



# Sales and Use Tax and Farmers – Direct Sales and Purchases

The Virginia Cooperative Extension publication, *Direct Marketers and the Virginia Sales Tax*, is a great resource for farmers selling directly to the public, such as at Farmer's Markets, to learn whether or not they should collect sales tax and how to file this with the Virginia Department of Taxation. But how are farmers affected by the state's sales tax? Many think that all purchases by farmers are exempt from the sales tax, but, in reality, only those purchases of items used in the production of an agricultural item for sale are exempt from the sales tax. This handout will attempt to explain the sales tax exemption a little further than the extension publication and give examples of sales.

The Virginia Retail Sales and Use Act establishes a tax on the sale, lease, or rental of tangible personal property or the use or consumption of tangible personal property in Virginia, as well as taxable services in Virginia.

A seller is subject to the sales tax imposed on gross receipts from retail sales. "Retail sales" means sales made for any purpose other than for resale. The tax may also apply to the furnishing of transient accommodations and the lease or rental of personal property. *Code of Virginia § 58.1-603.*

**In Virginia there are several "exemptions" from the retail sales tax to avoid double taxation on items.** These primarily involve the development of a product for sale such as in the manufacturing of a product. Virginia's sales and use tax is designed to tax products to consumers once. This is why input cost when growing or manufacturing a product are exempt from the sales and use tax when purchased by the farmer or manufacturer producing the product.

The sales and use tax would be charged when the product is sold to the consumer. In the agriculture industry sales on items to farmers that are used in the production of a product for sale is exempt from the sales and use tax. It is when the product is sold to the final consumer where the sales and use tax must be charged.

The "agricultural exemption" from the sales and use tax can be claimed by farmers only when they "purchase items necessary for agricultural production. "Not all purchases made by farmers are exempt from the sales and use tax no matter what type of farm they operate. It depends on what the use of the item purchased is as to whether or not the sales and use tax is applicable. *§ 58.1-609.2. Agricultural exemptions and 23VAC10-210-50. Agriculture.*

*For example, in milk production,* the feed, supplies, etc. used in the production of the milk on the farm are exempt from the sales and use tax when the dairy farmer buys them. The consumer in the grocery store pays the sales tax when they buy a carton of milk in the store.

If a farmer claims the exemption, they must sign the VA State Tax Form ST-18 marking the exemption that fits the situation. The retailer keeps the form on file at their business. This is the same if a farmer is in the business of selling directly to a consumer, who also could be another farmer if the buying farmer is not using the item being purchased in the production of an agricultural item for sale. Sales tax does not have to be collected if the farmer selling an item isn't making regular sales and does so through "occasional sales."

## **What's an example of an occasional sale?**

Farmer Smith bales straw annually to use in his own farming operation. Once a year a local community group buys straw from Farmer Smith for use on their fall parade float. Does Farmer Smith have to collect any sales tax?

Because Farmer Smith's only sale is to the local community group and only occurs once a year, Farmer Smith does not have to collect sales tax on the sale to the group.

As it relates to the state sales tax, an occasional sale is "a sale by a person who is engaged in sales on three or fewer separate occasions within one calendar year..." *23VAC10-210-1080. Occasional Sale.*



## How about sales tax when a farmer sells products on a regular basis?

Farmer Jones raises and sells hay, does he have to collect sales tax?

It all depends if the customer he is selling to will use it to produce an agricultural product for sale or resell it. The determination to claim the agricultural exemption and to file an ST-18 with Farmer Jones is up to the customer. If the customer files an ST-18 then Farmer Jones would keep this on file as proof the customer claimed the exemption. If they do not file a form ST-18 then Farmer Jones should collect the sales tax from the customer.

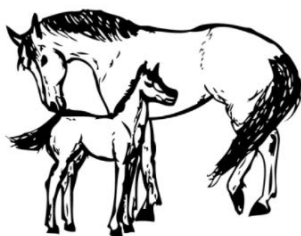
### Let's look at some of Farmer Jones' customers.

**Reggie Reseller** is a hay dealer who buys hay from Farmer Jones to resell to his own customers. Since he is reselling the hay Reggie would not pay sales tax on the purchase from Farmer Jones, but he would be responsible to collect sales tax from any of his customers who are not exempt. But as far as Farmer Jones is concerned, he would keep Reggie Reseller's ST-18 exemption form on file.

**Betty Boarding** buys hay from Farmer Jones to feed the horses that owners board at her horse farm. Betty would not be exempt from the sales tax since the hay is being fed to horses she keeps at her boarding facility and is not producing an agricultural product for sale.

**Mary Morgan** raises horses to sell. She breeds them then sells the foals. Mary would be exempt from sales tax for the purchase of hay from Farmer Jones and any other feed etc. when used in the production of the horses she sells. Mary would complete and file a ST-18 for Farmer Jones to keep on file.

**Randy Racer** races horses. All the hay he buys from Farmer Jones goes to feed the horses he races. Randy would not qualify for the exemption for this purchase since he is feeding race horses and not producing horses for sale.



**Barney Both** breeds and sells horses as well as races horses. Often horses from those he bred are trained and raced before he sells them. Barney is in a little more complicated situation. Each purchase would be treated differently. For supplies, feed, etc. used for the horses he feeds to produce animals sold the purchase would be exempt since he is producing an agricultural product for sale, but once he races some of those horses the supplies, feed, etc. for those raced are taxable. He should keep records showing which amount of feed was fed to which part of the operation so he could claim exemption from the sales tax if he so choose for the qualifying purchases. He would file a ST-18 with Farmer Jones to cover those purchases made with him that are exempt.

**William Angus** raises beef cattle and is buying hay from Farmer Jones to feed his herd in the winter. William would file an ST-18 with Farmer Jones and would be exempt from the sales tax for the purchase. The beef sold in the grocery store is where the sales and use tax is collected from the final consumer.

**Remember, the exemption** from the sales and use tax for agriculture **has nothing to do with the species** of livestock or crop grown, but rather whether or not the purchased item is used for the production of an agricultural product for sale.

**For example in the equine industry**, equine are included in the definition of livestock in Virginia, but not all types of uses of equine are for the production of a product for sale. The animal must be used in an agricultural production process.

#### Exempt:

- Breeding horse (on a breeding farm) so long as the horse has not entered showing, at which time the exemption ceases
- Plow or draft horse used in agricultural production
- Retired race horses

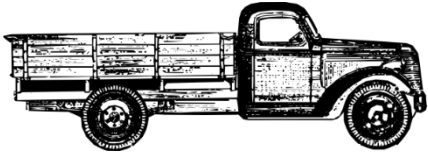
#### Taxable – Recreational Horses

- Horse being shown
- Buggy Horse
- Pet horse
- Riding horse
- Racing horse
- Pet or hobby horse that has been bred
- Boarding facilities

## Delivery

### Delivery Charges, are they taxable for sales and use tax?

**Va. Code § 58.1-609.5(3)** provides an exemption from the retail sales and use tax for separately stated transportation charges. Provided delivery charges are separately stated on the invoice to the customer, these charges are not subject to sales tax. If the delivery charges are not separately stated on the invoice, they become part of the sales price of the product and are subject to the tax. Thus, you do not have to collect tax on the charges for delivery of the product.



**Farmer Jones** delivers hay to **Betty Boarder**, who boards pleasure horses. He charges to deliver the hay to her farm. Is the delivery taxable? As we learned in a previous example the hay portion of the purchase is taxable since this is not for the production of an agricultural product for sale. However, if Farmer Jones lists the delivery charge separately then that portion of the transaction is exempt from being taxed. Should Farmer Jones include in the description a “handling” charge, the handling charge portion is taxable. Farmer Jones should list the delivery charge separately from the amount charged for the hay on his invoice to Betty Boarder.

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## Building Supplies

**Another area that can cause confusion is when a farmer buys building supplies.** When purchases go towards building and improvement on the property the purchase is subject to sales tax.

**Farmer Hill** is building a board fence on his property. He purchases some oak boards from a local building supply to build the fence. Farmer Hill would be subject to paying sales tax on the purchase. The same would be true if he were building a barn, shed, etc. because the lumber is going to erect an improvement to the real estate.

## Farmers Markets and Roadside Stands

**Individuals who raise and sell agricultural products at local farmers markets and roadside stands do not have to collect sales tax if their annual income from their sales does not exceed \$2,500 VA Code § 58.1-609.2. (7).** The seller is also exempt from collecting the litter tax if his annual income from such sales does not exceed \$1,000, and that any container he provides to hold purchased items has been previously used. VA Code § 58.1-1707.



## Farm Equipment

**When a farmer purchases equipment to use in the production of agricultural products for market,** the purchase is tax exempt and the farmer should file a ST-18 with the vendor (equipment dealer). However, if the purchase is made for a piece of equipment and not used to produce an agricultural product for sale then the purchase is subject to the sales tax.

**How about buying something like an ATV, or a similar purchase?** Many farmers use ATVs as farm equipment. As long as the equipment is used in the production of an agricultural product for sale the purchase is exempt from the sales and use tax. However, if the ATV is used for personal use the item is not included in the exemption.

## What’s the ST-18 form?

The ST-18 is the certificate of exemption used by a farmer when purchasing tangible personal property for use in producing agricultural products for market, or medicine and drugs sold to a veterinarian and used in the manner described below. In order to be deemed a “farmer,” a person must be engaged in the business of producing agricultural products for market.

When making purchases the farmer would complete the certificate and leave with the seller for them to maintain on file. Often the sellers would have their customers that claim the exemption to complete a new one to make sure the information is up to date.

# Remember when selling directly to consumers:

- Obtain a Certificate of Registration if starting a business in Virginia or desiring to conduct business as a dealer by selling directly to the consumer. The farmer must register with the state by filing State Form R1, Virginia Department of Taxation Business Registration Form (<https://www.tax.virginia.gov/forms>), and must collect and pay the tax due on retail sales.
- Keep accurate records, list any delivery charges separate on invoices.
- Know how often you are to file and remit the sales tax collected to the Department of Taxation.
- Know when you are to charge sales and use tax, the exemptions when selling at farmer's markets, occasional sales, and exemptions such as the agricultural exemption described.
- Be prepared to maintain exemption forms from your customers should they be exempt, the agricultural exemption form is ST-18. They can be downloaded from the Virginia Department of Taxation website: <https://www.tax.virginia.gov/sites/default/files/taxforms/exemption-certificates/any/st-18-any.pdf> Keep a supply of blank ones on hand.
- Complete information on Virginia sales and use tax can be obtained at the Virginia Department of Taxation website: [www.tax.virginia.gov/](http://www.tax.virginia.gov/) Use the "Business" link to reach the sales and use tax.

## Remember to:

- Always be prepared to file a **Sales and Use Tax Certificate of Exemption ST-18** with vendors you deal with when the purchase qualifies for the exemption.
- Obtain a **Sales and Use Tax Certificate of Exemption ST-18** and keep it on file should you ever need to prove the purchaser claimed the exemption.

## Sales tax rates

- The general sales tax rate for Virginia is 5.3% (4.3% state tax and 1% local tax).
- Northern Virginia and Hampton Roads regions - There is an additional 0.7% state tax imposed in the localities that make up Northern Virginia and Hampton Roads, making the rate in these areas 6% (5% state tax and 1% local tax).
- Sales of eligible food items are subject to a reduced sales tax rate of 2.5% (1.5% state tax and 1% local tax).

**Northern Virginia Region:** The additional 0.7% regional rate in Northern Virginia applies to the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park; and in the Counties of Arlington, Fairfax, Loudoun, and Prince William.

**Hampton Roads Region:** The additional 0.7% regional rate in Hampton Roads applies to the Cities of Chesapeake, Franklin, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg, and the Counties of Isle of Wight, James City, Southampton, and York.

7/1/18