

202106010L [Tax Type: Sales] [Document Type: Letter/Memo]

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Texas Comptroller of Public Accounts STAR System

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Tax Policy News
June 2021
Sales and Use Tax

[Everything's Coming Up Roses](#)

As temperatures rise in Texas, people enjoy venturing outside to work on their outdoor living spaces. You may be thinking of purchasing seasonal plants and gardening products. This article discusses the tax responsibilities for such items, including some reminders about what is taxable and what is not for items purchased for both the budding gardener and the gardening professional.

Generally, [Texas Tax Code Section 151.316 \(a\)\(5\)](#), *Agricultural Items* exempts seeds and annual plants that are

- food for humans;
- inventory for resale in the normal course of business; or
- feed for animals.

Annual Plants

An annual plant normally grows, flowers and dies in a year or season. Annual plants that produce food for humans are exempt from tax. An exemption certificate and Ag/Timber exemption number is not required.

Examples of annual plants that qualify for this exemption include

- tomatoes
- corn
- lettuce
- peas

- herbs that reseed each year. These include herbs that must be replaced because they cannot survive winter temperatures; dill; fennel; and a few others.

Perennial Plants

Perennial plants, which live for more than two years or produce in successive years, including plants that produce food for humans, are taxable.

Examples of perennial plants include

- blueberry
- raspberry
- blackberry
- strawberry
- grape vines
- nut and fruit trees, such as
 - pecan
 - walnut
 - peach
 - pear
 - apple
 - orange
- herbs, such as
 - rosemary
 - basil
 - sage
 - thyme
 - lavender
 - chives
 - mint

The produce harvested from perennial plants for human consumption is exempt.

Perennial plants qualify for exemption when the buyer is engaged in the business of

- selling the product of the plants in the regular course of business. The buyer may purchase the seeds or plants tax free by issuing their vendor a properly completed [Form 01-924, Texas Agricultural Sales and Use Tax Exemption Certification \(PDF\)](#) with an AG/Timber Number; or
- reselling the plants by issuing a properly completed [Form 01-339 \(front\), Texas Sales and Use Tax Resale Certificate \(PDF\)](#) to the supplier instead of paying the tax.

Seeds and Bulbs

Seeds for annual and perennial plants whose products are commonly recognized as food for humans or animals, or are usually only raised to be sold in the regular course of business, are exempt from Texas sales and use tax. See Tax Code Section 151.316 (a)(5). These include corn, oats, culinary herbs, soybeans and cotton seed.

An exemption certificate is not required to purchase these items tax free.

Grass seed is taxable. A farmer or rancher may, however, claim an exemption on grass seed that will be used to produce turf or grass for sale in the regular course of business; or to produce feed for farm or work animals, such as

- cattle
- horses
- mules

The farmer or rancher therefore must issue an agricultural exemption certificate or confirmation letter with an Ag/Timber Number to the seed supplier in order to claim the exemption.

Flower bulbs, flower seeds and seeds for *non-edible* plants are generally taxable. But, persons who grow and sell the agricultural products grown from these seeds in the regular course of business may claim an exemption from the tax by providing the seller with a properly completed agricultural exemption certificate complete with an Ag/Timber Number at the time of purchase.

For example, a garden center that grows and sells flowers may claim an exemption on the purchase of flower seed.

Trees

Trees, including fruit and nut trees, are taxable.

A commercial grower who sells the fruit or nuts produced by the trees in the regular course of business may claim the agricultural exemption when buying the trees by providing the seller with an agricultural exemption certificate or confirmation letter complete with an Ag/Timber Number in order to claim the exemption.

Similarly, a commercial timber producer may buy seedlings that are used in the production of timber for sale tax free by providing the seller with a timber exemption certificate or confirmation letter complete with an Ag/Timber Number at the time of purchase. Examples of trees commonly grown for commercial timber include hardwood or pine trees.

More Information

- [Texas Tax Code Section 151.316 – Agricultural Items](#)
- [Sales Tax Rule 3.296 – Agriculture, Animal Life, Feed, Seed, Plants, and Fertilizer](#)
- [Agriculture and Timber Industries Frequently Asked Questions](#)

ACCESSION NUMBER: 202106010L
SUPERSEDED: N
DOCUMENT TYPE: L
DATE: 2021-06-30
TAX TYPE: SALES