

**Document Number:** 17-185  
**Tax Type:** Retail Sales and Use Tax  
**Description:** Sales of Power Equipment to Farmers, Dealers, Agricultural Exemption, Exemption Certificates  
**Topic:** Exemptions  
**Date Issued:** 11-16-2017  
November 16, 2017

Re: Ruling Request: Retail Sales and Use Tax

Dear \*\*\*\*\*:

This is in reply to your letter in which you (the "Dealer") request a ruling regarding the application of the retail sales and use tax to sales of power equipment to farmers. I apologize for the delay in responding to your request.

### FACTS

The Dealer operates a power equipment business serving a wide range of customers including homeowners, landscapers, farmers, industrial entities and state and local governmental municipalities. Recently, farmers have come into the Dealer's business to purchase mowers and chain saws exempt of the tax. The farmers have told the Dealer the mowers would be used to mow the edges of their fields, and the chain saws would be used to trim branches from trees lining the edges of fields. The Dealer requests a ruling on the taxability of these sales and guidance on the Dealer's responsibility in denying or granting an exemption to such sales.

### DETERMINATION

#### Agricultural Exemption

*Virginia Code* § 58.1-609.2 1 provides, in pertinent part, that the retail sales and use tax does not apply to ". . . farm machinery; tangible personal property . . . necessary for use in agricultural production for market and sold to and purchased by a farmer . . ." [Emphasis added.]

Title 23 of the Virginia Administrative Code 10-210-50 interprets the foregoing statute and states that a farmer that is not engaged in the business of producing agricultural products for market cannot claim any agricultural exemptions. The purpose of the statute is to provide an exemption for the agricultural production of a product for market. The regulation is further supported in an Opinion of the Attorney General (1989 Att'y Gen. Ann Rep. 327.)

A 1995-1999 Sales and Use Tax Expenditure Study by the Department, December 1994, Volume 2, No. 1, p. 76 explains the statutory exemption and states that many items that are purchased by farmers become component parts or are used in the actual production of agricultural products that are ultimately taxed at the retail level. The exemption for tangible personal property used in the agricultural production of a product for market prevents double taxation of the component parts or products used in the agricultural production of the final product for market. Therefore, tangible personal property used in the production of a product that directly impacts the production of an agricultural product would qualify for the exemption.

The agricultural exemption in *Va. Code* § 58.1-609.2 1 is administered based on agricultural production and not on the ancillary activities that support such production. See Public Documents (PDs) 98-197 (11/30/98), 05-133 (8/10/05), and 09-153 (10/16/09). These documents relate that equipment and materials used in ancillary activities that support the farmer's production of a product for market are not used in the agricultural production of a product for market and are not entitled to the exemption. In addition, the Virginia courts have consistently adopted a rule of strict construction of sales tax exemption statutes, where any doubt as to the applicability of an exemption is resolved against the person claiming the exemption. See *Commonwealth v. Community Motor Bus*, 214 Va. 155, 198 S.E.2d 619 (1973).

Based on the foregoing authorities, the mowing of the edges of a field and the use of the chainsaw to trim branches from trees along the edges of fields are ancillary activities that do not directly impact the agricultural production of a product for market and, thus, are not "necessary" as contemplated by the statutory wording in *Va. Code* § 58.1-609.2 1. Accordingly, I find that the equipment at issue does not qualify for the agricultural exemption.

### Exemption Certificates

*Virginia Code* § 58.1-623 A states "All sales or leases are subject to the tax until the contrary is established. The burden of proving that a sale, distribution, lease or storage of tangible personal property is not taxable is upon the dealer unless he takes from the taxpayer a certificate to the effect that the property is exempt under this chapter."

The proper use of such certificates is set out in Title 23 of the Virginia Administrative Code (VAC) 10-210-280, which provides:

Reasonable care and judgment must be exercised by all concerned to prevent the giving or receiving of false, fraudulent or bad faith exemption certificates. An

exemption certificate cannot be used to make a tax-free purchase of any items of tangible personal property not covered by the exact wording of the certificate.

[Emphasis added.]

Based on the nature of its customer's purchases, the Taxpayer should question the customer as to the use of the equipment when a customer states that it is eligible for the agricultural exemption. If the Taxpayer is unsure as to the application of the exemption, the sales tax should be charged on the sale and the customer advised to seek a ruling from the Department as to the exempt status of such property.

I trust that the foregoing has responded to your request. This response is based on the facts provided and as summarized above. Any change in the facts or the introduction of new facts may lead to a different result.

The *Code of Virginia* section, regulation and guidance documents cited are available on-line at [www.tax.virginia.gov](http://www.tax.virginia.gov) in the Laws, Rules and Decisions section of the Department's website. If you have any questions regarding this matter, please contact \*\*\*\*\* of the Department's Office of Tax Policy, Appeals and Rulings, at \*\*\*\*\*.

Sincerely,

Craig M. Burns  
Tax Commissioner

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**Last Updated 12/14/2017 12:21**