



REVENUE ...
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**Sales and Use Tax Application to
Farming, Timber Harvesting, Nursery
Operations, and Agritourism**

February 2009

Dear Tennessee Taxpayer,

In 2007, the Tennessee General Assembly enacted a revision of the exemptions and reduced rates of sales and use tax for farmers, timber harvesters, and nursery operators effective January 1, 2008. As before, not all purchases by farmers, timber harvesters, or nursery operators are exempt from the sales or use tax. This booklet is designed to help farmers, timber harvesters, nursery operator, and dealers from whom they buy, to understand the scope of exemptions and reduced rates, the purchases that remain taxable, and how effectively to administer these tax provisions.

It is imperative that the reader understand that the information provided is general in nature. The excerpts from the sales tax law are through the 2007 legislative session. The opinions expressed here are informal and do not constitute a revenue or letter ruling pursuant to the provisions of Tennessee Code Annotated Section 67-1-109. Future amendments, court decisions, regulation charges, or other factors could change the opinions expressed herein.

The locations, addresses, and phone numbers of the regional offices of the Taxpayer and Vehicle Services Division are provided for your convenience for additional questions or discussion. The Department of Revenue hopes this will be beneficial to you. You are encouraged to use our resources for future communication.

If you have any questions, you may call any of our HELP NUMBERS:

Tennessee Department of Revenue
Taxpayer and Vehicle Services Division
Andrew Jackson Building, 3rd Floor
500 Deaderick Street
Nashville, Tennessee 37242-1099

Toll-Free: (800) 342-1003
Out-of-State: (615) 253-0600
TDD: (615) 741-7398

Regional Offices

Nashville:
1321 Murfreesboro Road
Nashville, TN 37217
(615) 360-0423

Chattanooga:
540 McCallie Avenue
Suite 350
Chattanooga, TN 37402
(423) 634-6266

Jackson:
Lowell Thomas State Office Building
225 Dr. Martin L. King Jr. Drive
Suite 340
Jackson, TN 38301
(731) 423-5747

Johnson City:
204 High Point Drive
Johnson City, TN 37601
(423) 854-5321

Knoxville
531 Henley Street
Room 606
Knoxville, TN 37902
(865) 594-6100

Memphis
3150 Appling Road
Bartlett, TN 38133
(901) 213-1400

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Effective January 1, 2008, Tenn. Code Ann. Section 67-6-207 is amended to provide new language regarding farm equipment and machinery exemptions for farmers, timber harvesters, and nursery operators. In previous versions of the Tennessee Code, these exemptions could be found only by searching various sections of the sales or use tax law. Now, however, all of the exemptions have been codified under one section.

Also included in this revised Tenn. Code Ann. Section 67-6-207 are the criteria now required for a person to qualify as a farmer, timber harvester, or nursery operator for purposes of obtaining exemptions.

Farmers, timber harvesters, and nursery operators must now apply for a personalized Agricultural Exemption Certificate that will be issued by the Department of Revenue in the name of the applicant and which must be renewed every four years. The qualifications for exemption and the application process are discussed later in this booklet.

Agricultural Exemptions [Tenn. Code Ann. Section 67-6-207, effective January 1, 2008]

The sale at retail, lease, rental, use, consumption, distribution, repair, storage for use or consumption in this state of the following tangible personal property is specifically exempted from the tax imposed by this chapter when sold to a qualified farmer, timber harvester, or nursery operator.

- + Any appliance used directly and principally for the purpose of producing agricultural products, including nursery products, for sale and use or consumption off the premises, but excluding an automobile, truck, household appliances or property which becomes real property when erected or installed;
- + Grain bins and attachments thereto;
- + Aircraft designed and used for crop dusting, such as an agracat or other similar airplanes which are designed for crop dusting purposes;
- + Equipment used exclusively for harvesting timber;
- + Trailers used to transport livestock, as defined in Tenn. Code Ann. Section 44-18-101;
- + Self-propelled fertilizer or chemical application equipment used to spread fertilizer or chemical on farms to aid in the production

of food or fiber for human or animal consumption, notwithstanding the fact that such equipment may be mounted on a chassis with wheels, if such equipment is not designed for over-the-road use, but may be driven over-the-road from the source of supply to the farm, and tender beds and spreader beds, even if mounted on a truck chassis;

- + Systems for poultry environment control, feeding and watering poultry and conveying eggs;
- + Replacement parts or labor relative to the repair of farm equipment and machinery as defined in Tenn. Code Ann. Section 67-6-207;
- + Gasoline or diesel fuel used for “agricultural purposes” as defined in Tenn. Code Ann. Section 67-6-102; except that pre-mixed engine fuel containing gasoline and oil, produced for use in two-cycle engines and not for use in the propulsion of an aircraft, vessel or any other vehicle, that is sold in containers of one gallon (1 gal.) or less, is not exempt from the tax imposed by this chapter. For purposes of this subsection (a), “diesel fuel” means any petroleum distillate with at least twelve (12) to sixteen (16) carbon atoms per molecule and which has a boiling point of between three hundred fifty degrees Fahrenheit (350 degrees F) and six hundred fifty degrees Fahrenheit (650 degrees F) or any petroleum distillate which is ordinarily and customarily sold and used as a source of fuel for diesel engines;
- + Seeds, seedlings, plants grown from seed and liners (cuttings) which will produce food or fiber, including tobacco, for human or animal consumption;
- + Fertilizer to be used to aid in the growth and development of seeds, seedlings, or plants that will produce food or fiber, including tobacco, for human or animal consumption;
- + Pesticides which are sold for the purpose of aiding in the production of food or fiber, including tobacco, for human or animal consumption. As used in this section, “pesticide” means any substance or mixture of substances or chemicals intended for defoliating or desiccating plants or for

Agricultural Exemptions (cont'd)

- preventing, destroying, repelling or mitigating any insects, rodents, fungi, bacteria or weeds, including, but not limited to, insecticides, fungicides, bactericides, herbicides, desiccants, defoliants, plant regulators, and nematocides;
- + Containers for farm products and plastic or canvas used in the care and raising of plants, seeds or seedlings, as defined in this section, and plastic or canvas used in covering feed bins, silos, and other similar storage structures;
- + Livestock and poultry feeds, drugs used for livestock and instruments used for the administration of such drugs;
- + Any natural or artificial substance used in the reproduction of livestock, including semen or embryos;
- + Adjuvants and surfactants solutions sold exclusively for the purpose of mixture with insecticides, pesticides, fungicides or herbicides or for use as a soil conditioner when such is intended to aid in the growth and development of food or fiber, including tobacco, for human or animal consumption;
- + Agri-sawdust, which includes sawdust, wood shavings, chips, and slabs;
- + Electricity, natural gas and liquefied gas, including, but not limited to, propane and butane used directly in the production of food or fiber for human or animal consumption or to aid in the growing of a horticultural product for sale; and
- + Coal, wood, wood products or wood by-products, or fuel oil, which is used as energy fuel in the production of food or fiber for human or animal consumption or in production of nursery and greenhouse crops.
- + The person is the owner or lessee of agricultural land from which one thousand dollars (\$1,000) or more of agricultural products were produced *and* sold during the year, including payments from government sources;
- + The person is in the business of providing for-hire custom agricultural services for the plowing, planting, harvesting, growing, raising or processing of agricultural products or for the maintenance of agricultural land;
- + The person is the owner of land that qualifies for taxation under the provisions of the Agricultural Forest and Open Space Land Act of 1976, compiled in Chapter 5, Part 10 of this title;
- + The person's federal income tax return contains one or more of the following:
 - o Business activity on IRS schedule F (Profit or Loss From Farming); and
 - o Farm rental activity on IRS form 4835 (Farm Rental Income and Expenses) or schedule E (Supplemental Income and Loss); and
- + The person otherwise establishes to the satisfaction of the commissioner that the person is actively engaged in the business of raising, harvesting or otherwise producing agricultural commodities as defined in Tenn. Code Ann. Section 67-6-301(c)(2).

Application for the Agricultural Exemption Certificate

Persons seeking to become qualified farmers, timber harvesters, or nursery operators shall apply to the commissioner for authority to make purchases exempt from tax. This application shall require such information as the commissioner deems necessary. If the commissioner finds from such information that the applicant is entitled to be a qualified farmer, timber harvester, or nursery operator, the commissioner shall issue a certificate granting such authority for a period of four years or until the applicant is no longer operating within the scope of its original application. Any misrepresentation made on the application by the applicant will subject the applicant to any applicable tax, penalty, and interest.

Qualification for Agricultural Exemptions

To qualify for exemption as a farmer, timber harvester, or nursery operator on or after January 1, 2008, an applicant for exemption must meet one or more of the following criteria.

Application for Agricultural Exemptions (cont'd)

Persons who have obtained authority from the commissioner to make purchases tax exempt as a qualified farmer, timber harvester, or nursery operator shall provide their vendors with a copy of the certificate issued by the commissioner or a fully completed Streamlined Sales Tax Certificate of Exemption, which must include the exemption authorization number included on the certificate issued by the commissioner, to evidence qualification for the exemption.

Persons making purchases exempt from tax under this section shall keep records to establish that the property qualifies for the exemption. The purchaser shall be liable for tax, penalty, and interest for making non-qualifying purchases without payment of tax.

Exemption from Sales and Use Tax of Agricultural Products Grown or Produced [Tenn. Code Ann. Section 67-6-301]

The gross proceeds derived from sales of livestock, nursery stock, poultry and other farm or nursery products, made in any calendar year directly by a farmer or nursery operator, are exempt from the sales or use tax if 50% or more of the products sold are grown or produced in the calendar year by the farmer or nursery operator making the sale.

If less than 50% of the products being sold in any calendar year are grown or produced by the farmer or nursery operator, then only the gross proceeds of sales of the products actually grown or produced by such farmer or nursery operator are exempt from the sales or use tax.

Generally, when sales of livestock, nursery stock, poultry, or other farm or nursery products are made to consumers, other than as described here, they are not exempt from the sales or use tax. In other words, when a farmer sells farm products that the farmer produced to a person who sells only products grown by others, such as a grocery store, the resale by the grocery store of the farm products is subject to the sales or use tax.

When livestock and livestock products, poultry and poultry products, or farm, nursery, and agricultural products are produced by a farmer or nursery operator and used by the nursery operator or members of the nursery operator's family, the sales or use tax law states specifically that Tennessee use tax does not apply.

Straw purchased from a supplier other than the agricultural producer does not qualify for exemption when presenting the certificate. Straw is not one of the items specified in the statute as tax-exempt even when purchased by a farmer, timber harvester or nursery operator.

When agricultural commodities sold by anyone other than the producer to a third party who is purchasing to acquire raw products for use or for sale in the process of preparing, finishing, or manufacturing the agricultural commodities for retail sale to the ultimate consumer, such sales are exempt from the sales or use tax, including payment of the tax applicable to the sale, storage, use, transfer, or any other utilization or handling of the products.

In such instances, the tax will be collected on the sale of the agricultural commodities when they are actually sold as a marketable or finished product to the ultimate consumer. The sales or use tax will be collected only once.

For sales or use tax purposes, "agricultural commodity" means horticultural, poultry, and farm products, and livestock and livestock products.

Effective July 1, 2007, sales made directly from a farmer or nursery operator to a consumer through an online nonprofit farmers' market are exempt from sales or use tax providing that:

- + An amount equal to the consumer's full purchase price is transmitted by the consumer or the online farmers' market to the farmer; and
- + The cooperative or other organizing body of the online farmers' market charges no fee or other charge for facilitating the sales other than "virtual booth" rental fees assessed to participating farmers to cover actual costs incurred in operating the online farmers' market.[Tenn. Code Ann. Section 67-6-301(a) amended by Public Chapter 507, Acts of 2007]

Agritourism

Agritourism is a style of activity in which hospitality is offered on farms. This may include the opportunity to assist with farming tasks during the visit. Participants can pick fruits and vegetables, visit mazes cut in crop fields or "Halloween" mazes (including Halloween-oriented activities and characters in costume), ride horses, taste honey, learn about crops, participate in hay rides (which may include picnics, campfires or bonfires, and entertainment such as music and dancing), shop in gift shops and farm stands for local and regional produce or hand-crafted gifts, purchase food and beverages, purchase photographs, and much more.

Agritourism (cont'd)

If admission charges are made for participants to engage in such agritourism activities, these charges would generally be subject to sales tax under Tenn. Code Ann. Section 67-6-212, which imposes sales taxes on fees or other charges made for admission to places of amusement, sports, entertainment, exhibition, display, or other recreational events or activities.

If the activities are only educational in nature (i.e., where guests are merely shown how a farm operates, are given demonstrations, etc.) without any amusement, recreation, or entertainment activities, such as horse riding or hay rides, charges for these tours would not be subject to the sales or use tax.

If participants are permitted to pick fruits and vegetables for which an additional charge is made, these sales would not be subject to the sales or use tax as long as the farm making the sale produces at

least 50% of the products sold. However, when involved as a part of an amusement, entertainment, or recreation activity, the charges for the fruits and vegetables must be made separately from the charge for the amusement, entertainment, or recreation event in order to qualify for exemption.

The farmer must collect tax on the sale of products purchased from others and sold if more than 50% of the gross sales are from the sale of products produced by others. Generally, hand-crafted gifts would also be subject to the sales or use tax unless made from products produced by the farmer.

If the person selling the agritourism adventure is not the owner or operator of the farm, but has simply contracted with a farm to conduct such activities on the farm, then the total charge made by the seller for the admissions to the amusement, entertainment, or recreation event and for sales of fruits and vegetables is subject to the sales or use tax.

Questions and answers regarding farm/nursery/timber harvesting equipment and machinery and repair and replacement parts. Refer to Tenn. Code Ann. Section 67-6-207, effective January 1, 2008.

Agricultural Exemptions

1. What items are exempt from sales and use tax per the statute changes?

It would be impossible to publish a comprehensive list of all specific items. Generally, the following items are exempt from sales and use tax when sold to qualified farmers, timber harvesters, or nursery operators.

- Any appliance (including appliances costing less than \$250) used directly and principally for producing agricultural products (does not include autos, trucks, household appliances, or property that becomes real property, such as barns, sheds, and fencing)
- Grain bins and attachments
- Aircraft designed for crop dusting
- Equipment used for harvesting timber (does not include trailers and trucks for transporting)
- Livestock trailers
- Self-propelled fertilizer or chemical application equipment
- Systems for environment control, feeding, watering, and egg conveyance for poultry
- Replacement parts and labor for previously qualifying equipment
- Gas or diesel fuel used for agricultural purposes (does not include pre-mixed gas and oil of one gal. or less)
- Seeds, seedlings, plants, fertilizer, and pesticides used to produce food or fiber, including tobacco, for human or animal consumption
- Farm containers and plastic or canvas covers used in raising plants, including tobacco, for human or animal consumption
- Feed and drugs for livestock
- Agri-sawdust, which includes sawdust, wood shavings, chips, and slabs
- Electricity, natural gas, liquefied gas, coal, wood, and fuel oil used in the production of food and fiber for human or animal consumption or in the production of nursery and greenhouse crops.

2. I've heard that for an original purchase of farm equipment to be exempt, it must cost more than \$250. Do the repair part and/or labor on the farm machinery and equipment have to exceed \$250 also?

Effective January 1, 2008, the \$250 threshold for farm equipment and machinery is eliminated. On or after that date, the machinery, equipment, or appliance no longer has to cost \$250 to be exempt farm machinery or equipment. In addition, the charge for repair or replacement parts or repair labor does not have to cost \$250 to be exempt. However, the repair or replacement parts and repair labor must be for qualifying equipment and sold to a qualified farmer, timber harvester, or nursery operator.

3. A seller charges purchasers for delivery of machinery and equipment to the farm, nursery, or forest. Is the delivery charge taxable?

Effective January 1, 2008, a new definition of sales price was enacted. Delivery charges made by the seller are a part of the sales price of property regardless of whether the delivery charge is separately itemized on the invoice. If the machinery and equipment, repair or replacement parts, or other items delivered qualify for an agricultural exemption, then the delivery charge is equally exempt.

4. I do not qualify as a farmer or nursery operator. Can I continue to buy seeds, seedlings, and plants that produce food or fiber for human or animal consumption free of tax?

No. Effective January 1, 2008, Tenn. Code Ann. Section 67-6-207 limits the exemption from sales tax on agricultural purchases such as seeds, seedlings, and plants to produce food or fiber for human or animal consumption only to purchases by persons that have qualified for and received the Agricultural Sales and Use Tax Certificate of Exemption.

5. I am not a farmer, but, in the past, I have purchased items such as wood shavings and bales of hay to use in my small horse stable and rabbit cages. Will I be able to purchase these items without payment of sales tax after January 1, 2008?

No. Persons that do not meet one of the criteria cannot make tax-exempt purchases for agricultural purposes. Shavings and hay (usually wheat straw) used for bedding or as absorbent materials continue to be subject to tax. These items are not specified in the statute as exempt and do not fit within any of the categories of exempt items under the new law. Agri-sawdust is exempt from tax when purchased by qualified farmers or nursery operators.

6. My wife and I own a couple of horses stabled in another county. We ride only on the weekends. A couple of years ago, we bought a horse trailer tax-exempt. We are planning to buy another trailer next year. Will it be exempt ?

On or after January 1, 2008, only qualified farmers that have been issued the new agricultural exemption certificate can buy the livestock trailers exempt from the sales tax. Livestock trailers purchased by non-qualifying persons are subject to sales or use tax.

7. I just paid \$300 for tarpaulins or plastic to cover my round bales or hay stacked in a field. Can those items be purchased tax-exempt?

Yes; if purchased by a qualified agricultural certificate holder, plastic and canvas coverings, including tarpaulins, can be purchased for use (1) in the care and raising of plants, seeds, or seedlings; (2) for cover for agricultural and horticultural products, including hay; and (3) to cover a silo or grain bin or other similar structures are exempt from tax.

8. Are flat bed trailers used principally to transport seed, fertilizer, etc., to the farm; farm commodities to market; or transport of move farm equipment from farm to farm exempt from the sales tax as farm equipment?

No. The definition of farm equipment is limited to equipment or machinery used directly or principally in the production of a farm commodity. Here, the trailers are not used directly in production. The common drop pin farm wagon used to haul hay from the field and the silage or grain wagon used to transport silage to the silo or grain to the grain bin are considered exempt farm equipment used directly in production. However, on-road trailers do not qualify as exempt farm machinery except for livestock trailers, which are specifically included in the statute.

9. I am a qualified farmer and am buying corral panels. These come separately in 12-foot lengths. The panels sell for \$25 each. The gates come in 8-foot lengths and sell for \$40 each. The panels and gates can be chained together. I buy the panels and gates separately according to the configuration that I need. Can the panels and gates be purchased tax-exempt?

Yes. Te portable corral panels and gates will qualify as appliances used directly and principally to produce an agricultural product. Effective January 1, 2008, the \$250 threshold for farm equipment and machinery is eliminated. On or after that date, the machinery, equipment, or appliance no longer has to cost \$250 to be exempt farm equipment and machinery.

10. Can a farmer or nursery operator buy a lawnmower on an agricultural exemption certificate?

It is extremely rare that a lawnmower will qualify as tax-exempt farm machinery. However, it is true that a lawnmower, when adequately documented and used directly and principally in the production of an agricultural product, may be tax exempt. The nursery operator may have a better case for exemption because of the need to trim the area where trees are planted.

11. Can I purchase a farm truck exempt from sales or use tax?

No. Trucks and automobiles are specifically listed in the statute as types of machinery that will not qualify for the exemption.

12. I have a truck that is used exclusively for farm use. Are the tires and/or other repairs on the truck exempt from sales tax?

No. Tenn. Code Ann. Section 67-6-207 specifically provides that a truck is not farm equipment. Since the truck is subject to the sales tax, any tires, replacement parts, and labor performed on the truck are subject to the sales tax. The same answer applies to the trucks and trailers that loggers use to remove harvested timber from the forest.

13. Is water used for agricultural purposes exempt from tax?

No. Water is not listed in the statute as an item that a qualified farmer, timber harvester, or nursery operator may purchase tax exempt.

ATV's

14. Previously, when I bought an ATV as farm equipment, I was required to pay the sales tax and petition for a refund. Will this process continue after January 1, 2008?

No. Farmers, nursery operators, and timber harvesters who have an agricultural exemption certificate may present the certificate to the dealer and purchase the ATV tax exempt. The exemption is available only when the name on the billing and the title and registration is identical to the name on the Agricultural Sales and Use Tax Certificate of Exemption.

15. I have a "four wheeler" that qualifies as farm equipment. I am having it repaired. Is the repair exempt?

Yes. The purchaser must present the agricultural exemption certificate to purchase the repair parts and repair labor for the qualified "four wheeler" exempt from tax.

Repair

16. Has anything about repair to qualified farm equipment changed?

No. Repair and replacement parts and labor to repair qualified machinery, equipment, or appliances are exempt from the sales tax when billed to and paid for a person holding the agricultural exemption certificate.

17. Are batteries, oil filters, fuel filters, and air filters purchased to replace like articles on farm equipment exempt from sales tax?

Yes. These are considered replacement parts and, when sold to a qualified farmer, timber harvester, or nursery operator for use on qualifying machinery, can be purchased tax exempt.

18. Are replacement tires and rims for tractors, combines, livestock trailers, and other qualifying equipment and machinery tax exempt?

Yes. These are considered replacement parts and, when sold to a qualified farmer, timber harvester, or nursery operator for use on qualifying machinery, can be purchased tax exempt.

19. Is the tire disposal fee part of the price of the tire and exempt from tax for qualified machinery, or is the tire disposal fee subject to sales tax, since it is itemized on the invoice separate from the tire?

Assuming the tire is a qualified repair or replacement part for qualifying farm equipment, the tire disposal fee is equally exempt when purchased by a holder of the agricultural certificate of exemption.

20. I bought two rear tires for my farm tractor. Included in the price are line item charges for water and methanol and a fee for pumping the mixture into the tire. What is exempt?

The tires and the labor to install the tires on qualifying machinery, including the pumping fee, can be purchased tax exempt by a qualifying person. The fees for pumping the water and methanol into the tires are considered part of the sales price of the repair labor even if the pumping fee is separately itemized. However, water and methanol, like other liquids, such as oil, antifreeze, and transmission and hydraulic fluids, continue to be subject to tax.

21. Is adaptive equipment, such as radios or additional lights, that is installed on qualified farm machinery exempt from tax?

Generally, the addition of new parts of this type where a similar part did not previously exist is taxable. However, if the part replaced an existing part on qualified farm equipment, it is exempt from the tax when purchased by a qualified person.

22. I buy chains, cables, fasteners, nuts, bolts, and shear pins to replace those that break on my qualified farm and timber harvesting equipment. Are these exempt from the sales tax?

Yes. When these items are purchased by a qualifying farmer, timber harvester, or nursery operator as repair or replacement parts for qualified machinery, the items may be purchased tax exempt.

23. Is exemption available for smaller items such as link bars, stabilizers, lug nuts, draw bars, blades for hay mowers and bush hogs, hoses for hydraulically operated equipment (to adapt the equipment to the tractors hydraulic system), disc or bog blades, plow points, etc.?

As long as these things are used to repair or replace an existing part on qualified equipment, the items can be purchased exempt from tax by a qualified farmer, timber harvester, or nursery operator.

24. I am having my tractor painted. Are the paint and labor taxable?

Paint, primers, and the labor to apply these to qualified farm machinery and equipment can be purchased by a qualified farmer, timber harvester, or nursery operator exempt from tax.

25. Can lubricants and other liquids that will be used in qualifying machinery be purchase tax exempt by a qualified farmer, timber harvester, or nursery operator?

No. It is important to keep in mind that liquids (oil, antifreeze, transmission and hydraulic fluids, solutions for rear tires, greases, etc.) are not exempt even when sold to a qualified farmer, timber harvester, or nursery operator. These items continue to be subject to tax and were not available for agricultural exemption prior to the law changes.

26. Are wrenches, sockets, jacks, air compressors, grease guns, welders, and similar items used to repair farm equipment considered exempt under the new amendment?

No. The exemption extends only to qualified farm machinery and equipment and subsequent repair parts and repair labor to such equipment. It does not extend to tools or equipment used to repair or maintain the machinery. An exception is found in welding rods and the wire for wire feed (MIG) welders, used to repair farm equipment and machinery. The welding rods and wire for wire feed (MIG) welders are exempt because they become part of the repaired equipment.

Energy Fuel

27. What is the sales tax rate on energy (electricity, natural and propane gas, coal, firewood) purchased by a farmer or nursery operator on or after January 1, 2008?

Effective January 1, 2008, the previous 1.50% state tax on electricity, natural gas, liquefied gas, coal, and wood used *directly in the production of food and fiber for human or animal consumption or to aid in the growing of*

horticultural products for sale purchased by farmers, timber harvesters, and nursery operators is repealed. Upon presentation of the agricultural exemption certificate to the supplier of energy, the purchase is exempt from the sales tax. Such energy fuel purchased for other uses does not qualify for the agricultural exemption.

28. Are electricity, natural gas, or other energy fuels used to heat a dairy barn or farrowing pen or to provide electricity for lights or other electrical needs on the farm or nursery exempt from sales and use tax?

Yes. Tenn. Code Ann. Section 67-6-207 exempts electricity, natural gas, liquefied gas, coal, and wood used directly in the production of food or fiber for human or animal consumption or to aid in the growing of horticultural products for sale by a qualified farmer or nursery operator.

29. Are oxygen and acetylene used as energy fuel for my welder, which is used to repair my farm equipment, exempt from sales tax?

There is no provision in the statute for exemption of the oxygen and acetylene. The oxygen and acetylene are not used directly in the production of food or fiber for human or animal consumption or to aide in the growth of horticultural products for sale. The welder is a repair tool and is subject to tax. The welder does not qualify for any of the agricultural exemptions. There is no provision for exemption for tools and equipment used to repair farm equipment and machinery.

Warranty Contracts

30. Previously, sales of warranty or service contracts covering the repair or maintenance of qualified tax-exempt agricultural machinery were subject to tax. Does this change January 1, 2008?

No. The sales of extended warranty or maintenance contracts continue to be subject to sales tax even if the contracts cover the repair or maintenance of machinery and equipment that qualify for the agricultural exemption exemptions. There is nothing in the new law that will exempt the sale of the warranty or maintenance contracts covering the repair of qualified machinery when sold to a qualified farmer, timber harvester, or nursery operator.

Timber Harvester

31. Farmers and nursery operators have been able to purchase dyed diesel exempt from sales and use tax for some time, while timber harvesters could not. Will this change January 1, 2008?

Yes. For purposes of the sales and use tax exemption provided for in Tenn. Code Ann. Section 67-6-207, such diesel fuel must be used for "agricultural purposes," as defined in Tenn. Code Ann. Section 67-6-102. "Agricultural purposes" has been defined to include logging equipment used in cutting and harvesting timber. Dyed diesel purchased by timber harvesters holding the new agricultural exemption certificate will be exempt from the sales tax.

32. Please explain the exemption for "loggers" or timber harvesters.

Any machinery used exclusively (100% of the time) in the harvesting of timber is within the exemption for qualified agricultural equipment. Any subsequent repair labor and repair or replacement parts for qualifying equipment, when sold to a qualified timber harvester that has been issued the agricultural exemption certificate, are exempt from sales and use tax. Examples include chainsaws, log skidders, bulldozers used in a qualified manner, and equipment used to load the logs onto trucks and trailers. Trucks and trailers are specifically listed as equipment that will not qualify, even if the equipment is used to transport the logs to a saw mill or other market.

33 Is a chainsaw considered farm or logging equipment?

Chainsaws, which are used in cutting or harvesting timber, will qualify for the exemption if purchased by a qualified person who has been issued the agricultural certificate of exemption.

Under the statute, farm equipment is not determined by what it is, but how it is used in the production of an agricultural product. A chainsaw used principally for the purpose of producing an agricultural product qualifies. A

chainsaw used to cut firewood or other unqualified used by a farmer, does not qualify as exempt machinery used directly and principally to produce agricultural products.

34. I am a logger. I have purchased a truck without a bed of any type. I take the truck to a business that sells and installs a “claw” lift. The sole use of the “claw” lift is to pick up logs and load them onto other trucks or trailers in the forest. Am I exempt on the purchase and installation of the lift?

Yes; when it can be documented that a customized application of machinery or equipment is used exclusively for the harvesting of timber, then the machinery and equipment can be purchased tax exempt. However, this will not extend to the chassis of the truck. In this example, the truck and bare chassis is taxable. The “claw” lift and the installation of the lift, when sold to a qualified timber harvester, are exempt from tax. The installation service is a part of the sales price of the “claw” lift and can be purchased tax exempt if the “claw” lift sold by the seller is also exempt from tax. If the logger purchases the truck with the lift already installed, and there is no breakdown of the price of the truck and the lift, the total price is subject to tax.

Real Property

35. Are fencing wire, posts, and other fencing materials now exempt?

Fencing materials that become realty upon installation continue to be subject to tax. The statute specifically excludes from the agricultural exemption items that become realty upon installation. Fencing, including electric fencing, that is portable, intended to be moved, and does not damage the real property when it is moved does not become real property upon installation and, therefore, may be purchased tax exempt by a holder of the agricultural certificate of exemption.

36. Will you distinguish between “grain bins” and “silos” for the purposes for the agricultural exemption?

Grain bins are specifically named in law as being exempt agricultural equipment when purchased by qualified farmers. Grain bins are structures with augers, fans, and related equipment designed to dry the grain to a state desired for market. Conversely, silos are structures designed to contain silage and cause a heated fermentation process to convert the harvested silage to a state desired to feed the cattle, usually during the winter. Silos are structures that are clearly realty. A silo or materials to build the silo continue to be subject to tax. There is no specific listing for an exemption for silos in the statute.

37. I am building a barn on my farm. Do the lumber and other building materials qualify for sales tax exemption?

No. As in the case of the fencing that becomes realty upon installation, the materials for the barn become realty upon installation. Items that become realty do not qualify for agricultural exemption.

Non-farming Use

38. I run an antique tractor business. I buy older model tractors and restore them for sale to collectors, including farmers. However, these tractors will be used for show, collection, or investment. Are the tractors, and the parts sold to others for these tractors, exempt under the new law?

No. In order to qualify for farm equipment tax exemption, the tractor must be used principally in the production of a farm commodity for sale. Here, the intent of the restored tractor is for show, collection, or investment purposes. While, as a dealer, you can buy the parts that you will use to restore the tractor on a resale certificate, the sale of the tractors for purposes other than the production of a farm commodity for sale, or unless otherwise tax exempt, is subject to the sales tax. The same answer applies to the sale of parts for tractors not used in a qualified capacity.

Qualification for Agricultural Exemptions

39. Who qualifies for the new agricultural exemption certificate?

Persons applying for the new agricultural exemption certificate must meet at least one of the following criteria:

- (a) Must be the owner or lessee of agricultural land from which \$1,000 or more of agricultural products were produced or sold during the year, including payments from government sources;
- (b) Must be in the business of providing for-hire custom agricultural services of plowing, planting, harvesting, growing, raising, or processing agricultural products or the maintenance of agricultural land;
- (c) Must be the owner of land that qualifies for taxation under the provisions of the Agricultural Forest and Open Space Land Act of 1976;
- (d) The applicant's federal income tax return contains one or both of the following:
 - (i) Business activity on IRS Schedule F (Profit or Loss from Farming);
 - (ii) Farm rental activity on IRS Schedule 4835 (Farm Rental Income and Expenses); or
- (e) The applicant must establish to the satisfaction of the commissioner that he or she is actively engaged in the business of raising, harvesting, or otherwise producing agricultural commodities.

40. I live just across the state line in Kentucky. I operate a farm in Kentucky. I buy a lot of my farm equipment and supplies in Tennessee. Can I qualify for the Agricultural Sales and Use Tax Certificate of Exemption?

Yes. Farmers, timber harvesters, and nursery operators that are located outside Tennessee can apply for and receive the Tennessee Agricultural Sales and Use Tax Certificate of Exemption in the same manner as in-state farmers, timber harvesters, or nursery operators. Not all states issue certificates of exemption to farmers, timber harvesters, or nursery operators located in their states. However, certificates of exemption issued to farmers, timber harvesters, or nursery operators by other states will not be honored. To make tax-exempt purchases in this state, they will need to apply for the Tennessee Agricultural Sales and Use Tax Certificate of Exemption.

41. Does a sawmill operator qualify as tax-exempt and the sawmill equipment qualify as farm equipment and machinery?

No. A sawmill is after-the-fact of timber harvesting and does not fall within the exemption for cutting and harvesting timber. However, because the mill converts the logs to lumber for sale, upon application to the department, the sawmill operator may be considered eligible for exemption from sales tax as a manufacturer.

42. Is cotton ginning considered farming?

There are at least three possibilities in this category:

- (a) A qualified farmer with an agricultural certificate of exemption purchases his own gin to gin the cotton that he has grown. The cotton gin is machinery and equipment used directly and principally to produce an agricultural product and can be purchased tax exempt by the qualified farmer.
- (b) A business owns a gin. Such business gins the cotton for area farmers and is either paid for the service of ginning by the farmers' cotton or exchanges the ginning service for the cotton seeds. The cotton is returned to the farmer. This business may have already qualified for and received authorization from the department as a manufacturer. This business can qualify for the Agricultural Sales and Use Tax Certificate of Exemption under the criteria of *providing for-hire custom agricultural services for the processing of agricultural products*. The cotton gin, repair or replacement parts, and repair labor for the cotton gin, and the electricity, natural gas, liquefied gas, or fuel oil used to operate the gin can be purchased tax exempt by a person in the business of providing for-hire ginning services if the person is a holder of an Agricultural Sales and Use Tax Certificate of Exemption. The electricity, natural gas, liquefied gas, or fuel oil used to operate the cotton gin is directly used to produce fiber for human consumption. Such energy fuel used to operate the gin must be separately metered from other energy fuels that are subject to tax at the 1.5% tax rate on energy fuel sold to and use by manufacturers.

(c) A business owns a gin. The business buys cotton from the area farmers, processes the cotton by separating the seed from the fiber, and sells the seed and cotton to others for further sale. Under these conditions, and upon application to the Department of Revenue, the business may qualify as a manufacturer (processor) eligible for sales tax exemption on machinery and equipment used to process the cotton and reduced tax rates on water and energy fuel used by the manufacturer. This business is *not* providing for-hire services to process the farmers' cotton and therefore will not qualify for the agricultural certificate of exemption. The cotton gin, repair and replacement parts, and repair labor for the cotton gin can be purchased exempt from tax if the business has qualified for and received authorization as a manufacturer. The electricity, natural gas, liquefied gas, or fuel oil used to operate the cotton gin will be subject to tax at the 1.5% tax rate on energy fuel sold to and used by qualified manufacturers.

43. Can persons that board horses or train horses qualify for the agricultural certificate of exemption?

Persons that board horses owned by others are providing for-hire services for raising an agricultural product. Livestock feed, livestock drugs, and instruments used to administer the livestock drugs can be purchased tax exempt by a horse boarder that has received the agricultural certificate of exemption. Training horses is a non-taxable service in Tennessee. Trainers that are not also providing the boarding of horses owned by others do not meet any of the criteria for qualifying for the agricultural certificate of exemption. Trainers are not providing for-hire services to raise or process an agricultural product.

Application for the Agricultural Certificate of Exemption

44. Where can I find the agricultural application for sales tax exemption and information regarding the exemption?

Information regarding the agricultural exemptions, the applications, and instructions for completing the application can be found on the Department of Revenue's web site at www.tennessee.gov/revenue or by calling (615) 253-0600 or, toll-free within Tennessee (800) 342-1003.

45. How long will it take to get the certificate of exemption?

In most cases, if necessary documents are provided with the application, it will take 3 – 5 days for the department to process the application for exemption.

46. Can a dealer refuse to accept the agricultural certificate of exemption to make a sale tax exempt?

Yes. There is nothing in the sales tax statutes or regulations that mandate a dealer to recognize any exemption. Prior to the new law, a seller could refuse to allow a purchaser to provide a farmer's affidavit to make a tax-exempt purchase. In either case, a seller would most likely refuse to allow the user of the agricultural certificate of exemption or the farmer's affidavit if the seller knew that the item would not qualify for the exemption. For example, a seller should refuse to make a sale of a diamond ring tax exempt if the purchaser presents an agricultural certificate of exemption as the basis for making the purchase tax exempt.

47. Once I receive the agricultural certificate of exemption, will I have to reapply or renew the certificate?

The statute provides that the exemption is good for four years or until the applicant is no longer qualified within the four-year period. The methodology for renewal will be determined at that time.

48. Do I need multiple exemption certificates for each partnership?

If you individually qualify for the agricultural exemption certificate, you may provide a copy of your individual agricultural exemption certificate to the supplier for each separate account your supplier has set up for each partnership. The supplier should obtain a copy of each partner's agricultural exemption certificate if the partner has the authority to charge the purchase of items to the partnership account.

Sales of Agricultural Products

49. Are farmers and nursery operators who buy and sell agricultural products, including livestock, required to present the certificate of exemption to buy agricultural products, including livestock, tax exempt or obtain copies of purchasers' exemption certificates to sell agricultural products tax exempt?

No. Agricultural products grown and produced by a farmer and purchased directly from the farmer that grew or produced the agricultural products are not subject to sales or use tax. The farmer is not required to obtain the Agricultural Sales and Use Tax Certificate of Exemption to make tax-exempt sales of agricultural products that the farmer grew or produced. The Agricultural Sales and Use Tax Certificate of Exemption is required to make tax-exempt purchases of machinery, repairs, and certain supplies for use by a qualified farmer, timber harvester, or nursery operator.

Agritourism

50. Would a riding trail operator qualify for the agricultural certificate of exemption?

No. Providing riding trails is not one of the criteria that will qualify for the agricultural certificate of exemption. It should be noted that, according to Tenn. Code Ann. Section 67-6-212, charges for using riding trails or for providing horses to ride are considered fees or charges for an amusement, entertainment, or recreational activity that are subject to tax, and the seller must collect the tax on charges for trail riding or providing horses to ride.

51. I have a "corn maze" cut in a 100 acre cornfield. I charge \$8 for people to enter and try to find their way out. Should I charge sales tax on the \$8?

Yes; under Tenn. Code Ann. Section 67-6-212, this is considered to be an amusement, recreation, or entertainment activity subject to the state and local sales tax.

52. Occasionally I will have a hayride, where members of the local community, school classes, churches, civic organizations, etc., will pay me to conduct the hay ride on my farm. I may include picnics, local country band entertainment, etc. Are the charges subject to the sales tax?

Yes; again as an amusement, recreation or entertainment activity. In some circumstances, you may be paid by a church, school or other organization qualified for sales tax exemption. If you are paid directly by the organization and obtain the organization's exemption certificate, you will not be required to collect the tax.

53. When in season, I may sell my farm produce to attendees to these events. Will the farm produce then become taxable?

As long as the farm products are grown or produced by the farmer or 50% or more of the produce sold by the farmer is grown or produced by the farmer, the sale of the farm produce is not subject to tax. The charges for the non-taxable farm produce must be separate from the charges for the taxable amusement, recreation, and entertainment activity.

54. In conjunction with the agritourism event, I provide food that my family has cooked from my own farm produce. Should I charge tax on the prepared food?

To the extent that the cooked food is entirely from your own produce and there is a separate charge for the prepared food from the amusement, recreation, and entertainment activity, the sales of the prepared food are exempt from tax. However, combining the charge for the non-taxable prepared food with that of the taxable entertainment activity into one 'bundled' charge will subject the total bundled charge to tax. It should also be pointed out that your sales of beverages, (soft drinks, beer, tea, etc.) produced by others are taxable.

55. I cut the trees from my own farm, have the lumber sawed, and my family makes birdhouses, baskets, and similar crafts. Should I charge the tax on these items?

No; as long as these are created from wood from your farm, they are not taxable. However, if you buy the lumber and other components from a supplier, the sale of the home-made craft is taxable.

56. During the Halloween season, I sell pumpkins that I have grown in conjunction with the agritourism activity and from a stand in my driveway. Are the sales of the pumpkins subject to the sales tax?

No. As long as you have produced the farm commodity, it is not taxable

57. I sold \$2,000 worth of pumpkins. \$1,200 was from pumpkins I produced. \$800 was sales of pumpkins that I bought from Farmer Jones next door. Some were sold alone and others during the agritourism activities. Am I liable for sales tax?

No. If you produce more fifty percent or more of the total pumpkins sold, then none of the sales of the pumpkins are subject to the sales tax. However, if you sold \$800 of your own pumpkins and \$1,200 worth of pumpkins produced by Farmer Jones, the sales of the \$1,200 worth of pumpkins produced by Farmer Jones and sold by you are taxable. Sales of the \$800 worth of pumpkins grown by you remain exempt from tax. Record keeping is required to confirm the separation.

58. I give pumpkins to the first 100 school children who visit my farm. Am I subject to the use tax?

No. As long as you grew or produced 50% or more of the pumpkins you sell, or as long as you purchased the pumpkins directly from a farmer who grew or produced the pumpkins, no use tax is due on the pumpkins given away to school children. If you purchased the pumpkins from someone other than the grower or producer of the pumpkins, you owe tax on the purchase price of the pumpkins.

59. My family raises hogs. We slaughter them and produce hams, bacon, and sausage. We sell these during the agritourism activities and from a small store on the farm. Should we collect the sales on these sales under either of the conditions?

No. Raising livestock is producing an agricultural commodity. Agricultural commodities grown or produced by a farmer and sold directly by the farmer who is the grower or producer of the agricultural commodity are not subject to sales tax. Agritourism activities involving charges for admission to amusement, entertainment, or recreational activity are subject to sales tax. You may purchase the salt, sugar cure, and other preservatives that become a part of the hams, bacon, or sausage using a resale certificate of exemption.

67. My family has an orchard. We create jams and jellies from the fruits. Should we collect the tax? Keep in mind, we use jars, lids, rings, etc., to contain the product and buy preservatives to incorporate into the product. We may sell these, both in conjunction with the amusement, recreation, and entertainment activities as well as from our garage.

No. Sales of jams or jellies made from fruit grown or produced by the farmer and directly sold by the farmer are not subject to tax. If such a farmer has qualified for the Agricultural Sales and Use Tax Certificate of Exemption, the purchase of containers for farm products can be purchased exempt from tax. To qualify, the farmer must meet one of the five criteria. Sales of admissions to amusement, entertainment, or recreational activity are subject to the sales tax. Your sales and use tax registration can be used to purchase the preservatives using a resale certificate of exemption.

Tennessee Department of Revenue Reagan Farr, Commissioner	
FARMERS, TIMBER HARVESTERS & NURSERY OPERATORS	
www.Tennessee.gov/revenue	November 2007
Notice #07-12	Sales and Use Tax
 <p>Highlights</p> <ul style="list-style-type: none"> ➤ <i>Effective 1/1/2008 purchasers must have an Agricultural Sales and Use Tax Certificate of Exemption to make purchases exempt from tax</i> ➤ <i>Qualifications for exemption certificate</i> ➤ <i>Applying for and using exemption certificate</i> ➤ <i>Farmers affidavits are not valid for purchases made after 12/31/2007</i> 	<p>INTRODUCTION</p> <p>This notice is intended to provide information concerning recent changes in Tennessee sales and use tax laws related to the expansion of the agricultural tax exemptions. This notice will also provide information regarding the new requirements for obtaining the certificate of exemption needed in order to make tax-exempt purchases.</p> <p>Effective January 1, 2008, farmers, timber harvesters and nursery operators must qualify for and receive an Agricultural Sales and Use Tax Certificate of Exemption from the Department of Revenue to make agricultural purchases exempt from tax.</p> <p>Effective January 1, 2008, agricultural exemptions available to qualified farmers, timber harvesters and nursery operators have been expanded.</p> <p>DISCUSSION</p> <p>Farmers, timber harvesters and nursery operators applying to the Department of Revenue for the new exemption certificate must meet one or more of the following criteria.</p> <ul style="list-style-type: none"> • Is the owner or lessee of agricultural land from which \$1,000 or more of agricultural products were produced or sold during the year, including payments from government sources; • Is in the business of providing for-hire custom agricultural services of plowing, planting, harvesting, growing, raising, or processing agricultural products or the maintenance of agricultural land; • Is the owner of land that qualifies for taxation under the provisions of the Agricultural Forest and Open Space Land Act of 1976; • The applicant's federal income tax return contains one or more of the following: <ul style="list-style-type: none"> – Business activity on IRS schedule F (Profit or Loss From Farming); or – Farm rental activity on IRS form 4835 (Farm Rental Income and Expenses) or Schedule E (Supplemental Income and Loss); or • The applicant establishes to the satisfaction of the commissioner that he or she is actively engaged in the business of raising, harvesting or otherwise producing agricultural commodities. <p>The application for the new exemption certificate is available on the department's Web site, www.Tennessee.gov/revenue. Qualified applicants will be issued the Agricultural Sales and Use Tax Certificate of Exemption which includes a new exemption number. To make using the exemption certificate easier, a wallet-sized card containing the same information will also be issued.</p> <p>The exemption certificate or card must be presented to sellers to make tax-exempt agricultural purchases. The exemption certificate must be renewed every four years. The farmer and nursery operator affidavit previously used for making tax-exempt purchases is not valid after December 31, 2007.</p>

For more tax information, call toll free 1-800-342-1003
Nashville area and out-of-state call (615) 253-0600
Email TN.Revenue@state.tn.us

Sales and Use Tax

➤ *Items qualifying for exemption T.C.A. §67-6-207*

➤ *Machinery, equipment and appliances*

➤ *Replacement parts and repair labor*

➤ *Energy fuels*

Items Qualifying for Exemption

Purchases of the following items are exempt from sales and use tax **ONLY** when sold and billed to persons that have received the Agricultural Sales and Use Tax Certificate of Exemption and present the exemption certificate or card that contains the new exemption number to the seller.

- Machinery, equipment or appliances used directly and principally for producing agricultural and nursery products for sale and consumption off the premises. This does not include automobiles, trucks, household appliances, or property which becomes real property when erected or installed. **Note that the machinery, equipment, or appliance no longer has to cost more than \$250 to be exempt farm machinery or equipment.**
- Hay wagons, silage wagons, trailers used directly and principally in producing agricultural and nursery products for sale and consumption off the premises. Trucks, flat-bed trailers, and semi-trailers that are used to transport farm products over the road to market, to transport machinery over the road between farms, or to pick up and carry supplies over the road to the farm do not qualify as farm machinery equipment and cannot be purchased without the payment of tax.
- Sales of all-terrain vehicles (ATVs) for use directly and principally in the production of agricultural or nursery products for sale and consumption off the premises. **Qualified purchasers are no longer required to pay tax on the purchase of ATVs and upon approval by the department obtain a refund of the tax from the seller.** Sales of ATVs when purchased by a person presenting the new exemption certificate or card are exempt from tax.
- Equipment used exclusively for harvesting timber.
- Trailers used to transport livestock.
- Self-propelled fertilizer or chemical application equipment used to spread fertilizer or chemicals to aid in production of food or fiber for human or animal consumption.
- Tender beds & spreader beds, even if mounted on a truck.
- Grain bins and attachments.
- Aircraft designed and used for crop dusting.
- Systems for poultry environment control, feeding and watering poultry and conveying eggs.
- Replacement parts or repair labor for repair of machinery, equipment and appliances qualifying for this exemption.
- Gasoline and diesel fuel used for agricultural purposes as defined in Tenn. Code Ann. Section 67-6-102. **Note that the purchase of dyed diesel fuel used in vehicles, not operated on public highways, and logging**

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Sales and Use Tax

➤ *Supplies*

equipment that is used in cutting and harvesting trees is no longer subject to sales tax when purchased by a person presenting the new exemption certificate or card.

- Electricity, natural gas, and liquefied gas, including propane and butane used directly in producing food or fiber for human or animal consumption or aid in growing horticultural product for sale. **Note that the 1.5% state sales tax is repealed. These purchases are completely exempt when purchased by a person presenting the new exemption certificate or card.**
- Coal, wood, wood products or wood by-products or fuel oil, which is used as energy fuel in the production of food or fiber for human or animal consumption or in production of nursery or greenhouse crops. **Note that the 1.5% state sales tax is repealed. These purchases are completely exempt when purchased by a person presenting the new exemption certificate or card.**
- Seeds, seedlings, plants grown from seed and liners (cuttings) to produce food or fiber, including tobacco, for human or animal consumption.
- Fertilizer to be used to aid in the growth and development of seeds, seedlings, or plants.
- Pesticides which are sold for the purpose of aiding in the production of food or fiber, including tobacco, for human or animal consumption.
- Containers for farm products and plastic or canvas used in the care and raising of plants, seeds or seedlings, and plastic or canvas used in covering feed bins, silos and other similar storage structures.
- Livestock and poultry feeds, drugs used for livestock and instruments used for the administration of such drugs.
- Any natural or artificial substance used in the reproduction of livestock.
- Adjuvants and surfactants solutions sold exclusively for the purpose of mixture with insecticides, pesticides, fungicides, or herbicides or for use as a soil conditioner when used to aid in the growth and development of food or fiber, including tobacco, for human or animal consumption.
- Agri-sawdust.

➤ *"Agricultural purposes" defined for exempt gasoline & diesel fuel T.C.A. § 67-6-102*

"Agricultural purposes" means operating tractors or other farm equipment used exclusively, whether for hire or not, in plowing, planting, harvesting, raising or processing of farm products at a farm, nursery or greenhouse; or operating farm irrigation systems; or operating motor vehicles or other logging equipment used exclusively, whether for hire or not, in cutting and harvesting trees; when such vehicles or equipment are not operated upon the public highways of this state.

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Sales and Use Tax

➤ *Purchasers are responsible if purchases are not used in tax exempt manner*

Tax Responsibility

Qualified farmers, timber harvesters and nursery operators are liable for the sales tax, penalty and interest on purchases made free of tax if:

- 1) The machinery and equipment, including any repair or replacement parts, are not used directly and principally in producing agricultural or horticultural products for sale and consumption off the premises, or exclusively used in harvesting timber, or
- 2) The supplies are not used to produce food or fiber for human or animal consumption, or
- 3) He or she allows other persons to use his or her exemption certificate or number to make tax-exempt purchases.

➤ *Sellers are responsible if they do not maintain a copy of the exemption documentation*

Sellers are liable for the sales tax, penalty and interest on sales made free of tax if:

- 1) The seller does not maintain a copy of the exemption certificate or card, which must include the new exemption number, in their records, or
- 2) The invoice or bill does not contain the name and address of the qualified farmer, timber harvester or nursery operator presenting the exemption certificate or number, or
- 3) The invoice or bill does not contain a description of the products purchased by the farmer, timber harvester or nursery operator.

➤ *Sales of agricultural products grown or produced by farmers T.C.A. § 67-6-301*

Sales of Agricultural Products

Agricultural products, including livestock and horticultural products, that are produced or grown by the farmer or nursery operator continue to be exempt from sales and use tax when sold by the farmer or nursery operator. A person does not have to qualify for the exemption certificate to make tax-exempt sales of agricultural products grown or produced by that person. Farmers and nursery operators are not required to obtain exemption certificates from purchasers of agricultural products that are grown or produced by the farmer or nursery operator.

➤ *Streamlined Sales Tax Certificate of Exemption form is on the department's Web site*

Streamlined Sales Tax Exemption Form

Sellers may obtain, in place of a copy of the new exemption certificate or card, a fully completed Streamlined Sales Tax Certificate of Exemption form which must include the exemption number appearing on the Agricultural Sales and Use Tax Certificate of Exemption issued by the department. Streamlined Sales Tax Certificates of Exemption forms are available on the department's Web site.

 **References:**

- PC 602 (2007)
- T.C.A. § 67-6-102
- T.C.A. § 67-6-207
- T.C.A. § 67-6-301

The information provided here is current as of the date of publication but may change as a result of new statutes, regulations, or court decisions. While this notice is intended to be comprehensive, events and situations unanticipated by this notice may occur. In such cases you should contact the department or your tax professional for further guidance.

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 Email TN.Revenue@state.tn.us

RETAILER'S NOTICE

SALES TO FARMERS, TIMBER HARVESTERS & NURSERY OPERATORS

Notice #07-13

Sales and Use Tax

November 2007



Highlights

➤ *Effective 1/1/2008 purchasers must have an Agricultural Sales and Use Tax Certificate of Exemption to make purchases exempt from tax*

➤ *Procedure for making tax-exempt sales*

➤ *Streamlined Sales Tax Certificate of Exemption form is on the department's Web site*

➤ *Farmers affidavits are not valid for purchases made after 12/31/2007*

INTRODUCTION

This notice is intended to provide retailers with information concerning recent changes in Tennessee sales and use tax laws related to the expansion of the agricultural tax exemptions. This notice will also provide information regarding the new agricultural exemption certificates that must be presented to sellers in order to make tax-exempt purchases.

Effective January 1, 2008, only persons who have been issued an Agricultural Sales and Use Tax Certificate of Exemption by the Department of Revenue are permitted to make agricultural purchases exempt from tax.

DISCUSSION

Farmers, timber harvesters and nursery operators must apply to the Department of Revenue for the new exemption certificate. The exemption certificate will contain the name and address of the qualifying person and an exemption number. To make using the exemption certificate easier, the department will issue a wallet-sized card containing the same information.

When a seller makes a tax-exempt sale to a farmer, timber harvester or nursery operator who has presented the seller with the exemption certificate or card, the seller must:

- 1) Include the name and address of the purchaser on the invoice;
- 2) Include a list or description of the products purchased on the invoice;
- 3) Obtain a copy of the new exemption certificate or card; and
- 4) Maintain a copy of the invoice and exemption certificate or card in his or her books and records.

When an employee or family member makes a purchase on behalf of the exempt farmer, timber harvester or nursery operator, the seller must include the name of the employee or family member making the purchase on the invoice. In addition, the purchase must be billed or invoiced in the name of the exempt farmer, timber harvester or nursery operator.

Sellers may obtain, in place of a copy of the new exemption certificate or card, a fully completed Streamlined Sales Tax Certificate of Exemption form which must include the exemption number appearing on the Agricultural Sales and Use Tax Certificate of Exemption issued by the department. Streamlined Sales Tax Certificate of Exemption forms are available on the department's Web site.

Once a certificate of exemption is obtained, sellers are not required to obtain an additional copy of the exemption certificate for subsequent tax-exempt sales. The farmers and nursery operators affidavit previously used by sellers for making tax-exempt agricultural sales is not valid after December 31, 2007.

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➤ *Items qualifying for exemption are in T.C.A. § 67-6-207*

➤ *Machinery, equipment & appliances*

➤ *Replacement parts & repair labor*

➤ *Energy fuels*

Items Qualifying for Exemption

The following items are exempt from sales and use tax **ONLY** when sold and billed to persons that have received the Agricultural Sales and Use Tax Certificate of Exemption and present to the seller the exemption certificate or card that contains the new exemption number.

- Machinery, equipment or appliances used directly and principally for producing agricultural and nursery products for sale and consumption off the premises. This does not include automobiles, trucks, household appliances, or property which becomes real property when erected or installed. **Note that the machinery, equipment, or appliance no longer has to cost more than \$250 to be exempt farm machinery or equipment.**
- Hay wagons, silage wagons, trailers used directly and principally in producing agricultural and nursery products for sale and consumption off the premises. Trucks, flat-bed trailers, and semi-trailers that are used to transport farm products over the road to market, to transport machinery over the road between farms, or to pick up and carry supplies over the road to the farm do not qualify as farm machinery equipment and cannot be purchased without the payment of tax.
- Sales of all-terrain vehicles (ATVs) for use directly and principally in the production of agricultural or nursery products for sale and consumption off the premises. **Sellers are no longer required to collect tax on the sale of ATVs and refund the tax to the purchaser upon approval by the department.** Sales of ATVs to persons presenting the new exemption certificate or card are exempt from tax.
- Equipment used exclusively for harvesting timber.
- Trailers used to transport livestock.
- Self-propelled fertilizer or chemical application equipment used to spread fertilizer or chemicals to aid in production of food or fiber for human or animal consumption.
- Tender beds & spreader beds, even if mounted on a truck.
- Grain bins and attachments.
- Aircraft designed and used for crop dusting.
- Systems for poultry environment control, feeding and watering poultry and conveying eggs.
- Replacement parts or repair labor for repair of machinery, equipment and appliances qualifying for this exemption.
- Gasoline and diesel fuel used for agricultural purposes as defined in Tenn. Code Ann. Section 67-6-102. **Note that the sale of dyed diesel fuel used in logging equipment that is used in cutting and harvesting**

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trees is no longer subject to sales tax when purchased by a person presenting the new exemption certificate or card.

- Electricity, natural gas, and liquefied gas, including propane and butane used directly in producing food or fiber for human or animal consumption or aid in growing horticultural product for sale. **Note that the 1.5% state sales tax is repealed. These purchases are completely exempt when purchased by a person presenting the new exemption certificate or card.**
- Coal, wood, wood products or wood by-products or fuel oil, which is used as energy fuel in the production of food or fiber for human or animal consumption or in production of nursery or greenhouse crops. **Note that the 1.5% state sales tax is repealed. These purchases are completely exempt when purchased by a person presenting the new exemption certificate or card.**
- Seeds, seedlings, plants grown from seed and liners (cuttings) to produce food or fiber, including tobacco, for human or animal consumption;
- Fertilizer to be used to aid in the growth and development of seeds, seedlings, or plants.
- Pesticides which are sold for the purpose of aiding in the production of food or fiber, including tobacco, for human or animal consumption.
- Containers for farm products and plastic or canvas used in the care and raising of plants, seeds or seedlings, and plastic or canvas used in covering feed bins, silos and other similar storage structures.
- Livestock and poultry feeds, drugs used for livestock and instruments used for the administration of such drugs.
- Any natural or artificial substance used in the reproduction of livestock.
- Adjuvants and surfactants solutions sold exclusively for the purpose of mixture with insecticides, pesticides, fungicides, or herbicides or for use as a soil conditioner when used to aid in the growth and development of food or fiber, including tobacco, for human or animal consumption.
- Agri-sawdust.

➤ *Supplies*

➤ *"Agricultural purposes" defined for exempt gasoline & diesel fuel in T.C.A. § 67-6-102*

"Agricultural purposes" means operating tractors or other farm equipment used exclusively, whether for hire or not, in plowing, planting, harvesting, raising or processing of farm products at a farm, nursery or greenhouse; or operating farm irrigation systems; or operating motor vehicles or other logging equipment used exclusively, whether for hire or not, in cutting and harvesting trees; when such vehicles or equipment are not operated upon the public highways of this state.

For more tax information, call toll free 1-800-342-1003
Nashville area and out-of-state call (615) 253-0600
Email TN.Revenue@state.tn.us

➤ *Purchasers are responsible if purchases are not used in a tax exempt manner*

➤ *Sellers are responsible if they do not maintain a copy of the exemption documentation*

➤ *Application for the new exemption certificate is on the department's Web site*

Tax Responsibility

Sellers may make tax-exempt sales of the items listed when the purchaser presents to the seller the exemption certificate or card that contains the new exemption number.

- Farmers, timber harvesters and nursery operators are liable for the sales tax, penalty and interest on purchases made free of tax if:
 - 1) The machinery and equipment, including any repair or replacement parts, are not used directly and principally in producing agricultural or horticultural products for sale and consumption off the premises, or
 - 2) The supplies are not used to produce food or fiber for human or animal consumption, or
 - 3) He or she allows other persons to use his or her exemption certificate or number to make tax-exempt purchases.

- Sellers are liable for the sales tax, penalty and interest on sales made free of tax if:
 - 1) The seller does not maintain a copy of the new exemption certificate or card which must include the exemption number issued by the department in their records, or
 - 2) The invoice or bill does not contain the name and address of the qualified farmer, timber harvester or nursery operator presenting the exemption certificate or number, or
 - 3) The invoice or bill does not contain a description of the products purchased by the farmer, timber harvester or nursery operator.

Applications for Exemption Certificates

The application for the new exemption certificate is available on the department's Web site, www.Tennessee.gov/revenue. Sellers are encouraged to download and have application forms and this notice available for purchasers who have not received or made an application for the Tennessee Agricultural Sales and Use Tax Exemption Certificate.



References:

PC 602 (2007)
T.C.A. § 67-6-102
T.C.A. § 67-6-207

The information provided here is current as of the date of publication but may change as a result of new statutes, regulations, or court decisions. While this notice is intended to be comprehensive, events and situations unanticipated by this notice may occur. In such cases you should contact the department or your tax professional for further guidance.

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www.Tennessee.gov/revenueTennessee Department of Revenue
Reagan Farr, Commissioner

County Clerks Notice

Sales to Farmers, Timber Harvesters, and Nursery Operators

Notice #07-19

Sales and Use Tax

December 2007



Highlights

- *Effective 1/1/2008 purchasers must have an Agricultural Sales and Use Tax Certificate of Exemption to make purchases exempt from tax*
- *The Agricultural Sales and Use Tax Certificate of Exemption has a unique exemption account number*
- *Procedural changes relating to livestock trailers and ATVs effective 1/1/2008*
- *Trucks, flat-bed trailers & semi-trailers used over the road continue to be taxable.*

INTRODUCTION

This notice is intended to provide the county clerks with information concerning significant changes in Tennessee sales and use tax laws related to agricultural tax exemptions. Tenn. Code Ann. § 67-6-207 has been amended to permit agricultural exemptions only to persons qualified as farmers, timber harvesters, and nursery operators.

Effective January 1, 2008, only persons who have been issued an Agricultural Sales and Use Tax Certificate of Exemption by the Department of Revenue are permitted to make agricultural purchases exempt from sales tax. The two most significant changes for county clerks relate to sales of:

- **Trailers used to transport livestock, as defined in Tenn. Code Ann. Section 44-18-101, and**
- **Purchases of all-terrain vehicles (ATVs)**

Each Agricultural Sales and Use Tax Certificate of Exemption will include the name of the qualified farmer, timber harvester or nursery operator on the face of the certificate. It will also include a unique sales tax exemption account number.

DISCUSSION

For county clerks, this change in the statute will require procedural changes with regard to livestock trailers and ATVs purchased by qualified farmers, timber harvesters, and nursery operators. **Effective January 1, 2008, the farmer and nursery operator affidavit previously used to make tax-exempt purchases is no longer valid.**

Livestock Trailers

- Only those holding an agricultural certificate of exemption may purchase a livestock trailer free of sales tax.
- Dealers will have primary responsibility for checking to ensure the proper certificate is presented before selling the trailer exempt from tax.
- If a person purchases from another person who is not a dealer and later comes to the clerk's office to register the trailer, the owner must present the agricultural certificate of exemption in order to be exempt from sales tax.
- Trucks, flat-bed trailers and semi-trailers that are used to transport farm products over the road to market, to transport machinery over the road between farms, or to pick up and carry supplies over the road to the farm remain taxable.

For more information, call toll free 1-888-871-3171
Nashville area and out-of-state call (615) 741-3101
Email TN.Revenue@state.tn.us

➤ *ATVs sold to persons issued an Agricultural Sales and Use Tax Certificate of Exemption are exempt*

➤ *The name on the certificate of exemption must match the title and registration.*

➤ *Clerks must make copies of the certificate of exemption to forward with the application*

ATVs

- Clerks will no longer be required to collect tax on the sale of ATVs made to persons issued an Agricultural Sales and Use Tax Certificate of Exemption by the Department of Revenue.
- Dealers will have primary responsibility for checking to ensure the proper certificate is presented before selling an ATV without collecting tax.
- Those without a certificate of exemption will not be permitted to purchase an ATV exempt from sales tax.
- If a person purchases from another person who is not a dealer and later comes to the clerk's office to register the ATV, the owner must present the agricultural certificate of exemption in order to be exempt from sales tax.

For both ATVs and livestock trailers, the exemption is available only when the name on the title and registration is identical to the name on the Agricultural Sales and Use Tax Certificate of Exemption.

To make using the certificate of exemption easier, the department also issued wallet-sized cards containing the same information as the certificate of exemption. The Clerks will need to make a copy of the agricultural certificate of exemption or card to forward along with the application, just as they currently do with other tax exemption certificates. Clerks may obtain, in place of a copy of the agricultural certificate of exemption or card, a fully completed Streamlined Sales Tax Certificate of Exemption form which must include the exemption account number appearing on the Agricultural Sales and Use Tax Certificate of Exemption.

Additional information is available on Revenue's Web site at the following link:

<http://www.tennessee.gov/revenue/misc/farmerexemption.htm>



References:

PC 602 (2007)
T.C.A. § 67-6-102
T.C.A. § 67-6-207

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Nashville area and out-of-state call (615) 741-3101
Email TN.Revenue@state.tn.us



TENNESSEE DEPARTMENT OF REVENUE
 APPLICATION FOR REGISTRATION
 AGRICULTURAL SALES AND USE TAX CERTIFICATE OF EXEMPTION

This application for registration is to be used to obtain a Tennessee agricultural sales or use tax exemption certificate. This certificate must be used to make qualified agricultural purchases exempt from sales and use tax. You must complete the front of this application and submit with copies of any requested documents.

1. REASON FOR APPLICATION <input type="checkbox"/> New Registration <input type="checkbox"/> Registration Renewal	2. TYPE ENTITY - Check one <input type="checkbox"/> Farmer <input type="checkbox"/> Timber Harvester <input type="checkbox"/> Nursery Operator	3. LEGAL NAME and ADDRESS NAME : _____ Street : _____ City, State, Zip : _____
4. PRIMARY MAILING ADDRESS Name: _____ Street: _____ City, State, Zip: _____	5. PHONE NUMBER AND EMAIL ADDRESS Phone Number: _____ Fax: _____ E-mail Address: _____	
6. PRIMARY SSN: _____ FEIN (IF APPLICABLE): _____		
7. TYPE OF OWNERSHIP: <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> PROPRIETORSHIP <input type="checkbox"/> HUSBAND/WIFE OWNERSHIP <input type="checkbox"/> PROFESSIONAL LIMITED LIABILITY COMPANY <input type="checkbox"/> LIMITED PARTNERSHIP <input type="checkbox"/> LIMITED LIABILITY COMPANY <input type="checkbox"/> S CORPORATION <input type="checkbox"/> OTHER PROFESSIONAL CORPORATION <input type="checkbox"/> CORPORATION		
8. NAME OF BUSINESS _____ SEC. OF STATE # _____		
9. Applicant must meet at least one of the following criteria for agricultural exemption. (Check all boxes that apply.) <input type="checkbox"/> The owner or lessee of agricultural land from which \$1,000 or more of agricultural products were produced and sold during the year, including payments from government sources. (Provide proof of government payments and/or copies of tax returns reflecting income information.) <input type="checkbox"/> In the business of providing for-hire custom agricultural services for the plowing, planting, harvesting, growing, raising, or processing of agricultural products or for the maintenance of agricultural land. (Provide copies of Form 1099.) <input type="checkbox"/> The owner of land that qualifies for taxation under the provisions of the Agricultural Forest and Open Space Land Act of 1976, compiled in Tenn. Code Ann. Title 67, Chapter 5, Part 10. (Provide copy of qualification of land under this provision.) <input type="checkbox"/> Have a federal income tax return that contains one or more of the following: <input type="checkbox"/> Business activity on IRS Schedule F (Profit or Loss From Farming) (Provide copy of Schedule F) , and/or <input type="checkbox"/> Farm rental activity on IRS Form 4835 (Farm Rental Income and Expenses) or Schedule E (Supplemental Income and Loss) (Provide copy of Form 4835 or Schedule E) <input type="checkbox"/> Otherwise establish to the satisfaction of the Commissioner of Revenue that you are actively engaged in the business of raising, harvesting or otherwise producing agricultural commodities as defined in Tenn. Code Ann. Section 67-6-301(c)(2). (Provide a written statement detailing why you should qualify for the agricultural exemptions if you do not meet one of the other criteria.)		
10. I declare that the information on this application is correct and complete to the best of my knowledge and belief. Print Name: _____ Sign Here: _____ Date: _____	DEPARTMENT USE ONLY	

RV-F1308401

Application for Registration
Tennessee Agricultural Sales and Use Tax Certificate of Exemption

Instructions:

- Item 1:** Indicate whether application is being submitted for a new exemption certificate or to renew an existing certificate.
- Item 2:** Indicate whether you are a farmer, timber harvester, or nursery operator.
- Item 3:** Provide the legal name and address of the business for which exemption is requested. If requesting for yourself as an individual, please enter your name and your location address.
- Item 4:** Provide the primary mailing address where correspondence regarding this exemption should be mailed.
- Item 5:** Provide the telephone number, fax number, and e-mail address of the person or business being registered.
- Item 6:** Enter the social security number of the individual or federal employer identification number (FEIN) of the business. Also enter the driver's license number of the individual or primary member and the state of issue.
- Item 7:** Indicate the legal form of the person or business for whom the exemption is requested.
- Item 8:** If the business for which exemption is being requested is not a sole proprietor, husband and wife ownership, or general partnership, enter the name of the business, as registered with the Tennessee Secretary of State (SOS), and the SOS number.
- Item 9:** You must meet one or more of the criteria listed on the front of this application to be eligible for an agricultural sales and use tax exemption as a farmer, timber harvester, or nursery operator. Check the block in Item 9 next to the qualification under which the individual or business qualifies for exemption. Supporting documentation of exemption authorization must be submitted with this application as indicated.
- Item 10:** The individual or the primary member of the business for which exemption is being requested must provide the person's printed name, sign the application form, and provide the date on which the application is being submitted.

WARNING: Persons qualifying for this exemption will be liable for tax, penalty, and interest on purchases made without the payment of tax if such purchases are not used directly and principally in producing agricultural products for sale and consumption off the premises or if they allow other persons to use their exemption certificate or number to make tax-exempt purchases. For more information concerning the types of purchases that can be made by qualifying farmers, timber harvesters, and nursery operators, please visit the department's web site or call the department at the numbers listed below.

Return this application and appropriate documents to the Tennessee Department of Revenue, Taxpayer and Vehicle Services Division, Andrew Jackson State Office Building, 500 Deaderick Street, Nashville, Tennessee 37242. You can fax the application to the Department at (615) 532-9784. If you have questions or need assistance, you can call the Department at (615) 253-0600. Callers within Tennessee but outside the Nashville calling area call 1-800-342-1003. You may also e-mail the department at Tn.Revenue@state.tn.us. Our web site address is www.Tennessee.gov/revenue.

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TENNESSEE DEPARTMENT OF REVENUE

Tennessee Agricultural Sales and Use Tax Certificate of Exemption

JOHN DOE
ATTN: SAMPLE
100 FARMERS WAY
SOMEWHERE TN 37777

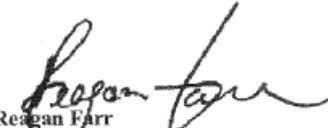
Effective Date: January 1, 2008
Account Type: Sales and Use - Agricultural
Account No: 783793488
Expiration Date: December 31, 2011

SAMPLE

The Tennessee Department of Revenue grants the holder of this certificate authority to make purchases for qualified agricultural purposes exempt from sales or use tax under Tenn. Code Ann. Section 67-6-207.

The purchaser must furnish its suppliers of qualified goods and services with one of the following: (1) a **COPY** of this exemption certificate, (2) a **COPY** of the wallet-sized exemption card that can be found on the bottom of this certificate, or (3) the Streamlined Sales Tax certificate of exemption, which must include the exempt account number shown above. The supplier must retain a copy of the exemption certificate, card, or the Streamlined Sales Tax certificate of exemption for audit purposes. Later purchases do not require the submission of the exemption certificate, card, or Streamlined Sales Tax certificate of exemption. Invoices must contain the name of the farmer, timber harvester, or nursery operator presenting this certificate to make exempt purchases.

IF YOU CEASE FARMING, TIMBER HARVESTING, OR NURSERY OPERATIONS, MOVE, OR IN ANY WAY CHANGE STATUS FROM YOUR PRESENT FORM, YOU MUST NOTIFY THE DEPARTMENT IMMEDIATELY. THIS EXEMPTION CERTIFICATE IS VALID FOR FOUR YEARS FROM THE DATE OF ISSUE AND MUST BE RENEWED BY THE TAXPAYER PRIOR TO THE EXPIRATION DATE.


Reagan Farr
Commissioner of Revenue

CERTIFICATE OF EXEMPTION FROM SALES AND USE TAX
FOR TENNESSEE AGRICULTURAL EXEMPTIONS

Name: JOHN DOE

Account Identification Number: 783793488

Type of Exemption: Sales and Use Tax- Agricultural

Effective Date: January 1, 2008

Expiration Date: December 31, 2011

I certify that all purchases of agricultural related goods and services made by me, unless otherwise specified on any order or invoice, are used directly and principally for the purpose of producing agricultural products, including nursery products, for sale and use or consumption off the premises.

Signature of purchaser: _____

CERTIFICATE OF EXEMPTION FROM SALES AND USE TAX
FOR TENNESSEE AGRICULTURAL EXEMPTIONS

Name: JOHN DOE

Account Identification Number: 783793488

Type of Exemption: Sales and Use Tax- Agricultural

Effective Date: January 1, 2008

Expiration Date: December 31, 2011

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Signature of purchaser: _____

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