

# Nebraska Sales Tax Review

*The following is an update on a problem that seems to persist in how we go about collecting or not collecting sales tax on certain items. The purpose of this information is to explain the Nebraska and local option sales tax as it applies to purchases and leases of depreciable agricultural machinery and equipment.*

## Overview

Purchases and certain leases of depreciable agricultural machinery and equipment are exempt from Nebraska and local option sales and use tax when purchased or leased for use in commercial agriculture.

Personal property tax remains due on such items even if sales tax was erroneously paid. Should this occur, a claim for a refund of the sales tax may be filed with the department.

## Definitions

*Agricultural machinery and equipment* is tangible personal property used directly in cultivating or harvesting a crop, the raising or caring for animal life, or collecting or processing of an agricultural product on the farm or ranch.

Agricultural machinery and equipment DOES NOT include: office equipment, registered or unregistered motor vehicles and trailers, well-drilling equipment, handling or processing equipment for agricultural products not on a farm or ranch, any building or fixture, or machinery and equipment purchased by veterinarians for use in their practices.

*Commercial agriculture* is the business of producing food products or other useful and valuable crops, or raising animal life. The crops or animal life can either be sold or used by the producer or grower to produce other products for sale.

Commercial agriculture includes commercial production in greenhouses, nurseries, tree farms, sod farms, and feedlots.

Commercial agriculture does not include storage of products off the farm, in commercial elevators, or animal like in stockyards or sale barns.

*Depreciable tangible personal property* means:

tangible personal property used in a trade or business, or used for the production of income, with a determinable life of longer than one year;

tangible personal property eligible for federal depreciation, but the owner chooses not to depreciate; or

all other tangible personal property where a taxpayer is claiming depreciation, amortization, or section 179 deductions on their federal income tax return.

## Sales of Agricultural Machinery and Equipment

Sales of depreciable agricultural machinery and equipment are exempt from Nebraska and local option sales and use tax when purchased for use in commercial agriculture.

ALL exempt sales of such equipment MUST be supported by a Nebraska Sales and Use Tax Exemption Certificate for Agricultural Machinery and Equipment Purchases or Leases (Form 13). The seller must provide one copy of Form 13 to the purchaser, keep one copy with their books and records, and attach a copy to their Nebraska and City Sales and Use Tax Return (Form 10).

### **Leases or Agricultural Machinery and Equipment**

Leases of qualified machinery and equipment remain exempt from Nebraska and local option sales and use tax when leased for use in commercial agriculture.

*Capitalized leases* of qualified machinery and equipment for periods of more than one year must be supported by Form 13. The capitalized lease allows the lessee to depreciate the machinery or equipment for federal income tax purposes. The depreciation allowance makes the lessor responsible for the personal property tax assessment. The lessor must provide one copy of Form 13 to the purchaser, keep one copy with their books and records, and attach a copy to their Nebraska and City Sales and Use Tax Return (Form 10).

*Operating leases* of qualified machinery and equipment for periods of one year or less must be supported by Form 13, Section B. The lessor is responsible for reporting the net book value for personal property assessment. The lessor must keep the completed Form 13 with their books and records.

### **Repair and Replacement Parts for Agricultural Machinery and Equipment**

The sales of repair and replacement parts for agricultural machinery and equipment used in commercial agriculture are not exempt from sales and use tax. The seller is required to collect and remit the tax on sales of repair and replacement parts. The seller cannot accept a Form 13 or Form 13 to exempt such sales from tax.

The purchaser may apply for a refund of the tax paid on depreciable repair and replacements for agricultural machinery and equipment that is directly used in commercial agriculture. The claim for refund must be filed within three years after the date of purchase.

As a general rule, repair and replacement parts are depreciable if they will appreciably prolong the life of the property, arrest its deterioration, or increase its value or usefulness, and are typically capital expenditures where a deduction is allowed only through the depreciation/cost recovery allowance. However, incidental repairs that merely keep the property in an ordinary operating or usable condition are deductible current expenses, and the tax paid for these items is not refundable.

### **Personal Property Tax**

Personal property tax is due on qualified agricultural machinery and equipment EVEN IF sales tax is paid on the item. All depreciable agricultural machinery and equipment must be reported for personal property tax. If sales tax was paid, the purchaser may apply for a refund of the sales and use tax by filing a Nebraska Sales and Use Tax Refund Claim for Agricultural Machinery and Equipment Purchases or Leases (Form 7AG-1).

### **Improper Issuance of Form 13**

If Form 13 was improperly issued by a purchaser who is not engaged in commercial agriculture, the purchaser must remit Nebraska and applicable city use tax directly to the department by filing a Nebraska and City Consumer's Use Tax Return (Form 2), or a Nebraska and City Individual Consumer's Use Tax Return (Form 3). Any purchaser who provides a Form 13 to a retailer for any purchase not exempt from sales and use tax may be assessed a penalty of \$100 or 10 times the tax.

### **Improvements to Real Estate**

Improvements to real estate do not qualify for this exemption because such improvements are not considered to be machinery and equipment. Examples include buildings and fences.

### **Equipment That Is Part of a Building**

When qualified agricultural machinery and equipment are annexed to a building, the person installing such equipment is considered a contractor.

Only a contractor operating under Option 1 can take Form 13 from their customer to exempt the qualified equipment from sales tax.

Contractors operating under Option 2 or Option 3 are the consumers of all materials, including qualified equipment, that they annex to a building. They *cannot* accept Form 13 for equipment that they annex to a building.

Information relating to the contractor options is available in the Nebraska Taxation of Contractors General Information Guide.

For further information on any of these topics, please contact the Nebraska Department of Revenue at 1-800-742-7474.

*Source: Nebraska Department of Revenue, August 1999*

The following list provides examples of machinery and equipment that can qualify for the sales and use tax exemption when:

- it is depreciable;
- it is agricultural machinery or equipment;
- and it is used in commercial agriculture.

ATV's and snowmobiles  
augers, portable  
combines  
movable concrete feed bunks  
crop dusting airplanes  
cultivators  
disks  
farrowing crates, pens and stations  
feed boxes  
feed wagons, not licensable  
automatic feeders  
fertilizer nurse tanks pulled behind a tractor or connected to center pivot  
fertilizer spreaders or applicators

fish production equipment including feeding and seining equipment  
gates, completed  
gestation crates  
grain bin equipment that dries or moves the grain  
grain dryers, portable  
harrows  
hay balers  
hay loaders  
hay mowers  
hay rakes  
hog carts  
hog slats/gang slats, concrete  
hydraulic pole tampers and couplers  
irrigation well equipment, such as motors, pivots, and pipes, but not casing and concrete pads  
manure handling equipment  
milk separators  
milk storage equipment on the farm location  
milking equipment  
panels, completed  
planters  
plows  
stock racks  
tractors  
tractor duals  
trash wheels  
truck chassis/cabs modified to be feed wagons