



MARCH 2012

# TAX TOPICS

## SALES AND USE TAX

Texas Comptroller of  
Public Accounts

### Retailers' Guide to the Sales Tax Exemption Registration Requirement for Commercial Agricultural and Timber Operations

As of Jan. 1, 2012, a person claiming exemption from sales tax on purchases of certain items used in the production of agriculture and timber products must provide a Texas Agriculture and Timber Registration Number (Ag/Timber Number) issued by the Comptroller of Public Accounts on the exemption certificate or confirmation letter issued to the retailer.

The law\* did not change the list of items that qualify for the agricultural or timber exemptions; it simply changed the process a purchaser must follow in order to claim the exemptions on certain items.

\*House Bill 268, 82nd Regular Legislative Session (2011)

#### What Has Changed?

##### REGISTRATION (AG/TIMBER) NUMBER

Farmers and ranchers must have an Ag/Timber Number to make exempt purchases of qualifying items on or after Jan. 1, 2012. The law did not change any of the items that qualify for exemption. But, to make purchases of these items exempt from sales tax, the purchaser must now give the seller a new completed exemption certificate or signed confirmation letter with an Ag/Timber Number on it. If a customer does not have an Ag/Timber Number, retailers must charge sales tax on the sale. If the customer later applies for an Ag/Timber Number, they may be able to apply to the Comptroller for a *refund* of the sales taxes paid.

The primary owner or operator of the farm, ranch or timber operation may obtain an Ag/Timber Number. The number can be used by any person

authorized by the registrant. For example, if three family members operate a farm, one member can apply for one Ag/Timber Number for the farm that all three can then use when making qualifying purchases. Similarly, a large corporate agricultural or timber operation that employs multiple personnel may obtain one number that can be used by all authorized employees when making qualifying purchases. Ag/Timber Numbers must be renewed every four years.

Upon registration, the Comptroller will provide cards confirming the registration that can be copied and given to the employees who make purchases in the name of the registrant. These cards are for the customer's convenience only. The retailer is not required to view or copy the registration card. The retailer's documentation is the completed exemption certificate or confirmation letter containing the Ag/Timber Number.

##### Online Verification of Ag/Timber Number

Retailers may verify Ag/Timber Numbers through the **Comptroller's online system** but verification is not necessary for the retailer accepts an exemption certificate or confirmation letter with an Ag/Timber Number.

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This publication is intended as a general guide and not as a comprehensive resource on the subjects covered. It is not a substitute for legal advice.



**COMMERCIAL AGRICULTURAL AND TIMBER OPERATIONS**

**NEW EXEMPTION CERTIFICATES OR CONFIRMATION LETTER REQUIRED**

**As** of Jan. 1, 2012, a purchaser claiming an agricultural or timber exemption on qualifying items must provide to the retailer the appropriate new exemption certificate or their signed confirmation letter with the purchaser’s Ag/Timber Number:

For agriculture:  
Texas Agricultural Sales and Use Tax  
Exemption Certificate (Form **01-924**)

For timber:  
Texas Timber Operations Sales and Use Tax  
Exemption Certificate (Form **01-925**)

**Description of Item and Use No Longer Required**

The purchaser is not required to list the items being purchased or to describe how the items will be used on the new exemption certificates. Retailers do not need to determine whether the planned use of an item by a purchaser qualifies for exemption as long as the item is of a type or quantity that would ordinarily or reasonably be used in the production of timber products or on a farm or ranch in the production of agricultural products.

When a retailer makes the first sale of items that qualify for exemption on or after Jan. 1, 2012, the retailer may obtain the new exemption certificate or signed confirmation letter with the Ag/Timber Number included at the time of purchase and keep that certificate or letter on file. Retailers may consider the new certificates as blanket certificates covering purchases of qualifying items made by purchasers with the Ag/Timber Number. When subsequent exempt purchases are made, the retailer can simply stamp the invoice with a statement, as is currently done, indicating the items purchased on the invoice will be used in a qualifying exempt manner. The stamped invoice must also include the purchaser’s Ag/Timber Number and signature of the customer.

Although retailers may keep a blanket exemption certificate or confirmation letter on file for purchasers, the certificate will only be valid for items purchased that are of a type or quantity that would ordinarily or reasonably be used in the production

of timber products or on a farm or ranch in the production of agricultural products.

For example, assume a rancher purchases lumber, hand tools and a decorative bathroom mirror at his local lumberyard. The lumberyard may accept an exemption certificate or confirmation letter with the purchaser’s Ag/Timber Number for the lumber and hand tools since the rancher could reasonably use the lumber and tools to build a cattle feeder, water trough, fence or other exempt piece of equipment ordinarily used exclusively on a farm or ranch in the production of agricultural products.

The lumberyard should not accept a claim for exemption on the decorative bathroom mirror since it is not an item ordinarily used in the production of agricultural products.

*Recommended language from the Comptroller for invoices used in connection with blanket exemption certificates or confirmation letters*

For Agriculture:  
“I certify the items on this invoice are for exclusive use on a farm or ranch in the production of agricultural products for sale. I understand that if these items are not used exclusively in this manner, I will be liable for the tax, penalty and interest.  
Signature \_\_\_\_\_  
Ag/Timber Number \_\_\_\_\_ ”

For Timber:  
“I certify the items on this invoice are for exclusive use in the production of timber products for sale. I understand that if these items are not used exclusively in this manner, I will be liable for the tax, penalty and interest.  
Signature \_\_\_\_\_  
Ag/Timber Number \_\_\_\_\_ ”

**BLANKET EXEMPTION CERTIFICATES MUST BE UPDATED**

Retailers who currently have on file blanket exemption certificates using the Exemption Certificate (Form **01-339**) must obtain from their customer one

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of the new exemption certificates (either Form **01-924** or **01-925**) or signed confirmation letter with the customer's Ag/Timber Number.

The updated exemption certificate or confirmation letter will be good until the customer revokes the certificate in writing to the retailer or the retailer is notified that the Ag/Timber Number associated with the exemption certificate or confirmation letter has expired, been canceled or suspended.

#### RETAILER'S GOOD FAITH ACCEPTANCE OF EXEMPTION CERTIFICATE

**A** person who has been issued the Ag/Timber Number has certified to the Comptroller he/she is engaged in the production of agriculture or timber products for sale. By issuing a retailer one of the new exemption certificates or the confirmation letter with a valid Ag/Timber Number, a purchaser is certifying the purchases will be used in an exempt manner. The retailer may accept an exemption certificate or confirmation letter with an Ag/Timber Number in good faith, provided the item is of a type or quantity that would ordinarily be used in the production of timber products or on a farm or ranch in the production of agricultural products. The properly completed exemption certificate or confirmation letter containing a purchaser's Ag/Timber Number is the retailer's documentation that a tax-exempt sale was made in good faith.

A retailer must be familiar with the agriculture and timber exemptions available for the items sold by the retailer. A retailer may not claim good faith acceptance of a certificate for purchases of items that clearly do not qualify for the exemption. For example, a retailer should never accept an agricultural or timber exemption certificate for jewelry or furniture because those types of items clearly would not be used in the production of timber products or on a farm or ranch in the production of agricultural products.

#### RECORD KEEPING

**A** retailer accepting an exemption certificate or confirmation letter in good faith must keep records of the sale. A retailer must be able to match the stamped invoices to the purchaser's exemption certificate or confirmation letter. This may be accomplished by the

retailer entering the customer's Ag/Timber Number on each customer-signed invoice.

#### REFUNDS

**A** retailer is required to charge sales tax if the person claiming an agricultural or timber exemption does not have an Ag/Timber Number on purchases made on or after Jan. 1, 2012.

In determining how to handle refund requests, the retailer will need to know if the purchaser had a valid Ag/Timber Number at the time the item was purchased. To make this determination, retailers should use the Comptroller's online verification system.

If the purchaser did not have a valid Ag/Timber Number at the time the purchase was made, the retailer should not refund the sales tax or assign the right to refund to the purchaser. The purchaser should, instead, apply for an Ag/Timber Number and, on receipt of the number, submit a refund claim directly to the Comptroller.

If the purchaser did have a valid Ag/Timber Number at the time the purchase was made, the retailer may refund the sales tax or give the purchaser an Assignment of Right to Refund if the purchaser provides the Ag/Timber Number to the retailer when making that request.

If the number is invalid or was not active on the date of the sale, the retailer should direct the purchaser to file the refund claim directly with the Comptroller's office. An Assignment of Right to Refund is not required in this situation.

### What Has Not Changed?

#### QUALIFYING EXEMPT ITEMS

**A**griculture and timber exemptions are "use" based exemptions. That means that an item that is normally taxable will qualify for exemption if it is used in an exempt manner. For most agricultural exemptions to apply, the purchased item must be used exclusively on a farm or ranch in the production of an agricultural product for sale. Items qualifying for the timber exemption must be used exclusively to produce timber products for sale. The exemption is lost if the item is not used exclusively in a qualifying manner.

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The law does not change the exempt status or exempt uses of items purchased by persons who produce agricultural products for sale in the ordinary course of business. Just as before, the items listed below only qualify for the agricultural or timber exemption based upon their use.

It is the responsibility of the purchaser to use the items purchased in an exempt manner, and the purchaser is responsible for the tax, penalty and interest if the items are not used in an exempt manner. The retailer can accept an exemption certificate or confirmation letter with an Ag/Timber Number, in good faith, when selling the following items:

- fertilizers, fungicides, insecticides, herbicides, defoliants and desiccants used **exclusively** in the production of timber for sale or on a commercial farm or ranch in the production of food or other agricultural products for sale;
- machinery and equipment (including repair or component parts) used **exclusively** on a commercial farm or ranch in the production of food or other agricultural products for sale or the building or maintaining of roads and water supplies;
- machinery and equipment (including repair or component parts) used **exclusively** in the production of timber;
- machinery and equipment used by an original producer for packing and processing agricultural or timber products;
- machinery and equipment **exclusively** used in an agricultural aircraft operation, as defined by 14 C.F.R. Section 137.3;
- tangible personal property incorporated into a structure used for poultry carcass disposal;
- components of irrigation systems used in the production of food and other agricultural and timber products for sale;
- seedlings used in the production of timber for sale;
- electricity and natural gas used in agriculture or timber operations;
- services performed on exempt tangible personal property identified in this list; and

- certain motor vehicles and off-road vehicles used in farming, ranching or timber operations.

#### ITEMS ALWAYS EXEMPT – NO AG/TIMBER NUMBER OR EXEMPTION CERTIFICATE REQUIRED

**S**ales of some agricultural items are always exempt. It doesn't matter who is buying the item or how it will be used. The retailer does not need to obtain an exemption certificate when selling:

- seeds and annual plants, the products of which are commonly recognized as food for humans or animals, or are usually only raised to be sold in the regular course of business, such as corn, oats, soybeans and cotton seed;
- animals, such as cattle, sheep, poultry and swine, the products of which are ordinarily food;
- horses, mules, donkeys and ponies;
- all medications, tonics, restoratives or other therapeutic preparations (vaccines and drenches, for example) prescribed or dispensed by a veterinarian\*, water; and
- feed for farm and ranch animals or wild game, including oats, hay, chicken scratch, wild bird seed and deer corn. Feed for pets do not, however, fall in this category, even if those animals are located on a farm or ranch.

\*Note, the purchaser must either provide the retailer a written prescription or allow the retailer to receive the prescription directly from the veterinarian. The seller must keep a copy of the prescription on file to document the exemption.

Animals, "the products of which are ordinarily food", include only those animals subject to mandatory inspection by the USDA's Food Safety Inspection Service (FSIS) when sold for food - cattle, sheep, goats, swine, and poultry. "Poultry" means chickens, turkeys, ducks, geese, guineas, ratites, or squabs. Ratites are ostriches, emus and rheas. Squabs are young pigeons from one to about thirty days of age.

All other animals are taxable. However, an exemption can be claimed on taxable animals such

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as rabbits, deer, llamas and bison that are raised to sell their products or as food.

#### EXEMPTION CERTIFICATE REQUIRED; AG/TIMBER NUMBER NOT REQUIRED

Some items still qualify for exemption based on how the item will be used by the purchaser, but are not subject to the new Ag/Timber Number requirement. When selling one of the following items in the situation described, the purchaser must provide a properly completed generic exemption certificate (Form **01-339**) that specifically states the exempt purpose for which the item will be used. An Ag/Timber Number is NOT required.

#### WORK ANIMALS

Animals used exclusively in one of the following work activities qualify for exemption:

- herding dogs and animals raised for their products, such as wool or fur, if harvesting of those products is their primary purpose;
- aiding a person with a disability (professionally trained service animals); and
- performing protective services, if the animal has been professionally trained for that specific purpose.

Work animals do not include animals raised, trained or held as pets or breeding stock; for sport (i.e., hunting dogs) or for show. For example, tax is due on deer and other animals purchased by a hunting operation for game, exotic animals purchased by a zoo or circus, and hunting dogs.

The term “show animals” as used in this context does not include animals raised and shown by students in 4H, FFA and similar vocational educational groups. Taxable animals such as rabbits that are raised for show and sale by such students qualify for exemption.

Purchasers should issue an exemption certificate when buying work animals. The exemption certificate should indicate what type of work the animal will perform.

#### ANIMAL FEED

Feed for a work animal is exempt. The exemption certificate provided by the purchaser should indicate the type of work performed by the animal(s) to be fed. For example, “dog food for a service dog.”

Feed for animals being held for sale in the regular course of business, including dogs, cats, rabbits and exotic animals also qualifies for exemption. The exemption certificate must state that the feed will be fed to animals being held for sale in the regular course of business or for animals used as breeding stock for animals that will be held for sale. Sellers of cats, dogs, exotic animals and other animals that are not ordinarily considered either food sources for humans or farm or ranch animals are required to hold a sales tax permit and to collect tax on sales of such animals.

Pet food also qualifies for exemption when sold or dispensed under a veterinarian’s prescription, and an exemption certificate is not required. The purchaser must either provide the retailer a written prescription or allow the retailer to receive the prescription directly from the veterinarian. The seller must keep a copy of the prescription on file to document the exemption.

#### ICE USED BY COMMERCIAL FISHING BOATS

Ice exclusively used by commercial fishing boats in storing aquatic species, including but not limited to shrimp, other crustaceans, finfish, mollusks and similar creatures is exempt. The exemption certificate should state that the ice will be used for the storage of fish or other aquatic species. Ice purchased for consumption in drinks or for storage of food, beverages or other items is taxable.

#### RETAILERS ARE NOT REQUIRED TO ACCEPT AN EXEMPTION CERTIFICATE

A retailer *may* accept a properly completed exemption certificate or confirmation letter in lieu of collecting tax on an exempt transaction; the law does not *require* a retailer to accept an exemption certificate or confirmation letter. If a retailer chooses not to accept an exemption certificate or confirmation letter from a purchaser on a qualifying exempt purchase, a

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purchaser may request a refund of the tax paid from the Comptroller. See "Sales Tax Refunds" for more information.

#### SALES TO OUT-OF-STATE PURCHASERS

**W**hen a retailer ships or delivers items to an out-of-state location, and the customer does not take possession of the items in Texas, Texas sales tax does not apply. The retailer should simply keep copies of the shipping documents in his records as verification that the items were sent directly out of state.

If a resident from another state or country purchases taxable items in Texas and receives the items here, Texas tax is due. If the purchaser claims an agricultural or timber exemption, the purchaser must provide the appropriate exemption certificate or confirmation letter with a valid Ag/Timber Number. Anyone engaged in the production of agricultural or timber products for sale, including non-Texas residents, can apply for a Ag/Timber Number. If the out-of-state customer does not have a Ag/Timber Number, the retailer should collect the sales tax.

#### SALES FOR RESALE

**A** retailer may continue to accept a properly completed resale certificate from a customer buying items for resale. Retailers may also continue to accept a properly completed "general" exemption certificate, Form **01-339**, without an Ag/Timber number from qualified exempt organizations such as Texas public schools and universities, churches, federal and Texas state and local government agencies, and nonprofit organizations buying items for their own use. These types of transactions are not affected by the new law.

### How You Can Help Your Customers

#### PAY ATTENTION TO CHANGES AND DATES

**A**lthough the law went into effect Sept. 1, 2011, the requirement to obtain the new exemption certificate or confirmation letter with a Ag/Timber Number did not become effective until Jan. 1, 2012. Customers claiming the agriculture or timber exemptions must issue an exemption certificate or confirmation letter,

either Form **01-924** (agriculture) or Form **01-925** (timber) and provide their Ag/Timber Number on the appropriate exemption certificate or confirmation letter. The registration must be renewed every four years. Retailers must collect sales tax on items that require an agriculture or timber exemption certificate or confirmation letter if the purchaser cannot provide a Ag/Timber Number.

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#### FAMILIARIZE YOUR STAFF

**R**etailers should alert their staff about these requirements, review the exemptions available for the items the business sells and distinguish the items the business sells that do not require an exemption certificate or confirmation letter from the customer to document the tax-exempt sale.

**Direct Customers to the Comptroller's website at [comptroller.texas.gov/taxinfo/agriculture](http://comptroller.texas.gov/taxinfo/agriculture).**

#### Additional Information

Tax Code Sections **151.316** and **151.3162**  
Rules **3.296** and **3.367**

**Tax Exemptions for Agriculture**  
(Publication 94-101)

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