

**Farmers
and
Commercial Horse Boarding Operations**

Governor George E. Pataki has signed legislation that expands existing exemptions from State and local sales and use taxes for certain property and services used or consumed predominantly in farm production and extends these exemptions to commercial horse boarding operations. These amendments are effective **September 1, 2000**. This legislation also changes the effective date of the farm production provisions enacted by Chapter 407 of the Laws of 1999 from March 1, 2001, to September 1, 2000.

This memorandum addresses the amendments to the sales and use tax provisions of the Tax Law with respect to farm production and commercial horse boarding operations, which take effect September 1, 2000, including the amendments enacted this year and in 1999.

Effective September 1, 2000, a revised Form ST-125, *Farmer's and Commercial Horse Boarding Operator's Exemption Certificate*, replaces the existing Form ST-125. Since the revised ST-125 reflects the broader exemption taking effect on September 1, 2000, farmers and commercial horse boarding operations should use the revised version. However, farmers, commercial horse boarding operations, and suppliers may continue to rely on the blanket Form ST-125 exemption certificates that have previously been furnished to the suppliers, as these certificates will remain in effect.

A New York State registered vendor that accepts Form ST-125, *Farmer's and Commercial Horse Boarding Operator's Exemption Certificate*, will be protected from liability for sales and use tax, if the certificate is valid.

The certificate will be considered valid if it is:

- ▶ accepted in good faith,
- ▶ in the vendor's possession within 90 days of the transaction, and
- ▶ properly completed (all required entries were made).

A certificate is accepted in good faith when the seller has no knowledge that the exemption certificate is false or is fraudulently given, and reasonable ordinary due care is exercised in the acceptance of the certificate.

The timely receipt of Form ST-125, *Farmer's and Commercial Horse Boarding Operator's Exemption Certificate*, will satisfy the vendor's burden of proving the transaction was not taxable and relieve the vendor of responsibility for collecting tax from the customer.

Definitions

Effective September 1, 2000, the term *farming* includes agriculture, floriculture, horticulture, viticulture, viticulture, aquaculture and silviculture; stock, dairy, poultry, fruit or vegetable, fur-bearing animals, graping, truck and tree farming; ranching; operating nurseries, greenhouses, vineyard trellises or other similar structures used primarily for the raising of agricultural, horticultural, vinicultural, viticultural, floricultural or silvicultural commodities; operating orchards; raising, growing and harvesting crops, livestock and livestock products, as defined in Section 301, subdivision 2, of the Agriculture and Markets Law; and raising, growing and harvesting woodland products, including, but not limited to, timber, logs, lumber, pulpwood, posts and firewood.

(See Tax Law, Section 1101(b)(19).)

The definition of farming has been expanded to include aquaculture and silviculture.

Aquaculture - Aquaculture is the raising of aquaculture products for sale. Aquaculture products include, but are not limited to, fish, fish products, water plants, and shellfish.

Silviculture - Silviculture is a branch of forestry dealing with the development and care of forests. The raising, growing and harvesting of trees for the purpose of producing woodland products for sale (including but not limited to logs, lumber, posts and firewood) and the growing of trees, Christmas trees, bushes and shrubs, for sale, by nurseries and tree farms, are considered to be farm production. Silvicultural activities performed as part of the overall production process resulting in woodland products or trees, bushes or shrubs, for sale, are also considered farming.

Commercial Horse Boarding Operation - A commercial horse boarding operation is defined in Section 301, subdivision 13, of the Agriculture and Markets Law, as an agricultural enterprise, consisting of at least 10 acres and boarding at least 10 horses, regardless of ownership, that receives \$10,000 or more in gross receipts annually from fees generated either through the boarding of horses or through the production for sale of crops, livestock, and livestock products, or through both such boarding and such production. A commercial horse boarding operation does not include operations whose primary on-site function is horse racing.

(See Tax Law, Section 1101(b)(20).)

Exemptions for tangible personal property

Beginning September 1, 2000, purchases of tangible personal property, whether or not incorporated into a building or structure, are exempt from state and local sales and use taxes when the property is used or consumed **predominantly** either in farm production or in a commercial horse boarding operation, or in both.

The amendments **have eliminated** the requirement that the property be used “directly” in the production phase of farming in order to be eligible for the exemption. On and after September 1, 2000, purchases of tangible personal property by farmers and commercial horse boarding operations

need only meet the test of being used “predominantly” (more than 50%) in farm production or in a commercial horse boarding operation, or in both, in order to qualify for the exemption. Tangible personal property used in administrative activities related to production, such as supplies used to prepare feed records or animal weight records, are considered to be used in farm production.

▶ **Computers**

The purchase of a computer would qualify for exemption from the state and local sales and use taxes if the computer is used predominantly either in farm production or in a commercial horse boarding operation, or in both. A computer is considered to be used in farm production when it is used for such activities as turning milking machines on and off, directing machinery or equipment used for measuring and delivering feed mixtures to the trough, or turning irrigation systems on and off. Examples of other uses in farm production include, but are not limited to, performing agricultural research; preparing and maintaining animal feed records, weight records, and health records; and preparing tags used to label farm or commercial horse boarding materials.

▶ **Building Materials**

Purchases of building materials are exempt from state and local sales and use taxes when the materials are used to erect, add to, alter, improve, install, maintain, service, or repair a structure or building or other real property, property, or land, used predominantly either in farm production or in a commercial horse boarding operation, or in both. The exemption applies whether the building materials are purchased by the farmer or commercial horse boarding operation, or by a contractor, subcontractor, or repairman performing a job for a farmer or a commercial horse boarding operation. However, contractors and subcontractors may purchase building materials tax exempt only if the materials become an integral component part of the structure, building or real property. The farmer or commercial horse boarding operator should furnish the contractor a properly completed Form ST-125, *Farmer’s and Commercial Horse Boarding Operator’s Exemption Certificate*.

A contractor, subcontractor, or repairman who is registered for New York State sales tax purposes may purchase the building materials tax exempt by furnishing a properly completed Form ST-120.1, *Contractor’s Exempt Purchase Certificate*, to the building materials supplier. The contractor, subcontractor or repairman should check the box indicating that the item being purchased will be used predominantly in farm production. The contractor or repairman should obtain a properly completed Form ST-125, *Farmer’s and Commercial Horse Boarding Operator’s Exemption Certificate*, from the farmer or commercial horse boarding operation as substantiation that the job being performed is exempt from tax. The subcontractor should obtain a properly completed Form ST-120.1 from the contractor as substantiation that the job is exempt from tax. A farmer or commercial horse boarding operation may itself purchase the building materials tax exempt by furnishing the supplier a properly completed Form ST-125, *Farmer’s and Commercial Horse Boarding Operator’s Exemption Certificate*.

Examples of buildings or structures that are typically used predominantly in farm production or in a commercial horse boarding operation are cow or horse barns, hay storage barns, fences, buildings for parking, storing, or repairing machinery and equipment used predominantly either in farm

production or in a commercial horse boarding operation, or in both, milk houses, corn cribs, grain storage buildings to hold grain used in farm production, silos, greenhouses, and any housing provided for employees (regardless of whether the employees are permanent, temporary or migratory). A cold storage facility used to hold agricultural products for sale is eligible for exemption if the facility is used predominantly to refrigerate products still considered in the production phase, such as products that need to be sized and graded before they are ready for sale. Examples of buildings that do not qualify for the exemption are the farmer's personal residence, buildings to house motor vehicles or equipment not used predominantly in farming or in a commercial horse boarding operation, and buildings where the predominant use is for making retail sales of farm products.

▶ **Machinery or Equipment**

As of September 1, 2000, purchases of machinery or equipment or other tangible personal property that is permanently installed in a structure or building or real property, property, or land, used predominantly either in farm production or in a commercial horse boarding operation, or in both, also qualify for the exemption from sales and use taxes. A contractor, subcontractor or repairman may purchase such machinery or equipment tax exempt by furnishing the supplier a properly completed Form ST-120.1, as described above. The contractor should obtain a properly completed Form ST-125 from the farmer or commercial horse boarding operator as substantiation that the job being performed is exempt from tax. A farmer or commercial horse boarding operation may itself purchase the above machinery or equipment tax exempt by furnishing the supplier a properly completed Form ST-125.

Examples of permanently installed machinery and equipment that typically are used predominantly in farm production are barn cleaners, barn ventilators, blowers, conveyors, driers, elevators, grain bins and tanks, irrigation pipe and fittings, piping systems, and electrical systems.

(See Tax Law, Sections 1115(a)(6), 1115(a)(15) and (16).)

Exemptions for services

Purchases of the service of maintaining, servicing, or repairing real property, property, or land used predominantly either in farm production or in a commercial horse boarding operation, or in both, are also exempt from state and local sales and use taxes. A farmer or commercial horse boarding operation may purchase these services tax exempt by giving the supplier of the service a properly completed Form ST-125, *Farmer's and Commercial Horse Boarding Operator's Exemption Certificate*. Contractors performing these services for a farmer or commercial horse boarding operation may purchase these services from a subcontractor tax exempt by giving the subcontractor a properly completed Form ST-120.1, *Contractor's Exempt Purchase Certificate*. The contractor should obtain a properly completed Form ST-125 from the farmer or commercial horse boarding operator as substantiation that the job being performed is exempt from tax.

In addition, purchases of the service of installing, maintaining, servicing or repairing tangible personal property (including machinery, equipment, parts, tools or supplies) are exempt from state

and local sales and use taxes (but subject to local taxes in New York City), provided the tangible personal property is used or consumed predominantly either in farm production or in a commercial horse boarding operation, or in both. A farmer or commercial horse boarding operation may purchase these services tax exempt by giving the supplier of the service a properly completed Form ST-125.

(See Tax Law, Sections (1105(c)(5), 1105(c)(3)(vi).)

Exemption for motor vehicles

Motor vehicles, trailers, all-terrain vehicles, motorcycles, boats and snowmobiles that are for use predominantly either in farm production or in a commercial horse boarding operation, or in both, may be purchased exempt from New York State and local sales and use taxes on and after September 1, 2000, regardless of the type of license plate used on the vehicle. A vehicle may be purchased tax exempt by furnishing the vendor (seller) a properly completed Form ST-125, *Farmer's and Commercial Horse Boarding Operator's Exemption Certificate*. In a casual sale transaction, where the seller is not a registered vendor, the purchaser may register the vehicle or apply for a certificate of title for the vehicle without payment of tax by furnishing the Department of Motor Vehicles or a county clerk a properly completed Form DTF-803, *Claim for Sales Tax Exemption - Title/Registration, Motor Vehicle, All-Terrain Vehicle (ATV), Vessel (Boat), or Snowmobile*.

A motor vehicle, trailer, all-terrain vehicle, motorcycle, boat, or snowmobile will qualify for exemption when more than 50% of its use consists of use on property actually farmed or on property actually used in a commercial horse boarding operation, or on both, or in direct and uninterrupted trips between properties used either in farm production or in a commercial horse boarding operation, or in both, by the purchaser or user of the vehicle. Such usage may be measured by hours of use or miles traveled, at the election of the farmer or commercial horse boarding operation.

(See Tax Law, Section 1115(a)(6)(B).)

Exemption for utilities, utility services, motor fuel and diesel motor fuel

Purchases of fuel (not including motor fuel or diesel motor fuel), gas, electricity, refrigeration, or steam, or of gas, electric, refrigeration, or steam service that is used or consumed either in farm production or in a commercial horse boarding operation, or in both, are exempt from state and local sales and use taxes (but continue to be subject to local taxes in New York City) on and after September 1, 2000. Utilities or utility services may be purchased tax exempt by furnishing the vendor (provider) a properly completed Form ST-125, *Farmer's and Commercial Horse Boarding Operator's Exemption Certificate*.

Purchases of diesel motor fuel that is used or consumed either in farm production or in a commercial horse boarding operation, or in both, are exempt from state and local sales and use taxes on and after September 1, 2000. The exemption does not apply to fuel consumed on New York State highways, except when the highways are used to reach adjacent farmlands or adjacent lands used in a commercial horse boarding operation, or both. This exemption is limited to sales and uses of no

more than 4,500 gallons of diesel motor fuel in a 30-day period. This exemption will also apply to the sale or use of more than 4,500 gallons of diesel motor fuel in a 30-day period when the Commissioner of Taxation and Finance has given prior approval. Prior approval may be obtained by writing to:

New York State Department of Taxation and Finance
TTTB-FACCTS-Fuels Section-855
W A Harriman State Campus
Albany NY 12227

Diesel motor fuel may be purchased exempt from state and local sales and use taxes by furnishing the supplier a properly completed Form FT-1004, *Certificate for Purchases of Diesel Motor Fuel or Residual Petroleum Product for Farmers and Commercial Horse Boarding Operations*.

Motor fuel (gasoline) may not be purchased exempt from tax. A refund or credit may be claimed for tax paid on motor fuel used or consumed in farm production or a commercial horse boarding operation, or both, by filing Form PR-955, *Claim for Refund by Farmers*. A refund or credit may also be claimed on Form FT-420, *Refund Application for Farmers Purchasing Motor Fuel*, or Form FT-500, *Application for Refund of Sales Tax Paid on Automotive Fuels*, if applicable.

See Tax Law, Sections 1115(c)(2), 1115(j.)