

OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
DAWN CASH, DIRECTOR

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July 23, 2008

Re: Our File No. LR-08-012

Dear

I am writing in response to your request for information regarding the sales taxability of certain agricultural transactions. Set forth below are the questions posed and the responses thereto.

1. What livestock sales are taxable? And more specifically, if a farmer purchases stocker calves to graze for a few months, then resale, does he pay sales tax on the purchase? These are "goods purchased for resale." If current agricultural exemptions were abolished, would this transaction remain tax exempt since it is a sale of items purchased for resale?

Our Response:

The sale of tangible personal property, including livestock, unless specifically exempted by the provisions of the Oklahoma sales tax code, is subject to the levy of sales tax. 68 O.S. §1354(A) (1). Certain transactions which do or could involve the transfer of livestock are exempted pursuant to 68 O.S. § 1358(2) and (5). Subsection 2 of Section 1358 exempts the sale of livestock, including cattle, horses, mules or other domestic or draft animals sold by the producer by private treaty or at a special livestock sale. Subsection 5 of Section 1358 exempts sales of items to be and in fact used in the production of agricultural products. Oklahoma Administrative Code 710:65-13-15(1) defines "production of agricultural products" as follows:

"Agricultural Production" and **"production of agricultural products"** is limited to what would ordinarily be considered a farming or ranching operation undertaken for profit. The term refers to the raising of food crops or livestock for sale. Included within the meaning of **"agricultural production"** and **"production of agricultural products"** are ranches, orchards, and dairies. Also included is any feedlot operation, whether or not the land upon

which a feedlot operation is located is used to grow crops to feed the livestock in the feedlot and regardless of whether or not the livestock fed are owned by persons conducting the feedlot.

Pursuant to 1358(5) of Title 68 the holder of an agricultural exemption permit may purchase stocker calves to be used directly in the production of livestock exempt from sales tax. Should the current agricultural exemptions in Section 1358 of Title 68 be repealed a person regularly engaged in selling livestock could purchase them for resale exempt from sales tax. 68 O.S. § 1357(3). The sale for resale exemption is not available to an entity which is a resident of Oklahoma but which has not been issued an Oklahoma Sales Tax Permit.

2. What about the work of "custom harvesters" (and similar people) who sell their services to farmers? Do they currently collect and remit sales tax when they hire out their machinery and labor? If not, is this exemption from sales tax considered to be in the "agricultural exemption" category?

Our Response:

Sales of custom harvesting services does not fall within one of the enumerated transactions subjected to sales tax pursuant to Section 1354 of Title 68.

3. Are farmers and harvesters allowed to purchase machinery exempt from sales tax?

Our Response:

Yes, consistent with Section 1358(6) which exempts the sale of farm machinery and associated operational, maintenance and repair parts and supplies as follows:

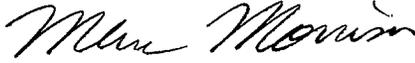
Sale of farm machinery, repair parts thereto or fuel, oil, lubricants and other substances used for operation and maintenance of the farm machinery to be used directly on a farm or ranch in the production, cultivation, planting, sowing, harvesting, processing, spraying, preservation or irrigation of any livestock, poultry, agricultural or dairy products produced from such lands. The exemption specified in this paragraph shall apply to such farm machinery, repair parts or fuel, oil, lubricants and other substances used by persons engaged in the business of custom production, cultivation, planting, sowing, harvesting, processing, spraying, preservation, or irrigation of any livestock, poultry, agricultural, or dairy products for farmers or ranchers. The exemption provided for herein shall not apply to motor vehicles;...

In order to qualify for any exemption authorized by Section 1358 of Title 68, at the time of sale, the person to whom the sale is made must furnish the vendor their agricultural exemption permit or other documentation as provided in 68 O.S. 1358.1.

This response applies only to the circumstances discussed in your request of Marc 3, 2008. Pursuant to Commission Rule 710:1-3-73(e), this Letter ruling may be generally relied upon only by the entity to whom it is issued, assuming that all pertinent facts have been accurately and completely stated, and there has been no change in applicable law.

Sincerely,

OKLAHOMA TAX COMMISSION

A handwritten signature in cursive script that reads "Marc Morrison".

Marc Morrison
Tax Policy Analyst