoos, stables for pleasure riding, trail riding or pack use of horses, mules, llamas, polo horses, etc.

The purchase must be qualifying "farm equipment":

- Irrigation equipment having a per unit purchase price of at least \$1,000,
- Vehicles that qualify as implements of husbandry are those vehicles that are exempt from registration and are designed, adapted or used for agricultural purposes. An example would be a feed truck. Trailers designed to carry this equipment are also implements of husbandry,
- Attachments to exempt farm tractors or implements of husbandry that are machinery and equipment that aid or enhance the performance of the tractor or implement,
- Bailing wire, binders twine, surface wrap and, from July 1, 2000, pallets, from July 1, 2001 crates or similar items,
- Aircraft designed or adapted to undertake agricultural applications, but the agricultural application use must be the primary use and not merely incidental to a farm operation from July 1, 2000,

- Parts for maintenance and repair of the farm equipment that qualifies for exemption from July 1, 2000.
- Dairy equipment used at a dairy farm (and not in commercial milk production) qualifies for exemption from July 1, 2001.

Exemption equipment also includes hay balers, hay stacking equipment, combines, tillage and harvesting equipment, and other heavy movable farm equipment primarily used on farms and not on highways. Trailers specially designed to move such equipment on highways are considered component parts of such implements of husbandry. [§42-1-102(44) C.R.S.]

The purchase is not exempt if it is subject to registration as a vehicle under §42-3-103, C.R.S. or if its use is incidental to farm, ranch or livestock production facility operation.

Leased farm equipment that otherwise qualifies under the above restrictions must have a fair market value of at least \$1,000 in order to qualify for the exemption.

#### AFFIDAVIT REQUIRED

Buyers must sign and complete the affidavit specified by the Director, testifying to their qualification for exemption. The form version dated 08/00 or later must be used for purchases after July 1, 2000. Vendors must retain the affidavit for three years from the date they file that month's sales tax return. The department may request copies of such affidavits at any time during that three year period. Buyers remain liable for tax, interest and any applicable penalties if the purchase is used in a manner that does not qualify for the exemption.

## SALES AND USE TAX EXEMPTION ON PESTICIDES

Effective July 1, 1999, purchases of pesticides or other substances registered by the Colorado Commissioner of Agriculture as agricultural use pesticides under the Pesticide Act (C.R.S. 39-9-101 et. Seq.) are exempt from state sales and use tax and any special district sales and use tax when purchased from a dealer licensed and registered under section 35-9-115 of the act.

Substances not registered for agricultural use are taxable and any purchase from a non-registered dealer is taxable.

Licensed pesticide dealers can inform their customers about pesticides that are registered under the Pesticide Act. And any pesticide qualified for agricultural use will have a statement on the packaging in the "Worker Protection Box," or in the "Directions for Use."

Contact the Colorado Department of Agriculture, to obtain the "Restricted Use Pesticides Dealers List."

This exemption applies to state sales and use tax only. Unless cities and counties have adopted an ordinance or resolution to exempt pesticides, local taxes are due on the purchase or sale of pesticides. Refer to "Colorado Sales/Use Taxes" (DRP 1002), published by the Department of Revenue to determine if a city or county has allowed this exemption. "Home-rule" cities are also listed in the DRP 1002. Some home-rule cities enact their own sales tax ordinances and collect their own taxes. Contact home-rule cities directly for their rules regarding sales taxes.

## SALES AND USE TAX EXEMPTION ON AGRICULTURAL COMPOUNDS

Effective July 1, 1999, all sales and purchases of agricultural compounds that are consumed by, administered to, or otherwise used in caring for livestock are exempt from Colorado state sales and use tax; state-collected local sales and use tax and any special district sales and use tax. This exemption also applies to all sales and purchases of semen for agricultural or ranching purposes.

"Agricultural compounds" means:

- Insecticides, fungicides, growthregulating chemicals, enhancing compounds, vaccines, and hormones;
- Drugs, whether dispensed in accordance with a prescription or not, that are used for the prevention or treatment of disease or injury in livestock; and
- Animal pharmaceuticals that have been approved by the Food and Drug Administration.

The exemption for these compounds only applies to using the compounds in caring for livestock. Any of these compounds may be taxable when used in agriculture, unless exempted under another specific provision.

Home-rule/self-administered cities enact their own sales tax ordinances and collect their own taxes. Contact these cities directly for rules regarding sales taxes. For a list of home-rule cities, refer to "Colorado Sales/Use Taxes" (DRP 1002).

#### **GENERAL ISSUES**

"Agricultural producer" means a person regularly engaged in the business of using land for the production of an agricultural commodity or livestock. The term includes persons engaged in agricultural, viticultural, fruit, vegetable, milk, honey, poultry, egg and livestock production. Livestock means cattle, horses, mules, burros, sheep, lambs, poultry, swine, ostrich, llama, alpaca and goats or other animal raised for food, fiber or hide production, and alternative livestock under §35-41.5-102, C.R.S. but not pet animal as defined in §35-80-102(10), C.R.S.

An "agricultural commodity" means any agricultural commodity as defined in §35-28-104(1) C.R.S. except that, for purposes of this sales tax exemption, "agricultural commodity" shall also include sugar beets, timber, and timber products, oats, malting barley, barley, hops, rice milo, and other feed grain.

"Agricultural producer" does not include a person who breeds or markets animals, birds, or fish for domestic pets nor a person who cultivates, grows, or harvests plants or plant products primarily for his own consumption.

Containers, crates, pallets, labels, and furnished shipping cases purchased by an agricultural producer are not subject to tax. "Containers" and "shipping cases" that are exempt when sold to agricultural producers include wire, twine, rope, tape, and similar binding materials, together with any other material or product used to wrap, bag, bundle, or similarly contain products.

Fertilizer purchased by an agricultural producer is not subject to tax. "Fertilizer" includes compounds of nitrogen, phosphorus, potassium, trace elements or similar materials or substances which provide essential plant food elements and which become ingredients of the growing plant. "Fertilizer" does not include soil, sand, peat moss, limestone, mulches and similar materials primarily used to condition the soil or to preserve or facilitate plant growth, regardless of incidental nutritive value; therefore, purchases of such things are taxable.

**Note:** Form DR 0511 Colorado Sales Tax Exemption for Farm Equipment Affidavit referenced in this FYI is located on the Web at *www.taxcolorado.com*