



OCTOBER 2011

# TAX TOPICS

## SALES AND USE TAX

Texas Comptroller of  
Public Accounts

## Tax Exemptions for Agriculture

### Sales Tax

Farmers and ranchers are not exempt entities; nor are all purchases that farmers and ranchers make exempt from sales tax. Some agricultural items, however, are exempt, while others are taxable unless purchased for exclusive use on a commercial farm or ranch in the production of food or other agricultural products for sale.

#### ALWAYS EXEMPT – EXEMPTION CERTIFICATE NOT REQUIRED

Sales of some agricultural items are never taxable, regardless of who is buying the item or how it will be used. The following agricultural items are not taxable and an exemption certificate is not required:

- seeds and annual plants, the products of which are commonly recognized as food for humans or animals, or are usually only raised to be sold in the regular course of business, such as corn, oats, soybeans, and cotton seed;
- animals, including cattle, sheep, poultry and swine, the products of which are ordinarily food;
- horses and mules;
- water;
- feed for farm and ranch animals or wild game, including oats, hay, chicken scratch, wild bird seed and deer corn. The exemption does not apply to feed for pets and exotic animals, even if those animals are located on a farm or ranch.

#### EXEMPT IN CERTAIN SITUATIONS; EXEMPTION CERTIFICATE REQUIRED

Some items only qualify for exemption in specific circumstances. In these instances, the purchaser must provide an exemption certificate to the seller stating that the item will be used in a qualifying manner.

#### NEW – USE OF TEXAS AGRICULTURAL AND TIMBER EXEMPTION REGISTRATION NUMBER (AG/TIMBER NUMBER) AND AGRICULTURAL EXEMPTION CERTIFICATE REQUIRED BEGINNING IN 2012

Beginning Jan. 1, 2012, persons claiming an exemption from Texas sales and use tax on purchases of qualifying agricultural items, other than the items identified as “always exempt”, must have a valid Texas Agricultural and Timber Exemption Registration Number (Ag/Timber Number) and are required to issue the new Texas Agricultural Sales and Use Tax Exemption certificate, Form 01-924, displaying the number to the supplier. The generic exemption certificate, Form 01-339, cannot be used to claim the agricultural exemption. Blanket exemption certificates issued to suppliers on the old form must be replaced with new certificates for purchases made on or after Jan. 1, 2012.

Retailers may accept and keep a blanket exemption certificate on file covering purchases of items that may be reasonably used exclusively in the production of agricultural products, such as air

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tanks, hand tools, motor oil, welding equipment, etc. However, a blanket exemption certificate will not cover items that cannot reasonably be exclusively used in the productions of agricultural products, such as furniture, guns, clothing, or jewelry.

#### EXEMPT IF USED EXCLUSIVELY ON A COMMERCIAL FARM OR RANCH FOR AGRICULTURAL PRODUCTION

Some items are exempt from sales tax only if they are used exclusively on a farm or ranch in the production of food or other agricultural products for sale.

For sales tax purposes, a farm or ranch is land used wholly or in part in the production of crops, livestock and/or other agricultural products held for sale in the regular course of business. Examples of farms and ranches include commercial greenhouses, feed lots, dairy farms, poultry farms, commercial orchards and similar commercial agricultural operations. A farm or ranch is not a home garden, timber operation, kennel, land used for wildlife management or conservation, land used as a hunting or fishing lease or similar types of operations that do not result in the sale of agricultural products in the normal course of business.

“Exclusively used” means the item must be used 100 percent of the time on a commercial farm or ranch in the production of food or other agricultural products. For example, a tractor used exclusively on a commercial farm to plow fields, mow hay and harvest crops qualifies for exemption. But, the tractor does not qualify for the exemption if it is used for any non-qualifying activity such as providing an amusement service (i.e. hayrides), or if it is used on any property other than a commercial farm or ranch for any reason. For example, a tractor used to mow grass on a utility line right-of-way does not qualify for exemption.

To qualify for this exemption, the purchaser must be a commercial farmer or rancher engaged in producing agricultural products for sale or entities commonly hired to help with the commercial production of agricultural products such as field hands, custom harvesters, crop dusters and veterinarians who make farm and ranch calls. To

claim the exemption, the purchaser must provide a properly completed exemption certificate to the supplier at the time of purchase, or maintain a valid blanket exemption certificate on file with the supplier.

Beginning Jan. 1, 2012, a purchaser must provide their suppliers a properly completed Agricultural exemption certificate, Form 01-924, that includes a valid Ag/Timber Number to purchase the items listed below tax-free.

The following items qualify for exemption only when purchased for exclusive use on a commercial farm and ranch:

- fertilizer, fungicides, insecticides, herbicides, defoliant and desiccants (drying agents) used exclusively in the production of food or other agricultural products for sale;
- over-the-counter medications, tonics, restoratives or other therapeutic preparations (vaccines and drenches, for example) for farm or ranch animals that are not prescribed or dispensed by a veterinarian or required by the federal Food and Drug Administration to be labeled with a drug facts panel;
- machinery or equipment used exclusively in the production of food, grass, feed and other agricultural products or exclusively used in building or maintaining roads and water facilities located on a farm or ranch;
- tangible personal property incorporated into a structure used exclusively for poultry carcass disposal in accordance with Section 26.303 of the Water Code;
- components of irrigation systems used on a farm or ranch in the production of agricultural products for sale; and,
- electricity or natural gas used in agriculture, including dairy or poultry operations and pumping for farm and ranch irrigation.

The ag exemption is lost if an item that was purchased tax free is not exclusively used on a farm or ranch in an exempt manner. The purchaser is then required to remit tax on the original sales price of the item to the Comptroller.

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## DEFINITION OF MACHINERY AND EQUIPMENT

For purposes of this exemption, equipment is defined as an apparatus, device, hand tool or simple machine. Machinery is power operated. The exemption also applies to accessories and repair and replacement parts for qualifying machinery and equipment, as well as the labor needed to install the accessory or perform the repair, provided the equipment has not been incorporated into realty.

Examples of machinery and equipment exempted when exclusively used in the production of agricultural products or in the building of roads or water facilities on a farm or ranch include:

- tractors, combines, grain augers, sprayers, manure and fertilizer spreaders, plows, hay rakes, and seed drills;
- expendable agricultural supplies, such as hand tools, baling wire and binder's twine; lubricants used in farm machinery and motor vehicles not licensed or registered for highway use; nuts, bolts, washers and other hardware; materials and structural components used in farm or ranch machinery or equipment;
- items specifically designed to be assembled into a machine used in irrigating crops, such as parts of a pumping system or portable irrigation system;
- repair and replacement parts for machinery or equipment used exclusively on a farm or ranch, including motor oil, hydraulic fluids, oil, fuel or air filters, and tires specifically designated by the manufacturer for farm use only;
- items installed as components of an underground irrigation system on a farm or ranch; and,
- fence wire, fence posts, pens, gates, cattle guards and chutes used to contain crops or livestock being produced for sale. Such items used to separate a residential yard from land used in agricultural production, to contain pets or to enclose a wildlife conservation or management area do not qualify.

## ALL-TERRAIN AND OFF-ROAD VEHICLES

Off-road vehicles are self-propelled vehicles designed for use off of public streets and highways. Examples include dirt bikes, golf carts, all-terrain vehicles (ATVs), utility vehicles and other vehicles not

designed or intended by the manufacturer to meet motor vehicle registration and safety inspections.

Motor vehicles designed for on-road use, such as cars, pick-ups, trucks and trailers, are subject to state motor vehicle tax under Chapter 152 of the Tax Code. See Motor Vehicle Tax for information about the taxability of motor vehicles.

Off-road vehicles are subject to state and local sales and use taxes. ATVs and utility vehicles may qualify for the agricultural sales tax exemption if used exclusively on a commercial farm or ranch in the production of agricultural products for sale. The exemption does not apply to vehicles like golf carts and miniature motorcycles that are designed and intended for recreational use.

ATVs and utility vehicles used for any purpose other than producing agricultural products for sale, like hunting, or that are used at any location other than a commercial farm or ranch do not qualify, even if the vehicle is also used in the production of agricultural products. For example, a utility vehicle used exclusively on a farm to perform crop spraying or feeding cattle qualifies for the exemption; however, if the vehicle is also used for hunting or pleasure riding, it does not qualify.

A purchaser claiming the agricultural exemption on the purchase of an ATV or utility vehicle must provide a properly completed exemption certificate to the seller at the time of purchase, and after Jan. 1, 2012, must include a valid Ag/Timber Number. For purchases made prior to Jan. 1, 2012, the exemption certificate issued by the purchaser must state that the vehicle will be used exclusively on a farm or ranch for a qualifying use. General statements such as "use on a farm" are not valid statements for exemption.

If an ATV or utility vehicle that was purchased tax-free for use exclusively in agricultural production is used in any non-qualifying manner, the exemption is lost and the purchaser is responsible for remitting tax on the original sales price of the item directly to the Comptroller.

## COMPUTERS

Most computers, software, and peripheral do not qualify for the agricultural exemption because

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they are not used exclusively in the production of agricultural products. Computers are also commonly used for communications, record-keeping and entertainment. Computers, software and/or related equipment that are exclusively used in the operation of production machinery on a farm or ranch, such as a computer operated feed mixing device, or that are used exclusively by an original producer at a location operated by the producer to process, packet or market agricultural products do qualify for exemption. See Original Producers: Machinery and Equipment Used to Process, Pack and Market Agricultural Products for more information about the taxability of machinery and equipment used by original producers.

A purchaser claiming the agricultural exemption on the purchase of a computer, computer equipment or services on qualifying equipment must provide a properly completed exemption certificate to the seller at the time of purchase, and after Jan. 1, 2012, must include a valid Ag/Timber Number.

If a computer that was purchased tax-free for use exclusively in agricultural production is used in any non-qualifying manner the exemption is lost and the purchaser is responsible for remitting tax on the original sales price of the item directly to the Comptroller.

#### ORIGINAL PRODUCERS: MACHINERY AND EQUIPMENT USED TO PROCESS, PACK AND MARKET AGRICULTURAL PRODUCTS

Certain machinery and equipment used by an original producer to process, pack or market agricultural products qualifies for exemption under specific conditions. The machinery or equipment must be:

- used exclusively in the processing, packing or marketing of agricultural products by an original producer; and,
- the use must occur at a location operated by the original producer for processing, packing, or marketing the producer's own products.

The exemption includes pollution control equipment required as a result of these processing, packing or marketing activities.

An "original producer" is the person who:

- brings an agricultural product into being and is the owner of the agricultural product from the time it is brought into being until it is processed, packed, or marketed; or
- is the grower of an agricultural product, exercises predominant operational control over the raising of the agricultural product, and bears a risk of loss of investment in the agricultural product.

To qualify for this exemption:

- fifty percent or more of the agricultural products processed, packaged, or marketed at or from the location must be produced by the original producer and may not be purchased or acquired from others; and
- the original producer may not process, pack, or market agricultural products that belong to another unless the value of the product that belongs to the other person is 5 percent or less of the total agricultural products processed, packed, or marketed by the producer

Two or more corporations that operate a farm, ranch or timber operation on the same tract or adjacent tracts of land and that are entirely owned by an individual or a combination of the individual, the individual's spouse, and their children may qualify as an original producer.

#### AGRICULTURAL COOPERATIVES

Agricultural cooperatives may claim an exemption from tax on machinery and equipment used exclusively in the processing, packing, or marketing of agricultural products if:

- the cooperative itself is the original producer of all the agricultural products being processed, packed, or marketed; and,
- the processing, packing, or marketing is accomplished at a location operated by the cooperative.

#### DIVERGENT USE OF PROCESSING, PACKING AND MARKETING MACHINERY AND EQUIPMENT USED BY AN ORIGINAL PRODUCER

Divergent use means the use of property in a manner or for a purpose other than that which qualified the item for exemption at the time of

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purchase. Tax is due when divergent use is made of an item for which an exemption was claimed based on how the item would be used.

In the case of machinery and equipment purchased tax-free under this exemption, sales tax is due if the producer grew less than fifty percent of the agricultural products it processed, packed, or marketed during the most recently completed calendar year.

The sales tax due is based on the fair amount the purchaser would pay to rent the machinery and equipment on the open market during the period of divergent use. If the item has no fair market rental value, sales tax is due based upon the purchase price.

If an original producer does not meet the fifty percent criteria in any year then they must accrue tax on the fair market rental value of the processing, packing and marketing machinery and equipment used during the entire one-year period following the calendar year in which the producer did not meet the fifty percent criteria, and remit that tax to the Comptroller.

At any time the producer may stop paying tax on the fair market rental value of the machinery and equipment and instead pay sales tax on the original purchase price, but credit will not be allowed for taxes previously paid on the fair market rental value.

The option to pay tax based on fair market rental value applies only to divergent use of processing, packing and marketing equipment used by original producers and does not apply to items that qualify for exemption only if used exclusively on a commercial farm or ranch in the production of food or other agricultural products for sale.

**BUILDINGS AND STRUCTURES**

Most buildings and structures used on a farm or ranch, and the materials used to construct them, are taxable. General purpose and storage buildings such as hay barns, machine shops, bunkhouses, kennels, offices and livestock barns are not exempt.

A building or structure that is designed for a specific agricultural purpose and constructed in such a way that the building cannot be economically used for any other purpose without major structural

changes is considered, for tax purposes, to be exempt as machinery or equipment. The structure and the materials used to construct it qualify for exemption subject to the conditions set out below. Examples of qualifying structures include an automated laying house, cattle guard, and commercial greenhouse.

**STRUCTURES USED FOR POULTRY CARCASS DISPOSAL**

Commercial poultry operations can claim an exemption on the purchase of tangible personal property that will be incorporated into a structure that is used exclusively for the disposal of poultry carcasses in accordance with Water Code Section 26.303.

**CERTAIN COMMERCIAL DAIRY FARM BUILDINGS – NEW IN 2011**

Effective Sept. 1, 2011, commercial dairy farmers can claim an exemption from tax on the purchase of building materials and other tangible personal property that, after purchase, will be incorporated into or attached to a free-stall dairy barn or a dairy structure used solely for maternity purposes that is located on a commercial dairy farm and is used or employed exclusively for the production of milk.

**CONSTRUCTION OF QUALIFYING BUILDINGS AND STRUCTURES**

When constructing or repairing a building or structure that qualifies for exemption as agricultural equipment, the farmer or rancher must purchase the qualifying materials by issuing a properly completed exemption certificate to the seller of the materials. The seller of the materials may be the retailer selling directly to the farmer or rancher or the seller may be a contractor hired by the farmer to provide the labor and materials to construct the building under the terms of a separated contract.

The agricultural exemption cannot be claimed by a contractor purchasing materials to construct a qualifying structure under a lump-sum contract entered into with the farmer or rancher. Under Texas law, a contractor operating under a lump sum contract is considered the consumer, not the seller, of all tangible personal property incorporated into

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the realty of the customer. If the contract is lump sum, the contractor owes tax on the construction materials at the time of purchase and may not claim exemptions that could be available under other circumstances. The farmer or rancher may not issue and the contractor may not accept exemption certificates, such as the new agricultural exemption certificate or a direct pay exemption certificate, for these real property improvements. See Rule 3.291, "Contractors" for more information concerning sales tax responsibilities associated with lump sum and separated contracts for new construction.

Contractors constructing an improvement to realty under a separated contract are considered sellers of the incorporated materials and may issue a resale certificate to suppliers when purchasing construction materials that will be incorporated into a customer's exempt property, as well as qualifying farm machinery or equipment that the contractor will install on a farm or ranch. The contractor must obtain a valid exemption certificate in lieu of collecting the tax on the separately stated charge for qualifying agricultural equipment. The labor for new construction is not taxable.

### REMODELING OR REPAIR OF BUILDINGS AND STRUCTURES

Nonresidential real property repair and remodeling is a taxable service. The agricultural exemption does not apply to nonresidential repair and remodeling services, even if performed on a farm or ranch. The labor to install qualifying agricultural equipment or machinery into an existing building, driveway, or road is taxable nonresidential real property remodeling.

If the contract or billing between the farmer and service provider to repair or remodel existing nonresidential realty is lump-sum, the total charge is taxable.

If the contract or billing to repair or remodel existing farm or ranch nonresidential realty separates the charge for exempt machinery or equipment from the charge for labor, the farmer or rancher may issue an agricultural exemption certificate that, beginning Jan. 1, 2012, includes the Agricultural Registration number, in lieu of paying tax for the exempt incorporated equipment, but not for the labor.

Once farm machinery or equipment is built in or incorporated into realty, the equipment is considered an improvement to realty. A lump-sum charge for material and labor to repair or restore agricultural equipment that has been incorporated into realty is taxable in total.

Under a separated contract with the service provider, however, a farmer or rancher may issue an exemption certificate claiming the agricultural exemption for the repair parts used to repair qualifying farm machinery and equipment. The separately stated charge for the repair labor is taxable.

Buildings used exclusively for housing people (i.e. farm/ranch houses and bunk houses) on commercial farms and ranches are considered residential real property. Materials purchased to repair residential realty do not qualify for the agriculture exemption. The labor to repair the residential realty is not taxable.

### FARM AND RANCH ROAD CONSTRUCTION

A farm or ranch road is a nonresidential improvement to realty. Farm and ranch roads are roads located on private property that run from a public roadway to any portions of a farm or ranch where production of agricultural products occurs, but does not include driveways to residences that branch off of a road.

Roads that run directly from a public roadway to residential dwellings and driveways are considered residential improvements to real property. When a road runs to a residential dwelling and then extends past the home to agricultural production areas, the section of the road from the public roadway to the residence is considered residential while the remaining portion of the road is nonresidential.

The exemption for machinery and equipment used exclusively in building or maintaining roads located on a farm or ranch does not extend to taxable materials incorporated into roads. Tax is due on culverts, concrete, asphalt and processed gravel and sand. Feed lot operators, however, may claim an exemption from sales tax on the purchase of road materials used exclusively to build, repair or maintain feed alleys that are contiguous to the

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pens, that exist entirely within the fenced-in area of the feed lot, and that are used exclusively for the purpose of delivering feed to livestock. Commercial dairy farmers may claim an exemption on road materials if used to build feed alleys that exist entirely within the perimeter of a free-stall dairy barn or maternity barn, provided the road base is not sold under a lump-sum contract between the contractor and dairy farmer.

Labor to construct a new road (residential or nonresidential), or to repair or remodel a residential road or driveway is not taxable. A contractor building a new road or repairing an existing residential road under a lump-sum contract should pay or accrue tax on all taxable materials used to construct the road and should not collect tax from the farmer/rancher on the lump-sum charge. When such roadwork is performed under a separated contract, the contractor should collect tax only on the separately stated charge for taxable materials. The charge for labor is not taxable.

**FARM AND RANCH ROAD REPAIRS**

Labor to repair or remodel a nonresidential farm or ranch road is taxable. Tax is due on the total charge to repair or remodel a nonresidential road.

The total charge for repairing or remodeling a road that is partially residential and partially nonresidential is presumed taxable if the work done on the nonresidential portion of the road represents more than 5 percent of the job total. This presumption may be overcome if, at the time of the transaction, the service provider separately states a reasonable charge for the taxable service (the nonresidential remodeling portion of the contract) from the charge for the nontaxable services (the residential portion of the contract). If the charge for the taxable portion of the services is not separately stated at the time of the transaction, the service provider or customer may later establish for the Comptroller, through documentary evidence, the percentage of the total charge that relates to the nontaxable service. Written contracts detailing the scope of work, bid sheets, tally sheets, schedules of values, and blueprints are examples of acceptable documentation.

**CONTAINERS USED TO TRANSPORT PRODUCE OR POULTRY**

Bins used exclusively as containers in transporting fruit or vegetables from the harvest location (field) to the location where the items are processed, packaged or marketed; and poultry cages used exclusively in transporting poultry from the farm to the location where the poultry is processed, packaged or marketed are exempt.

**Services**

In addition to nonresidential real property repairs or remodeling, the agricultural exemption does not apply to the purchase of taxable services such as structural pest control, data processing and waste collection or removal. For example, tax is due on a charge to fumigate a barn, silo, bunkhouse or similar structure, even if located on a farm or ranch. See publication 96-259 for more information about taxable services.

A service performed on exempt agricultural machinery or equipment qualifies for exemption. For example, a farmer may claim an exemption on the purchase of repairs, including parts and labor, to a tractor used exclusively on a farm in the production of crops. The purchaser must provide a properly completed exemption certificate (including a valid Ag/Timber Number beginning Jan. 1, 2012) to the service provider that states the type and use of the machinery or equipment on which the service is performed.

In order for the service to qualify for exemption, the item on which the service is performed must retain its identity as tangible personal property, and be used exclusively on a commercial farm or ranch in a qualifying manner. "Retain its identity as tangible personal property" means the item has not been incorporated into realty (i.e. plumbed, wired or otherwise built into a structure or land). Once an item has been incorporated into realty, it becomes nonresidential real property. Charges to repair or remodel nonresidential real property are taxable and do not qualify for exemption under Tax Code Sec. 151.316.

For example, repairs performed on wheel-line irrigation equipment (portable structure made out of pipes that can be hooked to a detachable hose)

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qualify for exemption because the equipment itself is not affixed to realty. But repairs performed on an underground irrigation system are taxable because the components have been installed in real property.

However, if the contract or billing for the service separates the charge for the repair parts from the charge for labor, the farmer or rancher may issue an agricultural exemption certificate, that beginning Jan. 1, 2012 includes the Ag/Timber Number, in lieu of paying tax for the exempt incorporated parts. The separately stated charge for labor remains taxable.

## Aircraft Operations

### CROP DUSTERS

Machinery and equipment used exclusively in an agricultural aircraft operation, as defined in Section 137.3 of Title 14 of the Code of Federal Regulations (C.F.R) qualifies for exemption. The C.F.R defines an agricultural aircraft operation to mean the operation of an aircraft for the purpose of dispensing any economic poison; dispensing a substance intended for plant nourishment, soil treatment, propagation of plant life or pest control; or engaging in dispensing activities directly affecting agriculture, horticulture, or forest preservation, but does not include the dispensing of live insects. "Exclusive use" means that the aircraft is used only for the performance of these activities.

Economic poison is defined as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the Secretary of Agriculture declares to be a pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant. The term does not include bullets or ammunition used for predator control.

The exemption includes aircraft used exclusively in an agricultural aircraft operation, and repair and replacement parts and labor for the aircraft, as well as other machinery or equipment directly used in the crop dusting operation. The exemption does not apply to items such as office furniture and supplies.

A person claiming an exemption for items used in an agricultural aircraft operation must provide a properly completed exemption certificate to the supplier. Purchasers buying qualifying items, including pesticides, beginning Jan. 1, 2012, must also include a valid Ag/Timber Number on the exemption certificate.

### AIRCRAFT USED FOR OTHER AGRICULTURAL PURPOSES

Tax Code Section 151.328 exempts aircraft sold for use in connection with an agricultural use including:

- predator control;
- wildlife or livestock capture;
- wildlife or livestock surveys;
- census counts of wildlife or livestock;
- animal or plant health inspection services; or,
- crop dusting, pollination, or seeding.

The exemption applies only to aircraft, and repair or replacement parts and repair labor for qualifying aircraft. It does not apply to firearms, ammunition or other machinery or equipment used on or with the aircraft or by the aircraft owner or operator.

An aircraft is considered to be exclusively used in connection with an agricultural use if 95 percent of the use of the aircraft is for a purpose described above. The 95 percent provision allows for travel of less than 30 miles each way to a location to perform an exempt service listed above. This flight time will not disqualify an aircraft from the exemption. The aircraft owner must maintain and make available to the comptroller flight records for all uses of the aircraft.

Any use of the aircraft for nonagricultural purposes will result in loss of the exemption.

Selling a gunner's seat on the aircraft to a person who will participate in predator control (e.g., feral hog eradication) will not result in a loss of the exemption under Sec. 151.328(a)(5). However, the sale of the gunner seat is subject to sales tax as a taxable amusement service (151.0028), and the seller must obtain a Texas sales and use tax permit to collect and remit tax on the transaction.

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## Sales Tax Refunds

**P**urchasers who paid Texas tax to a supplier on the purchase of an exempt item may request a refund of the tax.

### PURCHASES MADE PRIOR TO JAN. 1, 2012

Purchasers who do not have a Texas sales tax permit must request a refund of the tax directly from the seller. If the seller is unable or unwilling to issue a refund, the purchaser may request a refund directly from the Comptroller's office, if the seller provides a properly completed Assignment of Right to Refund (Form 00-985). The Assignment, along with any other necessary documentation, should be submitted to the Comptroller with the refund request. Purchasers who have a valid Texas sales tax permit may file a refund request directly with the Comptroller, or take a credit for the tax paid in error on a current or future return.

See "Sales Tax Refunds" for more information.

### PURCHASES MADE ON OR AFTER JAN. 1, 2012

Purchasers must have a valid Ag/Timber Number when claiming an exemption from tax on the purchase of certain items used in the production of agricultural products beginning Jan. 1, 2012. A farmer or rancher who does not have a valid Ag/Timber Number when buying an item subject to the registration requirement must pay tax to suppliers at the time of purchase. The purchaser may then apply for a Ag/Timber Number, and upon approval, submit a refund claim for the purchased item directly to the Comptroller's office. Purchasers who do not have a valid Ag/Timber Number at the time of purchase may not request a refund directly from the supplier.

## Motor Fuels Tax

### TAX REFUNDS FOR GASOLINE USE

**A** farmer or rancher can get refunds of tax paid on gasoline used in power take-off equipment or auxiliary power units, off-highway equipment, stationary engines

and for other non-highway purposes. Appropriate records and documentation must support all claims for refunds, which must be available for inspection for four years. Taxpayers who use a distribution log to record removals from bulk storage should note deliveries for off-highway purposes with a description of the equipment. Each entry must show the date, number of gallons, and be signed. The log must include the taxpayer's stamped or preprinted name and address.

Refund claims must be postmarked within one year from the first day of the month following the date of use (if withdrawn from your storage) or purchase, whichever is later. For example, if the gasoline was purchased or used on Jan. 18, 2011, you must file the claim on or before Feb. 1, 2012.

Taxpayers can request a refund using the Comptroller's Texas Claim for Refund of Gasoline or Diesel Fuel Taxes (Form 06-106). The claim should not include original invoices or other supporting documentation unless requested.

### TAX REFUNDS FOR DIESEL FUEL USED IN POWER TAKE-OFF (PTO) AND AUXILIARY POWER UNITS

Taxes paid on diesel fuel used in PTO or auxiliary power units are not eligible for refund. For example, there are no tax refunds for fuel used in diesel-powered tilt bed grain trucks, bulk feed trucks, truck-mounted fertilizer spreaders or cotton module trucks equipped with PTOs.

### DIESEL USED IN OFF-HIGHWAY EQUIPMENT, STATIONARY ENGINES AND FOR OTHER NON-HIGHWAY USES

All purchases of clear diesel fuel must include payment of state motor fuel tax. Tax paid on clear diesel fuel used in off-highway equipment, stationary engines and for other non-highway applications is not refundable.

### TAX-FREE PURCHASES OF DYED DIESEL FUEL WITH A SIGNED STATEMENT

A signed statement is used with an end user number to purchase tax-free dyed diesel fuel. To get an end user number, an applicant must first register with the Comptroller's office (Form AP-197, Texas Dyed Diesel Fuel End User Signed Statement

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### TAX EXEMPTIONS FOR AGRICULTURE

Number Registration). No bonds or reports are required for signed statements.

When fuel is used exclusively for agricultural purposes and an applicant receives an Agricultural End User Number, this allows the user to buy up to 25,000 gallons of tax-free dyed diesel per month. The end user must give suppliers and distributors the assigned Agricultural End User Number along with signed statements (Form 06-710, Texas End User Agricultural Signed Statement for Purchasing Tax-Free Dyed Diesel Fuel).

Agricultural use means use of diesel fuel to power non-highway agricultural equipment, such as a tractor or combine, on a farm or ranch. The farm or ranch can be a feedlot, dairy farm, poultry farm, commercial orchard, commercial nursery, timber operation or similar commercial agricultural operation. A home garden does not qualify. Agricultural use includes use of fuel for wildlife management as defined by the Property Tax Code, Section 23.51(7), but does not include the processing, packaging or marketing of agricultural products by anyone other than the original producer.

When fuel is used for some non-agricultural purposes and the applicant receives an End User Number, this allows the user to buy up to 10,000 gallons of tax-free dyed diesel per month. The end user must give suppliers and distributors the assigned End User Number along with signed statements (Form 06-352, Texas End User Signed Statement for Purchasing Tax-Free Dyed Diesel Fuel).

Dyed diesel fuel purchased using a signed statement may not be put into the fuel tanks of motor vehicles operating on Texas' public highways.

### TAX-FREE PURCHASES BY LICENSE

Farmers and ranchers can apply for a Dyed Diesel Fuel Bonded User license to purchase unlimited amounts of tax-free dyed diesel fuel for use in non-highway equipment. License holders must file a quarterly or yearly report that includes dyed diesel fuel inventories, purchases and uses. Under the law, the Comptroller's office may require a minimum bond of \$10,000.

### LIQUEFIED GAS USE

Liquefied gas (LG) users must prepay annually the tax on LG used in highway vehicles licensed in Texas. The tax is based on the vehicle's registered gross weight and miles driven in the state the previous year. The Comptroller's office issues the user an LG tax decal that shows dealers the tax has already been paid. All LG purchased for off-highway use may be purchased tax-free.

### Motor Vehicle Tax

Farm machines, trailers and semitrailers used primarily for farming and ranching, including machines and trailers used primarily in poultry operations and on feedlots, qualify for exemption from Texas motor vehicle tax.

- Primary use means the machine or trailer is used at least 80 percent of the time on the farm, ranch or poultry operation, directly in the production of agricultural products in the regular course of business.
- A farm machine is a self-propelled motor vehicle specially adapted for primary use on a farm or ranch in the production of crops or raising livestock (including poultry), to dispense feed or to apply fertilizer or other agricultural chemicals.
- A farm trailer must be used in the production of food for human consumption, grass, feed or agricultural products to be sold in the regular course of business.
- A farm trailer primarily used by a farmer or rancher in processing, packing or marketing of the farmer's own livestock or agricultural products is not subject to tax.
- A farm trailer exclusively used by an agricultural cooperative or gin to process, pack or market agricultural products is taxable unless the cooperative can prove that the cooperative is the original producer of all agricultural products being processed, packed or marketed and that those functions are performed at a location operated by the cooperative. An exemption from motor vehicle sales tax is not granted based on how a vehicle is licensed or titled. For example, a pickup truck is not exempt as a farm vehicle even though it may have farm registration.

The exemption is claimed on Form 130-U, Application for Certificate of Title, Section 21, Exemption claimed under the Motor Vehicle Sales

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## TAX EXEMPTIONS FOR AGRICULTURE

and Use Tax when purchasing a qualified exempt motor vehicle. This document is presented to the County Tax Assessor-Collector at the time of registration or titling.

**NEW TEXAS AGRICULTURAL EXEMPTION REGISTRATION NUMBER (AG/TIMBER NUMBER) REQUIRED IN 2012**

Beginning Jan. 1, 2012, farmers, ranchers and agricultural producers must have a valid Ag/Timber Exemption Number to claim an agricultural use exemption from motor tax. The registration number must be entered on the 130-U at the time of registration or titling.

**Qualifying Agricultural Producers Sign Up Now or Contact Us for More Assistance**

- Sign up for an Agricultural and Timber Exemption Number at [www.comptroller.texas.gov/taxinfo/agriculture](http://www.comptroller.texas.gov/taxinfo/agriculture).
- Call us toll free.
- Visit one of our local field offices.

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