



# MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 14

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## SEED, FEED, FERTILIZER AND OTHER ITEMS USED IN AGRICULTURAL AND AQUACULTURAL PRODUCTION

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This bulletin is intended solely as advice to assist persons in determining and complying with their obligations under Maine tax law. It is written in a relatively informal style and is intended to address issues commonly faced by taxpayers with respect to sales of agricultural and aquacultural products. Taxpayers are responsible for complying with all applicable tax statutes and rules. Although bulletins issued by Maine Revenue Services (“MRS”) do not have the same legal force and effect as rules, justifiable reliance upon this bulletin will be considered in mitigation of any penalties for any underpayment of tax due. This bulletin is current as of the last revision date shown at the end of the document.

The Sales and Use Tax Law is found in Part 3 of MRSA (“Maine Revised Statutes Annotated”) Title 36. Both Title 36 and all MRS rules may be seen by clicking on “laws and rules” on the MRS website.

### 1. PRODUCTS USED IN AQUACULTURAL PRODUCTION

Aquaculture is the farming of freshwater or saltwater organisms such as salmon, oysters, mussels, and seaweed for human or animal consumption. Also known as “aquafarming,” aquaculture involves the cultivating of aquatic populations under controlled conditions, as contrasted with commercial fishing, where the conditions are not controlled. Sales of feed, hormones, pesticides, antibiotics, and medicines used in aquacultural production are exempt from sales or use tax. 36 MRSA § 1752(7-A). The exemption does not apply to items used by aquariums or zoos.

**A. Feed.** Feed includes feed for lobsters in tidal circulating lobster pounds. The exemption does not apply to sales of water or feed for lobsters kept in tanks for sale.

**B. Antibiotics and medicines.** Sales of medicines used for the treatment of animals, fish, and shellfish in the course of aquacultural production, including antibiotics used for the treatment of lobsters kept in tidal circulating lobster pounds, are exempt.

### 2. PRODUCTS USED IN COMMERCIAL AGRICULTURAL PRODUCTION

Sales of seed, fertilizer, defoliants, pesticides, insecticides, fungicides, and weed killers for use in commercial agricultural production are exempt from sales or use tax. 36 MRSA § 1760(7-B). “Commercial agricultural production” means commercial production of crops (for either human or animal consumption), plants, trees, compost and livestock. 36 MRSA § 2013(1)(A). For purposes of this exemption, “commercial agricultural production” includes commercial silviculture (tree farming), as well as the growing of flowers, shrubs, and other plants by commercial nurseries and greenhouses.

Sales of plant seedlings are not exempt, except for tree seedlings used in commercial forestry (36 MRSA § 1760(73)) or when being purchased for resale.

The exemption does not apply to sales of items that are not purchased for use in commercial agricultural production. For example, items purchased by a farmer or any other individual for use in a home garden or other noncommercial use, are subject to tax.

**A. Seed.** “Seed” includes tubers, bulbs, and corms used as seeds. The exemption includes all seed sold for the commercial production of plants that ultimately and primarily produce a product for human or animal consumption. The term “seed” does not include seedlings.

**B. Pesticides.** The exemption covers sales of poisons intended to kill, repel, or otherwise control rodents and other animals that are damaging to commercial crops, plants or trees such as rat poisons, woodchuck bombs, and pesticides.

**C. Insecticides.** The exemption covers sales of preparations intended to kill, repel, or otherwise control insects harmful to commercial crops, plants, or trees. The exemption does not apply to products intended for household use, such as mothballs, ant traps, and insecticides in aerosol containers, or to preparations intended for personal use.

**D. Fungicides, weed killers and defoliant.** Mulch used for the purpose of weed suppression by a commercial farmer qualifies as an exempt herbicide when used around crops, but the exemption does not apply to herbicides used for weed management in a sales area or in parking lots.

### **3. PRODUCTS USED IN ANIMAL AGRICULTURE**

Sales of breeding stock, semen, embryos, feed, hormones, antibiotics, medicine, pesticides, and litter for use in animal agricultural production are exempt from sales or use tax. (See 36 MRSA §1760(7-C)). The exemption also covers antiseptics and cleaning agents used in commercial animal agricultural production.

“Animal agricultural production” includes:

- The keeping and raising of animals that are producers of food or that will become food products themselves, such as cows, pigs, chickens, bees, deer, game birds, and goats;
- The keeping and raising of animals that are producers of other products, such as fur-bearing animals, sheep, llamas, alpacas, or deer for fleece or antler velvet; and
- The keeping and raising of equines (horses).

Although this exemption applies to noncommercial as well as commercial activities, it does not apply to the following types of businesses or activities, which do not constitute animal agricultural production:

Aquariums  
Breeding or raising of pets  
Carnivals  
Circuses  
Zoos

**A. Medicine.** Medicine means a substance or preparation used in the prevention, diagnosis, or treatment of disease or injury.

Medicine includes:

antiseptics	electrolytes	propylene glycol
Banamine	Enrofloxin	Resorb
calcium	Gentamycin	Silver sulfadiazine cream
Carbocaine	Keto-gel	Torbugesic
Chap-shield and Chap-guard	Lactated ringers	vitamin B (when used to prevent metabolic disorders)
Chlorhexidine solution	Metronidazole	
CMPK gel	Neo/poly B/Bact Ophth ointment	
Detomidine	Penicillin G	

Medicine does not include:

Booster Calf	Orbeseal
California Mastitis Test	Stronghold
Ointments, creams, and salves that do not contain medicine	Vitamins

**B. Pesticides.** A pesticide is any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pests. Traps, such as fly tapes, are not pesticides.

**C. Litter.** "Litter" includes wood shaving, sawdust, and other organic bedding materials such as hay.

#### **4. SALES OF ANIMALS, FISH & SHELLFISH**

The retail sale of an animal, except one being raised as a food product or for food production or one that is a producer of another product, is taxable. The sale of any animal by a person not engaged in making retail sales is considered a casual sale that is not subject to tax. Some examples of taxable transactions are:

- A. Sales by pet stores of animals and fish;
- B. Sales by animal breeders of animals such as dogs, cats, and horses;
- C. Sales of horses at claiming races; and
- D. Sales of bait used in sport fishing.

#### **5. FUEL FOR BURNING BLUEBERRY FIELDS**

Sales of all fuels used in burning blueberry lands are exempt. In order to document the exempt sale, the retailer should obtain a signed statement from the purchaser describing its business activity and the fact that the fuel being purchased is to be used in burning blueberry fields.

**6. OTHER ITEMS PURCHASED FOR USE IN COMMERCIAL AQUACULTURAL OR AGRICULTURAL PRODUCTION**

**A. Supply items.** There is no exemption for sales of supply items. This category includes items such as paper towels, rags, office supplies, lubricants, syringes, and cleaning products.

**B. Baling Twine.** Purchases of baling twine are exempt as packaging material when the twine is used to bale hay that is held for sale (see Rule 301, “Sales for Retail and Sales of Packaging Materials”). However, twine used to bale hay that will be used by the farmer is taxable.

**C. Machinery and equipment.** For information regarding purchases of certain depreciable machinery and equipment and electricity used in commercial agriculture and commercial aquaculture, see Instructional Bulletin No. 45 and No. 49.

**D. Fuel.** Other than fuel described in Section 5 above, there is no exemption for sales of fuel oil.

**7. AFFIDAVIT FOR CLAIM OF EXEMPTION**

An affidavit, as provided in this bulletin, must be presented to the seller and retained in the seller’s file in order to document that the purchase is exempt from tax. The purchaser need not present an affidavit for each purchase as long as one copy of each purchaser’s current affidavit is retained by the seller. Provided these documents are in the seller’s file, the seller is relieved of the burden to charge tax on future purchases. However, the purchaser must inform the seller with each purchase whether the items purchased are exempt or taxable. By signing this affidavit, the purchaser is attesting to the fact that the items being purchased from the seller qualify for exemption. Misuse of the affidavit may subject the purchaser to prosecution.

**8. ADDITIONAL INFORMATION**

The information in this bulletin addresses some of the more common questions regarding the Sales and Use Tax Law faced by your business. It is not intended to be all-inclusive. Requests for information on specific situations should be in writing, should contain full information as to the transaction in question and should be directed to:

**MAINE REVENUE SERVICES  
SALES, FUEL & SPECIAL TAX DIVISION  
P.O. BOX 1060  
AUGUSTA, ME 04332-1060  
TEL: (207) 624-9693  
V/TTY: 7-1-1**

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# MAINE REVENUE SERVICES SALES/EXCISE TAX DIVISION

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## AFFIDAVIT REGARDING PURCHASES OF CERTAIN PRODUCTS FOR USE IN COMMERCIAL AGRICULTURAL PRODUCTION, COMMERCIAL FISHING, AQUACULTURAL PRODUCTION AND ANIMAL AGRICULTURE

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I present this affidavit to \_\_\_\_\_ and certify under penalty of perjury that purchases made by me from this retailer constitute:

- a. Seed, fertilizers, defoliant, pesticides, or weed killers to be used by me in commercial agricultural production. "Commercial agricultural production" means commercial production of crops, plants, trees, compost and livestock.
- b. Bait for commercial fisherman.
- c. Feed, hormones, pesticides, antibiotics or medicine to be used by me in aquacultural production.
- d. Breeding stock, semen, embryos, feed, hormones, antibiotics, medicine, pesticides, or litter for use in animal agricultural production, including the raising and keeping of equines.
- e. Organic bedding materials for farm animals.
- f. Antiseptics and cleaning agents to be used by me in commercial animal agricultural production.
- g. Materials to be used in the construction, repair or maintenance of an animal waste storage facility.

**I declare these purchases are exempt from Maine sales and use tax. I agree to assume full liability for payment to the State of Maine of any use taxes, together with penalties and interest that may later be determined to be due on any purchases covered by this affidavit because of a taxable use of the property.**

\_\_\_\_\_  
NAME OF PURCHASER

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
TITLE

NOTICE TO RETAILERS: Retailers making exempt sales covered by this certificate must appropriately mark or stamp all invoices to indicate whether they are exempt sales.

Misuse of Affidavit

Purchasers who avoid payment of tax through deliberate misuse of this affidavit of exemption may be subject to criminal prosecution.

## GENERAL RESTRICTIONS FOR USE OF THIS AFFIDAVIT OF EXEMPT USE

This affidavit is to be retained in the records of the seller to document any sale claimed to be exempt under 36 M.R.S.A. § 1760, sub-§§ (7-A), (7-B), (7-C), (78) and (81). A copy of this affidavit does not need to be obtained by the seller on each subsequent purchase. However, if the purchaser indicates that a certain purchase is believed to be exempt pursuant to this affidavit, the invoice must be appropriately marked to indicate the exempt sale.

This affidavit must be taken in good faith by the seller. The good faith of the seller will be questioned if the seller knows, or has reason to know, that the person making the purchase is not using the products for the intended exempted purpose.

This affidavit is valid only for purchases of the products identified under (a) through (g) on the reverse side. This affidavit may not be used for the tax-free purchase of the following items:

- (1) Machinery, equipment, repair parts and supplies
- (2) Products used in non-commercial agricultural production
- (3) Bait for non-commercial fishermen
- (4) Materials for construction, repair or maintenance of an animal waste storage facility for which a certified nutrient management plan is not in place.

### Additional Information

Please see Sales, Fuel & Special Tax Division Instructional Bulletin No. 45 (Commercial Agricultural Production), Bulletin No. 44 (Commercial Fishing) or Bulletin No. 49 (Commercial Aquacultural Production) for details regarding other exemptions available to commercial farmers and fishermen and Bulletin No. 14 (Seed, Feed, Fertilizer and other Items Used in Agricultural and Aquacultural Production) for details regarding agricultural and aquacultural products in general.

Requests for more information on specific situations should be in writing, contain full details as to the situation in question and should be directed to:

Maine Revenue Services  
Sales Tax Division  
P. O. Box 1060  
Augusta, Maine 04332-1060

Assistance is also available by calling (207) 624-9693 weekdays, between the hours of 8AM and 5 PM.

Visit our website at [www.maine.gov/revenue](http://www.maine.gov/revenue).