

# **To Tax Or Not To Tax - That Is The Question**

**By Mark Othmer, Nebraska Field Director**

Nothing seems to cause more confusion in Nebraska than sales tax laws. During our district meetings and recent phone calls with several dealers, it became quite clear to me that all dealer members probably need to rethink this issue. Local county assessors and accountants that may not completely understand the law seem to be contributing to the problem. Add some minor changes made by the Nebraska Department of Revenue and a customer looking for a way to save some tax dollars (farmers would never do this, would they?) and you have the perfect equation for total confusion.

I don't claim to have all the answers concerning sales tax laws, but I do think I may be able to help clear up some of the confusion. The first thing I would ask is that everyone wipe their minds clean of any thoughts or notions they may have about sales tax so we can start from scratch.

Quoting from a recent publication by the Nebraska Department of Revenue, "On or after January 1, 1993, anyone who purchases, leases, or rents agricultural machinery or equipment used in commercial agriculture may file an exemption certificate and make the purchase without paying any Nebraska or city sales and use tax."

This publication goes on to say that "Items of property purchased pursuant to this exemption are subject to personal property tax." These are pretty straight forward statements when taken separately. Unfortunately, some people would like to combine the two statements and their definitions.

The use of the words, "may file an exemption" in the first statement and, "...this exemption are subject to personal property tax," from the second statement have been construed to mean that the customer has a choice on whether or not he wants to pay sales tax depending on whether or not he wants to put it on his personal property tax statement. This could not be further from the truth. If this situation happens, the customer pays sales tax and does not list the personal property on his statement, he will have made a nice contribution to the Department of Revenue, which he will have a hard time getting back, plus he may have an irate county assessor on his doorstep asking for back taxes and penalties for personal property taxes.

So always remember this. Anyone who purchases, leases, or rents agricultural machinery used in commercial agriculture will be allowed to file for an exemption from sales and use tax. Property taxes have nothing to do with sales tax. They are governed by a completely different set of rules under the tax code. The only choice the customer has is whether or not he wants to file for the sales tax exemption.

Now that we have completely separated the issues of sales tax and property tax, we must go on to defining the phrase "commercial agriculture." In the same previously mentioned publication, commercial agriculture is defined as, "The business of farming or ranching.

It is the production of food products or other useful and valuable crops, or the raising of livestock. It includes commercial production in greenhouses, nurseries, tree farms, sod farms, and feedlots. It does not include the storage of agricultural products off the farm location or in commercial elevators, or the storage of livestock in stockyards or sale barns."

Notice this definition does not include any words or phrases like predominant use, used the majority of the time, or more than half the time. This means that the sale, rent, or lease of an item for which the exemption applies must have one, and only one, purpose - use in commercial agriculture.

A 20 horsepower tractor with a front end loader used by a farmer to clean his feedyard pens qualifies for the exemption. If that same tractor has a belly mower or rear mower used one time to mow lawn or weeds in the road ditch disqualifies it from the exemption.

The last area we need to understand is the record keeping process that must be used once a sale, lease, or rent is deemed to be exempt from sales and use tax. For every sale, lease, or rent of agricultural machinery or equipment that qualifies for the exemption, you must complete a Nebraska Sales and Use Tax Exemption Certificate, form 13, and submit it with your monthly sales and use tax remittance.

This is a recent change in procedure by the Nebraska Department of Revenue. Previously you were allowed to use the regular Form 13 for a repeat rent or lease customer, and keep it on file in your dealership. The Form 13 could be used for rents or leases by a customer that occurred in one calendar year. This is no longer the case. Every exempt sale, lease, or rent must be accompanied by a Form 13 taken in good faith by the retailer from the customer.

This last statement holds some very important keys to your dealership concerning liability and exposure to sales tax fraud penalties. If you do not know the customer you are dealing with, and he assures you that his purchase qualifies for sales tax exemption and signs a Form 13, you have taken it in "good faith" and may be relieved from any penalties concerning sales tax fraud.

If you know the customer and assume his purchase qualifies for the exemption, you have breached the "good faith" clause and have opened the door for legal action against your dealership. If you know the customer and know his purchase does not qualify for the exemption, but still exempt it and file a form 13, you can expect the Nebraska Department of Revenue to be very upset with you.

I realize this has been a fairly lengthy explanation of Nebraska Sale and Use Tax laws, but there have been some misunderstandings around the state, and in some instances it has cost members time and money.

There are basic questions you can ask yourself whenever you are exempting a sale, lease, or rent from sales and use tax.

- Is this a sale, lease, or rent of agricultural machinery or equipment?
- Will its sole use be for commercial agriculture?
- Have I taken a Form 13 from the customer in good faith?
- Am I taking a Form 13 with every exempt sale, lease, or rent and sending it in with my monthly sales and use tax remittance?

If you can answer yes to these four questions, your dealership should be safe from most sales tax problems you could encounter concerning exemptions for use in commercial agriculture. This appears to be the law and rules as I interpret them. If you have further questions, call Cliff Thomas at the Nebraska Department of Revenue at (402) 471-2971.