MAINE REVENUE SERVICES
SALES, FUEL AND SPECIAL TAX DIVISION
RULE NO. 323

COMMERCIAL AGRICULTURAL PRODUCTION, COMMERCIAL AQUACULTURAL PRODUCTION, ~~AND~~ COMMERCIAL FISHING, AND COMMERCIAL WOOD HARVESTING

SUMMARY: Explains 36 MRSA §2013 as it pertains to the issuance of refunds and certificates of exemption to persons who are engaged in commercial agricultural production, commercial aquacultural production, ~~and~~ commercial fishing, and commercial wood harvesting.

SECTION 1. DEFINITIONS

1. Depreciable. "Depreciable" refers to property that has a normal life expectancy of more than one year and is depreciable for federal income tax purposes.

2. Directly. "Directly" refers to those activities or operations that constitute an integral and essential part of commercial agricultural production, commercial aquacultural production, commercial wood harvesting or commercial fishing, as contrasted with and distinguished from those activities or operations that are simply incidental, convenient or remote to ~~commercial agricultural production, commercial aquacultural production or commercial fishing~~ those activities. Except in the case of electricity, items used in support operations (including construction or repair facilities, machine shops, storage activities, administration or highway transportation) are not used directly in commercial agricultural production, commercial aquacultural production, commercial wood harvesting or commercial fishing.

3. Livestock. "Livestock" includes:

A. Animals kept or raised primarily to produce meat for human or animal consumption;

B. Animals kept or raised primarily to produce other food products for human or animal consumption, such as laying hens, dairy cattle and bees;

C. Animals kept or raised primarily to produce other agricultural products, such as sheep, llamas and alpaca that produce wool and domestic deer that produce antler velvet; and

D. Animals kept or raised primarily to breed animals other than pets.

4. Machinery and equipment. "Machinery and equipment" means tangible personal property necessary to ~~the operation of a~~ commercial agricultural production, commercial aquacultural production, ~~or~~ commercial fishing ~~venture~~, or commercial wood harvesting, including repair parts and attachments for qualifying machinery and equipment. "Machinery and equipment" includes property that may, on account of its nature, be attached to a building or other structure without losing its identity as a particular piece of machinery or equipment and that, if attached, is readily removable without significant damage to the unit or to the realty.

"Machinery and equipment" does not include:

A. Land, buildings, and other inherently permanent structures such as docks and silos;

B. Materials and components, such as lumber, plumbing and wiring, that become an integral part of a building or other structure;

C. Trailers, parts and attachments that are used or designed for use in conjunction with a motor vehicle;

D. Foundations for machinery and equipment, and special purpose buildings used to house or support machinery and equipment; or

E. Items, other than repair parts, that are used in or with qualifying machinery and equipment, such as fuel, lubricants, coolants, solvents, tools and supplies used for cleaning and maintenance, and personal apparel.

5. Primarily. "Primarily" means more than 50% of the time.

6. Qualifying activity. "Qualifying activity" means commercial agricultural production, commercial aquacultural production, commercial fishing, or commercial wood harvesting.

~~6~~ 7. Related but non-qualifying business activity. "Related but non-qualifying business activity" means an activity that does not constitute commercial agricultural production, commercial aquacultural production, ~~or~~ commercial fishing, or commercial wood harvesting, but in which it is customary to employ machinery and equipment that is suitable for use in ~~commercial agricultural production, commercial aquacultural production or commercial fishing~~ those activities.

8. Yarding. "Yarding" means the hauling of felled trees to the landing or temporary storage site at which they are loaded onto trucks for transport on a public or private way, and does not include loading the felled trees onto the trucks.

SECTION 2. COMMERCIAL AGRICULTURAL PRODUCTION

The following activities do not constitute commercial agricultural production, even if they are conducted in support of commercial agricultural production or by a person who is also engaged in commercial agricultural production:

~~B~~ A. Subsistence farming;

~~C~~ B. Any activity engaged in primarily as a hobby or avocation rather than as a commercial venture;

~~D. Tree farming, except fruit-bearing trees;~~

~~E~~ C. Forestry and lumber operations of any sort;

~~F~~ D. Clearing of land;

~~G~~ E. The digging of drainage ditches and installation of drainage tile or other drainage materials;

~~H~~ F. Boarding, riding, racing and training of horses;

~~I. Raising non-edible crops such as seedlings, shrubs, vines, and trees, except those that ultimately and primarily produce a product for human or animal consumption;~~

~~J~~ G. Severance of sand, gravel, loam or peat moss; and

~~K~~ H. Transportation, storage, preparation or packaging for market of agricultural products by a person who did not grow or raise them.

SECTION 3. COMMERCIAL AQUACULTURAL PRODUCTION

The following activities do not constitute commercial aquacultural production, even if they are conducted in support of commercial aquacultural production or by a person who is also engaged in commercial aquacultural production:

1. Transportation, storage, preparation or packaging for market of aquacultural products by a person who did not grow or raise them; and

2. Any activity engaged in primarily as a hobby or avocation rather than as a commercial venture.

SECTION 4. COMMERCIAL FISHING

The following activities do not constitute commercial fishing, even if they are conducted in support of commercial fishing or by a person who is also engaged in commercial fishing:

1. Transportation, storage, preparation or packaging of marine organisms by a person who did not catch them;

2. Any activity engaged in primarily as a hobby or avocation rather than as a commercial venture; and

~~C~~ 3. The operation of a lobster pound.

SECTION 5. COMMERCIAL WOOD HARVESTING

"Commercial wood harvesting" does not include any activity engaged in primarily as a hobby or avocation rather than as a commercial venture, or any activity conducted in support of commercial agricultural production (such as the clearing of land).

SECTION ~~5~~ 6. PURCHASES OF ELECTRICITY

1. Exempt purchases. Electricity used directly in ~~commercial agricultural production, commercial aquacultural production or commercial fishing~~ a qualifying activity, including support operations, may be purchased exempt from sales tax by persons who have been issued a certificate of exemption, provided that an affidavit of exemption and a copy of the certificate of exemption card has been provided to the seller. The seller, acting in good faith, may continue to bill electricity sold to that person through that meter exempt from tax until notified that the person is no longer the holder of a certificate of exemption, or that the electricity sold through that meter is no longer used exclusively in ~~commercial agricultural production, commercial aquacultural production or commercial fishing~~ a qualifying activity (including support operations). For purposes of this subsection, "support operations" means storage activities, maintenance activities, and administrative activities related to ~~the operation of a commercial, aquacultural or fishing venture~~ a qualifying activity. "Support operations" does not include ~~harvesting or processing of forest products;~~ activities that constitute, or are conducted by, a separate business; construction activities; or reselling or transporting products that are procured or produced by someone else.

2. Refund of tax paid. The following persons may not purchase electricity without payment of tax, but may apply to Maine Revenue Services for a refund of sales or use tax paid on purchases of electricity used directly in ~~commercial agricultural production, commercial aquacultural production or commercial fishing,~~ a qualifying activity, including support operations.

A. Persons who have not been issued a certificate of exemption; and

B. Persons who purchase electricity that will be used in both qualifying and non-qualifying activities through a single meter. These persons must pay tax to the supplier based on the entire amount billed and apply to Maine Revenue Services for a refund of the tax paid on that portion of the electricity that was used in the qualifying activity.

SECTION ~~6~~ 7. CERTIFICATE OF EXEMPTION

1. Application. Any person claiming exemption under 36 MRSA §2013, sub-§3 must apply to the State Tax Assessor for a certificate of exemption. The application must be on a form prescribed by the State Tax Assessor and must include a copy of the portion of the person's most recent federal income tax return that shows the person is engaged in ~~commercial agricultural production, commercial aquacultural production or commercial fishing~~ a qualifying activity.

2. Issuance. A certificate of exemption will be issued by the State Tax Assessor to persons who have submitted an application that shows they are engaged in ~~commercial agricultural production, commercial aquacultural production or commercial fishing~~ a qualifying activity. The certificate of exemption is effective for a maximum of four years from the date of issuance.

3. Exceptions. A certificate of exemption will not be issued to the following persons:

A. Persons whose most recent federal income tax return does not show that the person was engaged in ~~commercial agricultural production, commercial aquacultural production or commercial fishing in the period covered by that filing~~ a qualifying activity; or

B. Persons who are primarily engaged in a related but non-qualifying business activity.

4. Use restricted. The certificate of exemption may not be used to purchase the following items without payment of sales tax:

A. Items that are less than 100% depreciable.

B. Items that are not commonly used directly in ~~commercial agricultural production, commercial aquacultural production or commercial fishing~~ a qualifying activity as determined by the State Tax Assessor, including lawn and garden tractors of less than 20 horsepower, backhoe tractors, fork lift trucks, snowmobiles, all-terrain vehicles and computers.

5. Refund of tax paid. The following persons may apply directly to Maine Revenue Services for a refund of sales or use tax paid on purchases of depreciable machinery and equipment used directly and primarily in ~~commercial agricultural production, commercial aquacultural production or commercial fishing~~ a qualifying activity:

A. Persons who have not been issued a certificate of exemption;

B. Purchasers of items that are less than 100% depreciable; and

C. Purchasers of items that are not commonly used directly in ~~commercial agricultural production, commercial aquacultural production or commercial fishing~~ a qualifying activity.

6. Requirements of seller. The burden of proving a sale is to a person that has been issued a certificate of exemption is upon the person making the sale. This burden of proof will be met if the seller obtains from the purchaser a signed affidavit and a copy of a valid certificate of exemption issued by Maine Revenue Services in accordance with the provisions of this Rule.

The seller must retain an affidavit and a copy of the certificate of exemption of each person to whom exempt sales are made, but need not obtain a separate affidavit or copy of the certificate for each individual sale. Invoices must be appropriately marked to indicate that they are exempt sales. This requirement is satisfied by the purchaser's certificate of exemption and the words "Maine Sales Tax Exempt."

7. Good faith requirement. The certificate of exemption must be taken in good faith by the seller. This good faith requirement is not met if the seller knows or could reasonably infer that the purchaser is not the holder of the certificate of exemption, or that the merchandise will not be used by the purchaser directly and primarily in ~~commercial agricultural production, commercial aquacultural production or commercial fishing~~ a qualifying activity.

8. Misuse of certificate of exemption. Misuse of the certificate of exemption will result in its cancellation. The certificate must be surrendered at the request of the State Tax Assessor.

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