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Sales Tax Information for Nurseries, Florists, Landscapers and Related Industries

Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134
801-297-2200
1-800-662-4335
tax.utah.gov



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Introduction

This publication provides tax information relating to nurseries, florists, landscapers and related industries. General sales and use tax information is available in Publication 25.

Tax Commission publications are reference tools. They are not all-inclusive and should not be used as legal references.

Tax laws may change due to legislative action. Changes to law will supersede any information in this publication.

Who is an Agricultural Producer?

An agricultural producer is primarily engaged in the production of ornamental plants; nursery products such as bulbs, florists' greens, flowers, shrubbery, flower and vegetable seeds and plants; and trees and sod. Producers also include tree nurseries or tree farms.

What can an Agricultural Producer Purchase Tax Free?

Four kinds of sales tax exemptions apply to purchases by agricultural producers:

1. the resale exemption,
2. the agricultural exemption,
3. non-returnable containers and labels, and
4. exemption for the purchase of items that become a component part of a final taxable product.

If a purchase does not qualify under one exemption, it may qualify under another.

When making a purchase or sale exempt from sales tax, the purchaser completes form TC-721, *Exemption Certificate*, which is retained by the seller.

Resale Exemption

Owners of nurseries, flower shops and other related businesses may purchase items for resale tax free, then collect sales tax from the retail purchaser. However, items pur-

chased for use by the business owner in producing or storing plant material may not be purchased tax free under the resale exemption. The following example illustrates this point:

Example 1

A florist may purchase fresh flowers, vases, ribbon, and cards from a wholesale distributor tax-free for use in the flower arrangements that the florist sells to its retail customers. However, the florist must pay sales tax on the purchase of vases used to store or display the flowers in coolers until the flowers are sold at retail. In the first instance, the vase is sold to the retail customer as part of an arrangement. In the second instance, the vase is not sold to a retail customer, but is used in the operation of the business.

An exception to the resale exemption exists when the retailer sells and installs trees, shrubs, plants, sod, sprinkling systems, fencing, pavers, landscaping timbers or other items which are converted to real property upon installation. An item is considered converted to real property when it is affixed to the real estate and installed in a manner that suggests it will remain in place over the useful life of the item. When a retailer sells and installs items of this nature, the retailer is considered a real property contractor. The real property contractor – not the property owner – is liable for sales tax on the purchase price of items installed because the real property contractor is the last person to own the items as tangible personal property. Examples 2 and 3 illustrate the tax liability for items that become part of a landscape.

Example 2

A homeowner hires a landscape contractor to install landscaping which includes trees, shrubs, sod, and an artificial pond. The landscaper purchases the plants and materials to create the pond from a supplier, installs them, and charges the homeowner for the total final project. Because the landscaper converts the items to real property, the landscaper must pay sales tax on his cost of the items. The amount charged by the landscaper to the homeowner is not subject to sales tax.

Example 3

A homeowner purchases plants, sod and materials for building an artificial pond. The homeowner then contracts with another party to install the items in the landscaping. In this case the homeowner is the last person to own the items as tangible personal property, and the homeowner must pay sales tax on the purchase price of these items. The installer is merely selling a non-taxable service. The charge by the installer to the homeowner is not subject to tax.

The above examples describe items typically converted to real property upon installation. Example 4 demonstrates a landscape contract that includes items not converted to real property upon installation.

Example 4

Assume the landscaper in Example 2 also supplied moveable benches as part of the landscape. Because the benches will not be affixed to the real property in a manner that suggests intent to leave them in place over their useful lives, they remain tangible personal property. The landscaper is a real property contractor with regard to the plants, sod and materials used to build the pond, but he is making a taxable retail sale of the benches to the homeowner. The landscaper will pay sales tax on his purchase of the items that will be converted to real property, but he may purchase the benches tax-free for resale. In billing the entire project to the homeowner, the landscaper must state the amount of tax imposed on the taxable items (the benches).

Example 5

A mall developer designs the mall facility to include a permanent indoor landscape, which includes long-term trees and shrubs. The developer contracts with a landscaper to provide and install the plants. As in Example 2 above, the landscaper is acting as a real property contractor and must remit the sales tax on his purchase of the landscape plants.

If the landscaper in these examples originally purchased the materials for the landscape tax-free, then converted them to real property under a furnish and install contract, the landscaper must report and pay sales tax on those items as goods consumed.

Incorrect Seller Practices

A seller that sells tangible personal property under a furnish and install contract (see examples 2 and 5) may not:

1. collect sales tax on that tangible personal property;
2. offset the use tax the seller owes on its own purchase of the tangible property by any sales tax the seller inappropriately collected on the sale of that property; or
3. show the tax due on the seller/installer's purchase of construction materials (or any amount labeled as tax, computed at the current tax rate, or that otherwise appears to be tax) as a separate item on an invoice or contract provided to the customer.

A seller that inappropriately collects sales and use tax on property sold under a furnish and install contract is required by Utah law to remit the tax to the Tax Commission, unless the tax is refunded to the purchaser.

Agricultural Exemption

With the exceptions mentioned below, a commercial agricultural producer may purchase or lease tax-free all equipment, machinery, supplies and other tangible personal property used or consumed primarily and directly in agricultural production operations.

Examples of items that may be purchased tax-free include:

- Seed or seedlings, fertilizer, and sprays and insecticides used in the commercial production of plants to control insects, diseases or weeds. The exemption for sprays and insecticides used to control insects, diseases, and weeds in the commercial production of agricultural produce does not extend to sprays and insecticides used in the processing of the products.
- Materials and supplies used to construct, repair or renovate an irrigation system, greenhouse, or other agricultural building.
- Charges for labor and/or parts (including lubricating oil, antifreeze or other supplies) used to repair or maintain off-road machinery and equipment not required to be licensed or registered in Utah and used primarily and directly in agricultural production.

Gas, electricity, heat, coal, fuel oil or other fuels used in agricultural operations to produce agricultural products for resale are not subject to sales tax. Qualifying uses include commercial greenhouses, irrigation pumps, equipment for heating orchards, off-highway farm machinery, and farming activities. The exemption applies to production activities up to the time of harvest or placing the product into a storage facility. If the electricity or gas for both qualifying and non-qualifying activities is delivered to a single location through a single meter, the determination depends on whether the electricity or fuel is used predominately for qualifying activities.

The following are exceptions to this exemption, and an agricultural producer must pay sales tax when purchasing these items:

- Items purchased for use in activities not directly related to agricultural production (e.g., purchases of office equipment, janitorial supplies, equipment used in the sales or distribution operations, and equipment or supplies used in research or development).
- Vehicles required under Utah law to be registered.
- Equipment, supplies, tools or machinery used in a manner merely incidental to farming.
- Storage bins and structures used to store previously harvested products held for resale.

Non-returnable Containers and Labels

Purchases of non-returnable containers, labels, bags, casings or shipping cases are exempt if used in packaging the product to be sold. For example, a nursery may sell shrubs in one-gallon containers. The one-gallon containers are non-returnable packaging and the nursery may purchase them tax-free.

In contrast, the nursery may also purchase plastic trays for the purpose of starting plants from seed. At some point the seedlings are transplanted from the trays to individual pots for resale. Because the plastic trays are not used as packaging for the final product, the nursery cannot purchase them tax-free under this exemption.

Component Part or Ingredient

An item of tangible personal property purchased primarily as a raw material to be blended or compounded with other ingredients to make the final taxable product qualifies for exemption. If the item is purchased and consumed by the agricultural producer in the production process, it is not eligible for this exemption even if some of it becomes an incidental ingredient of the final product.

Example 6

An agricultural producer grows and hybridizes lilies for sale as bare root plants. The grower purchases bulbs for use in growing more bulbs. The bulb is a necessary ingredient or component part of the final product and is purchased tax-free.

Example 7

The lily grower also purchases topsoil for the planting beds in which the lilies are grown. The topsoil is not an ingredient of the final product (the bare root plant). Instead it is used or consumed by the grower in the production process and the grower cannot purchase it tax-free as an ingredient or component part of the final product.

As mentioned above, purchases excluded from one exemption may be eligible for another. For example, pesticide purchased for use on plants grown for resale is not eligible for exemption as an ingredient or component part of the final product. It is, however, eligible for the agricultural exemption. The agricultural producer may purchase an item tax-free if the item or purchase fits within any one of the exemptions described.

What Can an Agricultural Producer Sell Tax-Free?

A seller who sells items of tangible personal property or provides services must collect and remit sales tax on that sale unless the sale is exempt under one of the exemptions described in this section.

Sale for Resale

An agricultural producer may sell items of tangible personal property tax-free if the purchaser provides the agricultural producer with a resale exemption certificate.

Example 8

A sod farm operator sells sod to a nursery for resale to its retail customers. The sale by the operator to the nursery is tax exempt under the resale exemption. The sale by the nursery to the retail customer is taxable.

Example 9

A sod farm operator sells sod directly to a homeowner for installation by the homeowner. This is a retail sale that does not qualify for exemption as a sale for resale, unless it fits within the exemption for sales of seasonal produce described in the next section.

Sale of Seasonal Produce

The exclusive sale of seasonal garden or farm crops or seedlings and plants sold during the harvest season is exempt if sold by:

- the agricultural producer,
- an employee of the producer, or
- a member of the producer's immediate family.

If the producer, producer's employee, or producer's immediate family member sells anything other than the producer's qualifying seasonal crops, the producer is operating a retail establishment and must collect sales tax on all sales.

Example 10

A farmer produces corn and sells it at a roadside stand during the harvest season. If the farmer is selling only his own seasonal crops through the stand, the farmer does not collect and remit sales tax on the sales. If the farmer sells anything other than qualifying seasonal crops at the roadside stand, he must collect sales tax on all retail sales, including sales of his corn.

Example 11

A nursery grows annuals for sale to the public. It also sells a full line of nursery products including trees, shrubs, perennials, garden tools, fertilizer, insecticide, and gardening books. Although the annuals constitute a seasonal crop grown by the nursery, the nursery is engaged in selling other items at retail. The nursery is a retailer and must collect and report sales tax on all of its sales, including sales of annuals.

Example 12

A sod farmer grows sod in Utah and Idaho. He sells sod to the public at his Utah location during the harvest season. He does not sell sod purchased from other sod farmers. The sod farmer does not collect sales tax from his customers because he is only selling sod he produces during the harvest season.

Sales of Hay

All sales of hay are exempt from sales tax.

Nontaxable Services

The following example illustrates services that are provided tax-free.

Example 13

Charges for fertilizing, mowing or other yard maintenance are not taxable.