

New Jersey Sales and Use Tax Requirements For Agriculture

Fact Sheet FS1099

Cooperative Extension

Peter Nitzsche, Rutgers Cooperative Extension of Morris County, Stephen Komar, Rutgers Cooperative Extension of Sussex County, and Robert Bruch, Agricultural Economic Development, NJ Department of Agriculture

Introduction

New Jersey agricultural producers are fortunate to enjoy some of the most progressive agricultural legislation in the country. These laws are in place to protect responsible commercial agricultural producer's rights to pursue an agricultural enterprise. Regulations are in place not only protecting a farmer's right to farm, they also provide certain tax privileges for agricultural operations.

Agriculture is changing rapidly in New Jersey. Every year new small farms are started in the state. Many of these new agricultural producers are unaware of the tax benefits and protections afforded them by New Jersey law. Having a thorough understanding of agricultural regulations is an important component of a successful farming enterprise.

The following information is intended to give agricultural producers a basic understanding of NJ Sales and Use Tax law and how the exemptions to the law may impact their business. This information is not intended to replace professional advice from an accountant or NJ Division of Taxation representative.

Sales and Use Tax

For all consumers, New Jersey Sales and Use Tax imposes a tax of seven percent upon the receipts from every retail sale of tangible personal property and the sale of certain services, except as otherwise provided in the Act. This means that in New Jersey, most items and services performed upon tangible personal property are taxable. Some items are exempted by law, including most food intended for at-home or off-premises preparation and consumption, most clothing and footwear, disposable paper products for household use, prescription drugs, and over-the-counter drugs sold for relief of pain.

A use tax liability may be incurred when taxable goods or services are purchased for use in New Jersey but sales tax was not collected by the seller, or was collected at a rate less than the New Jersey tax rate. Thus, when taxable items delivered or used in New Jersey are purchased from Internet retailers or mail-order catalog companies that do not collect New Jersey sales tax, or purchased in states that do not impose sales tax, the purchaser is required to collect and remit use tax directly to the State of New Jersey. Businesses that are required to

collect and remit sales tax should report their use tax liability on the sales and use tax return. Businesses that are not "vendors" may use form ST-18B to report their use tax liability, if any, by May 1 of the year following the year when some use tax liability has been incurred.

Agriculture

For farmers producing agricultural or horticultural commodities for sale, purchases are subject to sales and use tax, or exempt, based on the specific circumstances of their use. *While purchases of certain items or services may be considered essential to the conduct of the business of farming, either by practical necessity or by law, this does not, in itself, mean that the property is exempt from sales or use tax.*

To be exempt from paying sales tax on a purchase, the item must be used by a farmer **directly and primarily** in the **production, handling and preservation for sale** of agricultural or horticultural commodities at a farming enterprise.

"Handling and preservation" means the care and maintenance of agricultural and horticultural commodities during production and up to the point when the commodity reaches a marketable state and the prevention of spoilage or deterioration of agricultural or horticultural commodities during and after production until they reach a marketable state.

Examples of Exempt Purchases

Farmers who produce agricultural or horticultural commodities for sale do NOT have to pay sales or use tax on:

- "farm equipment used for tilling, planting, maintaining or harvesting crops;

Purchases Subject to Sales or Use Tax

By law, farmers **must** pay sales tax on:

- pickup trucks and automobiles;
- energy;
- materials used to construct a building or structure, with the exception of greenhouses, grain bins, silos and manure handling facilities;
- all items purchased which are not used directly and primarily in the production, handling and preservation

RUTGERS

New Jersey Agricultural
Experiment Station

Rutgers, The State University of New Jersey
88 Lipman Drive, New Brunswick, NJ 08901-8525
Phone: 732.932.5000

New Jersey Sales and Use Tax Requirements For Agriculture

Fact Sheet FS1099

for sale of agricultural or horticultural commodities for sale on a farming enterprise;

- a contractor's purchase of tangible personal property to be installed on a customer's farm premises or consumed during the work performed by the contractor on that property;
- purchases of items used by a service provider in rendering services, regardless of whether the services rendered will be exempt; and,
- purchasing certain services including repairing farm equipment, janitorial services; landscaping, snow removal, maintenance services, repairing a greenhouse, imprinting stationery, painting or maintaining a barn, or repairing a farm truck.

Examples of taxable tangible personal property not used "directly" include:

- shop tools, equipment and supplies;
- record-keeping materials, advertising and promotion materials;
- computers and software;
- equipment uses to transport products to market or to customers, or in displaying products or in operating a store;
- first aid supplies and accident prevention equipment; or
- property used for personal comfort of the farmer, employees, or customers.

The Sale of Agricultural Commodities by Farmers

The sale of vegetables, fruit and other food items, including prepared foods, are exempt from sales tax if the item is intended for at-home or off-premises preparation and consumption. Agricultural commodities sold by farmers in the wholesale market or which will be resold are exempt from sales tax (except to landscapers). Most non-food items sold retail are subject to sales tax, such as nursery plants, flowers, and hard goods. Firewood is a fuel and is an exempt item. Pumpkins are considered a food item unless they are painted and sold as face pumpkins.

Agri-tourism sales activities conducted on a farm are considered operating a place of entertainment with regard to sales tax. An admission charge or charge to partake of an activity, such as a farm wagon ride, is subject to sales tax. However, when the purchaser of the taxable admission is a public school district or other exempt entity or organization that issues the farmer Form ST-5, then the sale of the admission will be exempt.

Farmer's Exemption Certificate (ST-7)

Farmers, nursery owners and greenhouse owners use form ST-7 to be exempt from paying sales tax on items and certain services purchases for use in their farm operation. *A farmer does not need to be registered with the Division of Taxation to issue Form ST-7 to a supplier.*

Exempt Use Certificate (ST-4)

Exempt from sales tax are sales of commercial trucks, truck tractors, and semi-trailers which are properly registered and

1. have a gross vehicle weight rating in excess of 26,000 pounds; or
2. are operated actively and exclusively for the carriage of interstate freight under a Interstate Commerce Commission permit or certificate; or
3. are registered as a farm vehicle under the New Jersey Motor Vehicle Statute (N.J.S.A. 39:3-4 and 25) and have a gross vehicle weight rating in excess of 18,000 pounds.

Resale Certificate (ST-3)

A registered New Jersey business that purchases tangible property with the intention of reselling it, either in its present form or after it has been incorporated into other tangible personal property held for sale, may issue a Resale Certificate (ST-3) to the seller in lieu of paying sale tax. A registered business may also issue Form ST-3 to purchase certain services for resale without paying sales tax. Sales tax is collected when the property or services are subsequently re-sold at retail.

Additional Information

For more information on New Jersey sales tax, contact the Division of Taxation's Customer Service Center at (609) 292-6400, e-mail the Division at nj.taxation@treas.state.nj.us, or write to: New Jersey Division of Taxation, Information and Publications Branch, P0 Box 281, Trenton, NJ 08695-0281.

Many State tax forms and publications are available by fax or on the Division's Web site. Call NJ TAXFAX at (609) 826-4500 from your fax machine's phone, or access the Division's home page at: www.state.nj.us/treasury/taxation/.

Robert Bruch, New Jersey Department of Agriculture may be reached at (609) 984-2503 or at Robert.Bruch@ag.state.nj.us.

For a comprehensive list of our publications visit www.njaes.rutgers.edu.

May 2009

Cooperating Agencies: Rutgers, The State University of New Jersey, U.S. Department of Agriculture, and County Boards of Chosen Freeholders. Rutgers Cooperative Extension, a unit of the Rutgers New Jersey Agricultural Experiment Station, is an equal opportunity program provider and employer.