

# **Farming and New Jersey Sales and Use Tax**

## **Informational Guide**

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New Jersey Department of Agriculture

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Division of Taxation

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## **Sales and Use Tax Act – General Information**

The New Jersey Sales and Use Tax Act imposes a tax of 7 percent upon the receipts from every retail sale of tangible personal property and the sale of certain services, except as otherwise provided in the Act. This means that in New Jersey, most items and most services performed upon tangible personal property are taxable unless specifically exempted by law. Exempt items include, but are not limited to: most food and food ingredients, most clothing and footwear, disposable paper products for household use, and prescription and over-the-counter drugs.

A use tax liability may be incurred when taxable goods or services are purchased for use in New Jersey but sales tax was not collected, or was collected at a rate less than the New Jersey sales tax rate. Thus, when taxable items delivered or used in New Jersey are purchased from an Internet retailer or a mail-order catalog company that did not collect New Jersey sales tax, or purchased in states that do not impose sales tax, the purchaser is required to remit the use tax directly to the State of New Jersey. Businesses that are required to collect and remit sales tax should report their use tax liability on the sales and use tax return. Businesses that do not sell taxable property or services whose average annual use tax liability for the three preceding calendar years is \$2,000 or less are not required to file monthly and/or quarterly sales and use tax returns, but may instead file an Annual Business Use Tax Return (Form ST-18B) to report any taxable purchases made during the calendar year upon which use tax is due by May 1 of the year following a year when use tax liability has been incurred. For more information on this topic, request publication ANJ-7, *Use Tax in New Jersey*.

Real property means land and any structure or appurtenance affixed permanently thereto.

Tangible personal property means corporeal personal property of any nature. Examples include furniture, automobiles, tools, appliances, natural gas and electricity, and prewritten computer software.

There is also a category of property called “digital property” in the Sales and Use Tax Act.

## **Registering a Business**

For sales and use purposes, new businesses must file an application to register with the New Jersey Division of Taxation at least fifteen (15) business days before commencing business in New Jersey by filing an Application for Business Registration, Form NJ-REG. Some farm businesses do not have to register for sales tax if they are sole proprietorships, have no employees or independent contract workers, and have no sales or use tax collection obligations, such as a farm that sells only vegetables, fruit, meats, eggs, or dairy products for human consumption. However, a farmer selling taxable goods, including farmers who accept sales tax exemption certificates, must be registered.

Registration ensures that the business will receive all the necessary forms and information that the business needs to comply with New Jersey tax laws. A Public Records Filing may also be required depending upon the type of business ownership. For more information on Public Records Filing, call (609) 292-9292.

If the business indicates its registration application that it will collect sales tax or purchase materials for resale, it will be issued a Certificate of Authority (Form CA-1) for sales tax. This certificate will bear the name of the proprietor or corporation or, in the case of a partnership, the names of the partners, as well as the trade name (if any), physical business location, and New Jersey tax identification number of the business. The Certificate of Authority must be prominently displayed at the place of business and returned to the State in the event operations are ceased.

### **Farming Enterprises and Purchases Subject to Sales or Use Taxes A**

“farming enterprise” means an enterprise using land to raise agricultural or horticultural commodities for sale. Farming enterprises include, but are not limited to, enterprises producing dairy products, poultry, feed crops, fruit, vegetables, livestock, fur animals, timber, ornamental plants, bees and apiary products.

For sales and use tax purposes, a “farming enterprise” does **not** include an enterprise that is primarily engaged in boarding or training horses or in selling agricultural or horticultural products produced by others.

*Note that, for property tax assessment purposes the boarding, training, and rehabilitation of horses is an agricultural use when the facility is contiguous to land which otherwise qualifies under the Farmland Assessment Act. It is possible to qualify for farmland assessment, but not be a “farming enterprise” for sale tax exemption purposes, and it is also possible to qualify for sales tax exemption as a “farming enterprise,” but not to qualify for property tax farmland assessment.*

The following are not classified as “farming enterprises” for sales and use tax purposes:

- Horse boarding, training facilities, or riding stables
- Botanical display gardens
- Game hunting preserves
- Sport and recreational fishing
- Dog kennels or dog or cat breeding businesses
- Raising commodities or keeping animals for one’s own use or for educational or entertainment use, e.g., petting farm

In general, purchases by farmers are subject to sales and use tax. However, an exemption exists based on how the specific property or services are used in the production of agricultural or horticultural commodities by the farmer. While purchases of certain property or services may be considered essential to the conduct of the business of farming because their use is required either by law or practical necessity, this does not in itself mean that the property is exempt from sales or use tax.

### **Criteria for Exemptions**

To be exempt from paying sales tax on a purchase based on the farm-use exemption, the item must be used by a farmer directly and primarily in the **production, handling and preservation for sale** of agricultural or horticultural commodities at a farming enterprise.

“Handling and preservation” means the care and maintenance of farm animals and of agricultural and horticultural commodities during production for sale and up to the point when the commodity reaches a marketable state and the prevention of spoilage or deterioration of agricultural or horticultural commodities during and after production until they reach a marketable state.

### **Determining Exemptions**

In determining whether a service or item is used “directly” for an exempt purpose, the following are to be considered:

- Physical proximity of the item to the production, handling or preservation for sale process in which it is used.
- Proximity of the time of use of the property or service to the time of use of other property or services employed before or after it in the production, handling or preservation of agricultural or horticultural commodities.
- Active/causal relationship between the use of the property or service in question and the production, handling or preservation of an agricultural or horticultural commodity.

### **Examples of Exempt Purchases**

Farmers who produce agricultural or horticultural commodities for sale are exempt from paying sales or use tax on purchases of farm equipment used for tilling, planting, maintaining, or harvesting crops and on equipment used directly in raising livestock or their products for sale. Supplies such as seed, plants, plugs, liners, fertilizer, lime, pesticides, mulch film, drip irrigation, feed, supplies, and medicine for farm animals are exempt when used for an exempt purpose directly on farms.

In addition, exempt purchases include, but are not limited to:

- Materials used to construct silos, greenhouses, grain bins, and manure handling facilities;
- Materials such as welding rods which becomes an integral, necessary part of exempt farm equipment;
- Production and conservation services (e.g., spreading lime or fertilizer, custom spraying);
- Purchases used directly and primarily in “handling and preservation” as well as actual “production” of agricultural commodities; and
- Other items exempt from sales tax even though not used directly and primarily in the production, handling, or preservation for sale of agricultural commodities including:

Containers used in a farming enterprise (e.g., pallets, baskets, crates and boxes);

Protective equipment, such as protective masks;

Clothing, including work clothing, such as gloves and boots; and

Electronically transmitted software that is used directly and exclusively in the conduct of the farmer’s business, even though not used directly and primarily in the production, handling, or preservation for sale of agricultural commodities.

Production services purchased by a farmer that are part of the process of planting, breeding, propagating, feeding, fertilizing, raising, or harvesting agricultural or horticultural commodities on that farmer's farming enterprise for the purpose of selling those commodities are exempt.

### **Purchases Subject to Sales or Use Tax**

Farmers must pay sales or use tax on:

- Automobiles, including pickup trucks.
- Energy.
- Materials used to construct a building or structure, with the exception of silos, greenhouses, grain bins and manure handling facilities.
- All items purchased which are not used directly and primarily in the production, handling, and preservation for sale of agricultural or horticultural commodities for sale in the purchaser's farming enterprise.
- The purchase of certain services including: repairing farm equipment, janitorial services, landscaping, snow removal, maintenance services, grooming horses or other animals kept for the farmer's personal use or enjoyment, repairing a greenhouse, imprinting stationery, painting or maintaining a barn, or repairing a farm truck.
- The farmer is the only party which may claim the farm-use exemption. Contractors and other service providers performing work for a farmer may not claim the farm-use exemption since this exemption does not pass through to the service provider or contractor; they are required to pay tax on purchases of property and services used in performing the job for the farmer.
- Renting storage space for farm equipment.

Examples of taxable tangible personal property not used "directly" for an exempt farming purpose include shop tools and equipment and supplies; recordkeeping materials; advertising and promotional materials; computers; equipment used to transport products to market or to customers, in displaying products, or in operating a store; first aid supplies and accident prevention equipment; or property used for the personal comfort of the farmer, employees, or customers.

The term "farming" does not include the construction, reconstruction, alteration, remodeling, servicing, repairing, maintenance or improvement of real property. The purchase or use of tangible personal property by a farmer for such purpose is subject to tax even though the structure may house or otherwise contain equipment or other facilities used directly in farming.

Maintenance, service, and repair work is not a farm-use operation. Maintenance facilities, tools, equipment and supplies predominantly used in performing such work are subject to tax. However, repair or replacement parts purchased by the farmer for exempt farm equipment are exempt from tax. Equipment and supplies, including soaps and cleaning compounds, brushes, brooms, mops, and similar items, used in general cleaning and maintenance of farm property are subject to tax.

## **Sales of Products or Services by Farming Enterprises**

Items sold or services provided by farm enterprises are either exempt or subject to sales tax depending on the circumstances of the sale. The sale of vegetables, fruit, meats, eggs, milk and many other farm products sold for human consumption are exempt from sales tax. Pumpkins are treated as a food item unless they are painted, varnished or cut and sold as decorations.

Agricultural and horticultural commodities that are produced and sold by farmers in the wholesale market or that will be resold at retail are exempt from sales tax as sales for resale. Purchasers buying these items for the purpose of resale must supply a properly completed Resale Certificate (ST-3) or other exemption certificate appropriate under the specific circumstances.

Most non-food items sold retail by a farming enterprise are subject to sales tax, such as nursery plants, flowers, and hard goods. Animals and feed sold retail are subject to sales tax unless supported by an exemption certificate. Firewood is a fuel and is exempt from sales tax.

In general, for sales tax purposes, an enterprise which offers agri-tourism activities conducted on a farm is considered operating a place of amusement which is defined as “any place where any facilities for entertainment, amusement, or sports are provided.” N.J.S.A. 54:32B-2(t). For example, admission charges to a corn maze or to a haunted hayride are subject to sales tax. However, transportation services, such as charges for a tractor or wagon ride to a field where the customer picks their own produce, are not subject to tax because the field is not a “place of amusement”. Tax is not charged when the purchaser of the taxable admission is a New Jersey or Federal governmental entity (e.g., a public school district) or an exempt organization that has been issued an Exempt Organization Certificate (ST-5) by the Division of Taxation (e.g., a private school). Fees charged for instruction/teaching are exempt for sales tax as a professional service transaction so long as any property that is transferred is inconsequential and not separately charged for, N.J.S.A. 54:32B-2(e) (4)(A).

## **Keeping Records**

Keeping records is more than just good business sense – it is a necessary part of compliance with both State and Federal tax laws. Keeping good records will ensure the accuracy of tax returns, and will protect the business owner in the event of an audit or investigation.

Retailers registered to do business in New Jersey are responsible for collecting sales tax and remitting it to the State. They may also be accepting and issuing New Jersey exemption certificates. These certificates exempt the purchaser from paying New Jersey sales and use tax on property and/or services. Exemption certificates must be retained by the seller for at least four (4) years from the date of the last transaction covered by the certificate. Certificates must be in the physical possession of the seller and available for inspection by the Division of Taxation.

Individual sales receipts must be maintained for a period of not less than 90 days from the last date of the most recent monthly or quarterly report filing of sales tax returns. After that time, if individual sales slips, invoices, receipts and cash register tapes are not maintained, a summary of sales records must be maintained by sales location showing total receipts and taxable receipts for each location. Individual sales receipts, exemption certificates and other documents showing that a transaction is not subject to sales tax must be maintained for at least four (4) years.

### **Out-of-State Sales**

If taxable items are sold and delivered out-of-State, New Jersey sales tax should not be collected. The seller should retain records which show both the out-of-State destination and the method of delivery to that location, such as the parcel post receipts, the bill of lading, etc.

Sales are taxable, however, if an out-of-State customer picks up the merchandise in New Jersey, even though the customer may intend to ship the merchandise out-of-State at a later date. However, out-of-State sellers may claim a resale exemption on purchases in New Jersey of goods and services purchased for resale. For more information, request publication ANJ-10, *Out-of-State Sales and New Jersey Sales Tax*.

### **Horse-Keeping Businesses**

#### **Taxability of Horses**

A business that breeds and raises horses for sale or that sells horses raised by others must register as a seller with the Division of Taxation and must collect and remit sales tax on its sale of horses, except when a specific statutory exemption applies.

#### ***Horse-Breeding Farms Eligible for the Farm-Use Exemption***

A business that is primarily engaged in breeding and raising horses for sale is treated as a “farming enterprise” for sales tax purposes. The horses that it breeds and raises for sale are its product and are deemed to be an “agricultural commodity.” Thus, a horse breeding farm is eligible for the farm-use exemption when it purchases qualified tangible personal property (e.g., feed) or services (e.g., shoeing) used in raising its horses for sale. The farmer should present the supplier with a properly completed Farmer’s Exemption Certificate (ST-7) to support the claimed exemption.

#### ***Horse-Keeping Businesses Not Eligible for the Farm-Use Exemption***

The business of boarding or training horses or of renting horses to customers is not a “farming enterprise,” i.e., not an agricultural production business for the purposes of the farm-use exemption provisions. Therefore the business is not eligible to claim the farm-use exemption.

In many situations, the activities of a business may be statutorily deemed “agricultural use” for purposes of local property tax law, and thus qualify the land for Farmland Assessment, and yet the business would not qualify as a “farming enterprise” within the meaning of the Sales and Use Tax Act because it is not primarily engaged in producing



an agricultural commodity. If a business is primarily engaged in boarding or training customers' horses or in renting horses to customers for trail riding, it is not primarily engaged in producing an agricultural product. Therefore, although it may be viewed as a farm for property tax assessment purposes, it does not qualify for the farming use exemption from sales tax.

### **Taxability of Goods and Services Provided by Horse-Keeping Businesses**

#### ***Horse Boarding***

A business that boards horses needs to register as a seller. Many of its transactions will be taxable, and it will be required to collect sales tax.

Charges for boarding horses are taxable, unless a statutory exemption applies under the specific factual circumstances. For example, if the business boards horses for a horse dealer, who is in the business of selling the horses, the dealer may use a Resale Certificate (ST-3) and claim a resale exemption from sales tax. If it boards horses for a horse breeder, i.e., a farmer who is in the business of raising and breeding horses for sale, the farmer may use a Farmer's Exemption Certificate (ST-7) and claim the farm-use exemption from sales tax.

If, instead of charging a lump sum for boarding, the business itemizes the sales and services provided as part of boarding, the following general rules will apply:

- Separately stated charges for stall rental are subject to sales tax, unless the customer is entitled to a specific statutory exemption. Such charges are treated as a sale of storage space, which became taxable effective October 1, 2006.
- Charges for feeding the horses are taxable as charges for maintaining tangible personal property, and are subject to tax unless the customer is entitled to claim a specific statutory exemption, as explained above (e.g., farm use for breeder, resale for a dealer).
- Separately stated charges for grooming or shoeing horses are taxable as charges for maintaining tangible personal property, unless the customer is entitled to a specific statutory exemption as explained above.
- Separately stated charges for training the horses are not taxable.

#### ***Providing Horses for Riding***

Businesses that rent horses to customers are also required to register with the Division of Taxation as sellers and collect and remit sales tax.

A business that provides riding horses to customers (e.g., charges customers who borrow horses by the hour or by the day for trail riding) is deemed to be renting horses. Since these rentals are treated as retail sales, the amounts charged for use of the horses is subject to tax. See S&U-12: *Leases and Rentals*.

#### ***Training Horses***

Charges for training horses are not taxable because training services do not fall within any of the categories of services enumerated as taxable in the Sales and Use Tax Act.

They remain nontaxable even if some grooming or food is provided as an inconsequential element of the training service. However, if taxable services or property such as boarding, grooming services, feed, or horse accessories are provided as a significant element of the transaction, they must be separately stated and tax must be collected.

### **Resale Exemption**

A horse rental business is eligible to claim a resale exemption when it purchases horses that it uses for rental to customers. However, if the business ever uses some of those horses to give riding lessons, or for any other purpose that does not constitute “resale” of the horses, the business will then be liable for self-assessing use tax on the fair rental value of those horses which it purchased tax-free, and which it is now using for a purpose inconsistent with resale.

A horse boarding business is entitled to a resale exemption when it purchases feed or medicines for the horses that it boards. The feed and medicines are deemed to be resold as part of the taxable service of boarding horses.

Generally, a business primarily engaged in training horses may not claim the resale exemption when it buys feed for the horses that it trains. Training is a nontaxable service and, when the feeding is incidental to the training service, and no separate charges are made for the feed, the trainer is deemed to be the retail purchaser of the feed. However, if the trainer separately states the taxable charges for feed on its bill to the customer, then the purchase of the feed by the trainer is deemed to be an exempt purchase for resale.

### **Questions & Answers Relating to Sales and Purchases by Horse-Keeping Businesses**

1. *Is a business raising or breeding race horses for the purpose of selling them entitled to the farmers' exemption?*

Yes. The exemption applies if the horses are being raised for sale. However, the exemption applies only to those animals used exclusively as breeding stock or being grown for sale. Animals used for racing purposes do not qualify for the exemption.

2. *What is the taxable status of sales of horses by a New Jersey horse farm?*

The sale of a horse by a New Jersey horse farm to a New Jersey resident or to a nonresident who accepts delivery in New Jersey is subject to tax unless the horse is being purchased for resale, or for use exclusively as breeding stock on a horse-breeding farm, or as a draft animal used exclusively in farm production, or unless the purchaser is either an exempt government entity (no ST-5 needed) or an exempt private organization that has been issued a Form ST-5 by the Division of Taxation.

3. *Are the charges for boarding a brood mare subject to sales tax?*

If the boarding of a mare is for the purpose of putting the mare to stud, and if the mare is owned by a person who is in the business of breeding and raising horses

- for sale, the boarding charges are not subject to tax. The owner should issue a Resale Certificate (ST-3) to the boarding facility.
4. *Are the charges for horseback riding subject to sales tax?*  
Yes. The charges for horseback riding are deemed to be charges for the rental of the horse. However, separately stated charges for riding instruction, if any, are exempt.
  5. *Are stall rentals subject to sales tax?*  
Charges for stall rental are subject to sales tax, unless the customer is entitled to a specific statutory exemption. Such charges are treated as a sale of storage space, which became taxable effective October 1, 2006. Charges for horse boarding are also taxable, regardless of whether the stall rental is separately itemized.
  6. *If land is rented to the owner of a horse for grazing without an individual stall, is the pasture rental subject to sales tax?*  
No. Only when the rental is for an individual, enclosed, assigned space is sales tax to be charged.
  7. *Is the purchase of a horse to be used exclusively for rental purposes taxable to the owner of a commercial riding stable or academy?*  
No. Since the charges made for riding a horse and the equipment rented with the horse by a riding academy is deemed to be a purchase for resale, the purchaser may claim a resale exemption, supported by a properly executed Resale Certificate (ST-3). Purchases of tangible personal property and services from farriers and purchases of feed and medicines for riding horses are also deemed to be for resale.
  8. *Are medicines and supplies used by veterinarians taxable?*  
Yes. A veterinarian must pay sales or use tax on the purchase of all medicines and supplies used in treating clients' animals, even if the clients are horse farmers. If the veterinarian resells medicines and supplies to clients for their own use, the veterinarian must charge sales tax on its sale of the items and may claim a resale exemption when purchasing them for this purpose. Medicine separately billed by a veterinarian in connection with the treatment of breeding horses or horses being raised for resale or sold to the owner of a horse breeding farm is exempt if the owner issues a properly completed Farmer's Exemption Certificate (ST-7) to the veterinarian.
  9. *Are charges by a veterinarian for medical services taxable?*  
No. Professional medical services (e.g., exams, diagnostic tests, surgery, helping during delivery of foals) do not fall within any of the categories of services enumerated as taxable in the Sales and Use Tax Act. Charges for medical services by a veterinarian are exempt from sales tax.
  10. *A horse owner sells a horse to another person for their own use. Can this transaction be considered a "casual" sale and therefore not subject to sales tax?*

A “casual” sale is defined in the Sales and Use Tax Act as one which is an isolated or occasional sale of an item of tangible personal property by a person who is not regularly engaged in the business of making sales at retail where such property was obtained by the person making the sale, through purchase or otherwise, for his or her own use in this State. Thus, if the person selling the horse was a horse dealer, a horse breeder or anyone else in a business which involved the buying and selling of horses, the sale cannot be a “casual sale” and is therefore taxable. If, however, the sale of the horse was made by a person who had purchased or otherwise acquired the horse for his or her own use, the transaction would be a casual sale, and no tax would be due.

### **Sales Tax Exemption for Farm Trucks**

Trucks, including pickup trucks, with a gross vehicle weight rating of 18,000 pounds or less are not exempt from sales tax even if registered with “farmer plates.” In order for the purchase of a commercial truck, truck tractor and semi-trailers to be exempt from sales tax it must 1) have a gross vehicle weight rating in excess of 26,000 pounds; or 2) be operated actively and exclusively for the carriage of interstate freight; or 3) **registered as a farm vehicle under the Motor Vehicle Statute (N.J.S.A. 39:3-24 and 25) and have a gross vehicle weight rating in excess of 18,000 pounds (N.J.S.A. 54:32B-8.43).**

N.J.S.A. 39:3-24 deals with the registration of farm-use vehicles, which are used as farm machinery or equipment and cannot be operated on public highways between sunset and sunrise. N.J.S.A. 39:3-25 deals with the registration of farm trucks (“farmer plates”). The Division has determined that the 18,000 pound gross vehicle weight rating (GVWR) requirement can be met by a combination of the gross vehicle weight of the truck itself, as specified by the manufacturer, and the weight of a towed vehicle (“vehicle used in combination therewith”), as indicated by the truck’s towing capacity. There is no requirement that the combination vehicle actually be purchased at the time that the commercial truck is purchased. It is sufficient for exemption purposes that the truck is rated by the manufacturer to tow in excess of 18,000 pounds when the towing capacity is combined with the truck’s loaded weight capacity.

In order to support an exemption at the time of purchase, a New Jersey motor vehicle dealer must verify the GVWR of the truck and its towing capacity, obtain from the purchaser a completed copy of the Exempt Use Certificate (ST-4) indicating N.J.S.A. 54:32B-8.43 as the basis of the exemption, and register the truck as a farm vehicle (“farmer” or “farm-use”) with the New Jersey Motor Vehicle Commission. The dealer should advise the purchaser that the sales tax exemption is contingent upon the purchaser continuing to hold a New Jersey motor vehicle farm registration pursuant to Motor Vehicle law.

### **Claim for Refund of Sales Tax and Amending Sales and Use Tax Returns**

If nontaxable items are purchased and the seller charges sales tax, a request for a refund of sales tax paid may be made to either the seller or the Division of Taxation. To request

a refund from the State, a Claim for Refund (A-3730) must be filed. The application for a refund must be filed within four years from the date of payment of the sales tax.

Errors on monthly remittances (ST-51) may be reconciled on the next quarterly sales tax return (ST-50) if the error is discovered within the same calendar quarter. If the error is discovered after the end of the calendar quarter, an Amended Quarterly Return (ST-607A) and a Claim for Refund (A-3730) must be filed with the Division of Taxation if the mistake results in an overpayment for the quarter. Sellers must have records of canceled sales, returned goods or uncollectible receipts to substantiate any claim for a refund of sales tax remitted to the State. A seller may not claim a refund of sales tax that it has improperly collected and remitted unless it submits documentation showing that the improperly collected tax has been returned to the purchaser.

### **Urban Enterprise Zones/Salem County Businesses**

New Jersey has established Urban Enterprise Zones and UEZ-impacted business districts where sales and use tax on certain items may be charged at 50% of the regular rate. A qualified business located in a reduced sales tax rate zone or district will charge 3.5% sales tax on all sales of merchandise qualified for the reduced rate. In order for a seller to offer the reduced sales tax rate to a purchaser who makes an in-person purchase at the seller's place of business in the zone or district, the purchaser must accept delivery at the seller's place of business in the zone or district or the seller must deliver the goods to the purchaser from the seller's business location in the zone or district.

For more information about Urban Enterprise Zones or UEZ-impacted business districts, visit the New Jersey Commerce and Economic Growth Commission's website at [www.state.nj.us/commerce/uzehome.htm](http://www.state.nj.us/commerce/uzehome.htm) or request the publication *Urban Enterprise Zone Tax Questions and Answers*.

### **Using Exemption Certificates**

New Jersey has exemption certificates that can be used to purchase goods or services without payment of sales tax in certain situations. Each exemption certificate has a specific use. In some cases, the purchaser must be registered for sales and use tax purposes in order to issue exemption certificates. However, the New Jersey seller *accepting* an exemption certificate *must always* be registered with New Jersey. For information on exemption certificates, request publication S&U-6, *Sales Tax Exemption Certificates*.

Below are common exemption certificates which may be utilized by farming enterprises:

#### *Resale Certificate, Form ST-3*

A registered New Jersey business that purchases tangible personal property with the intention of reselling it, either in its present form or after it has been incorporated into other tangible personal property held for sale, may issue a Resale Certificate (Form ST-3) to the seller in lieu of paying sales tax. A registered business may also issue Form ST-3 to purchase certain services for resale without paying sales tax. Sales tax is collected when the property or

services are subsequently re-sold at retail. A New Jersey Resale Certificate may be issued to purchase:

- Inventory which is intended for resale, rental, or lease.
- Property which is actually transferred to the purchaser of a taxable service in conjunction with the performance of such service.
- Raw materials which will become component parts of a finished product.
- Services for resale.
- Services performed on tangible personal property held for resale.

*Resale Certificate for Non-New Jersey Sellers, Form ST-3NR*

Form ST-3NR is used by qualified out-of-State sellers to make tax-exempt purchases in New Jersey of goods or services purchased for resale. “Qualified out-of-State sellers” are sellers that 1) are not registered with New Jersey; 2) are not required to be registered with New Jersey; and 3) are registered with another state.

When a qualified out-of-State seller carries the goods away with him from the point of sale, or sends his own vehicle or messenger to pick them up in New Jersey, the qualified out-of-State seller may use the Resale Certificate for Non-New Jersey Vendors (Form ST-3NR).

*Exempt Use Certificate, Form ST-4*

Form ST-4 makes it possible for businesses to purchase production machinery, packaging supplies, and other goods or services without paying sales tax if the way they intend to use these items is specifically exempt under New Jersey law. This exemption certificate does not apply to the purchase of services performed on the property, except as otherwise noted. Form ST-4 also applies to purchases of exempt farm vehicles (N.J.S.A. 54:32B-8.43) and exempt farm containers (N.J.S.A. 54:32B-8.15).

*Farmer’s Exemption Certificate, Form ST-7*

Farmers, including nursery owners and greenhouse owners, use this exemption certificate to purchase goods and certain services used directly and primarily for the production, handling, and preservation for sale of agricultural or horticultural commodities. A farmer does not necessarily need to be registered with the State to issue Form ST-7 to a seller. (However, most farm businesses in New Jersey will need to be registered for other tax reasons.)

When “farmers” function as “contractors” planting their products on customers’ land, they may not use the farmer’s exemption or the resale certificate on purchases. Under the sales and use tax laws, contractors are considered the retail purchasers or end-users of the materials that they install on the customers’ real property.

*Certificate of Exempt Capital Improvement, Form ST-8*

A Certificate of Exempt Capital Improvement, Form ST-8, is issued by a property owner to a contractor when work is performed to real property which results in an exempt capital improvement. A capital improvement occurs when real property (land or buildings) is improved in a way that increases its capital value or useful life. A property owner issues Form ST-8 to the contractor and does not pay sales tax on the labor portion of the contractor's bill. Sales tax is paid on the materials at the time of purchase by the contractor or by any other individual making the purchase. A property owner does not need to register with New Jersey to issue Form ST-8, but a contractor performing work in New Jersey does need to be registered.

Capital improvements which are not exempt on and after October 1, 2006 include certain landscaping services (seeding, sodding, grass plugging of new lawns, planting trees, shrubs, hedges, plants, etc., clearing and filling land associated with seeding, sodding, grass plugging of new lawns, or planting trees, shrubs, hedges, plants, etc. This also includes tree/stump removal, floor covering installation services and alarm system installations.

**Contacts for Additional Information or Questions**

For assistance in clarifying whether an item purchased or sold by a farm enterprise is subject to sales tax, contact the Division of Taxation at (609) 292-5995 or the New Jersey Department of Agriculture at (609) 292-8896

Many State tax forms and publications are available on the Division of Taxation's web site at [www.state.nj.us/treasury/taxation](http://www.state.nj.us/treasury/taxation).

In Writing

New Jersey Division of Taxation  
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# Appendix

## **Sales and Use Tax Statute:**

Tangible personal property for use and consumption primarily for raising of agricultural or horticultural commodities for sale (N.J.S.A. 54:32B-8.16)

a. Receipts from sales of tangible personal property and production and conservation services to a farmer for use and consumption directly and primarily in the production, handling and preservation for sale of agricultural or horticultural commodities at the farming enterprise of that farmer are exempt from the tax imposed under the "Sales and Use Tax Act."

b. The exemptions provided by subsection a. of this section shall not apply to sales of:

(1) automobiles;

(2) energy; or

(3) materials used to construct a building or structure, other than a silo, greenhouse, grain bin, or manure handling equipment.

c. For the purposes of this section:

"Agricultural or horticultural commodities" means tangible personal property produced through the raising of plants or animals useful to people, including but not limited to: forages and sod crops; livestock; grains and feed crops; dairy animals and products; poultry and poultry products; game animals and fur-bearing animals; honey and other apiary products; the products of aquaculture; trees and forest products; fruits, nuts and berries; vegetables; and nursery, floral, ornamental and greenhouse products; and

"Farming enterprise" means a facility used primarily for the raising of agricultural or horticultural commodities for sale, including but not limited to truck farms, ranches, orchards, nurseries, greenhouses or other similar facilities.

## **Sales and Use Tax Regulation:**

Sales of tangible personal property and services used on farms (N.J.A.C. 18:24-19)

To be replaced with updates to Subchapter 19 when adopted.

### **19.1 Scope of Rules**

N.J.A.C. 18:24-19.1 through 19.7 are intended to clarify the application of the Sales and Use Tax Act (N.J.S.A. 54:32 B-1 et seq.) to the sale, rental or leasing of tangible personal property and the sale of production and conservation services used directly and primarily in the production, handling and preservation for the sale of agricultural or horticultural commodities at a farming enterprise. N.J.A.C.18:24-19.8 is intended to clarify the application of the Act to sales of containers used in a farming enterprise and sales of commercial motor vehicles registered as farm vehicles.

### **19.2 Definitions**

"Agricultural and horticultural commodities" means tangible personal property produced through the raising of plants or animals useful to people, with certain categories of exceptions noted below:

1. The following are examples of "agricultural and horticultural commodities":
  - i. Vegetables;



- ii. Fruits, nuts and berries;
- iii. Poultry and poultry products (for example, chickens, ducks, eggs);
- iv. Game animals (for example, rabbits, quail);
- v. Dairy animals and milk (for example cows, goats);
- vi. Grain (for example, corn, oats, wheat);
- vii. Trees (for example, shade trees, Christmas trees) and forest products (for example timber);
- viii. Honey and other apiary products;
- ix. Fur-bearing animals and their skins and fur (for example sheep, mink);
- x. Livestock and their meat ( for example, cattle, pigs, sheep);
- xi. Horses;
- xii. Products of aquaculture (for example tuna, oysters, water lilies);
- xiii. Sod;
- xiv. Forage and feed crops (for example, soybeans, feed corn); and
- xv. Ornamental plants (for example, flowers, yews).

2. The following are not deemed to be “agricultural and horticultural commodities”;

- i. Dogs and cats;
- ii. Microscopic organisms raised in a laboratory (for example, penicillin); and
- iii. Secondary commodities produced from agricultural or horticultural commodities (for example, jellies, ice cream, pies, wreaths, woolen fabrics, finished lumber).

“Aquaculture” means the propagation, raising and harvesting for sale of aquatic organisms, in controlled or selected environments in which the farmer must actively intervene in the rearing process in order to effect, improve or increase production for the purpose of sale.

“Automobiles” means motor vehicles designed to be used on public roadways and required to be registered as motor vehicles, other than vehicles that qualify for exemption pursuant to N.J.S.A. 54:32B-8.43(a)(1), (2) or (3). (See N.J.A.C. 18:24-7.18)

“Conservation services” means services performed in order to conserve soil, water, soil nutrients or other natural resources useful in the production of agricultural or horticultural commodities.

- 1. “Conservation services” are exempt under this section only when used directly and primarily in the production, handling or preservation of agricultural or horticultural commodities for sale.
- 2. Following are examples of conservation services:
  - i. Aerial sowing of fall cover crop in a field of growing summer crops for purposes of soil nutrient management; and
  - ii. Applying mulch to growing crops during a drought to prevent moisture loss.

“Dairy farming” means the business of breeding, feeding and raising of cattle and other milk-producing animals, and the production of feed for them by the owner of such animals, but does not include operations such as making of butter, cheese or ice cream.

“Energy” means natural gas or electricity as defined in N.J.S.A. 54:32B-2(gg).

“Farm animals” means animals that fall within the definitions of “agricultural commodities” and animals that perform work used directly and primarily in production, handling and preservation for sale of agricultural and horticultural commodities.

1. The following are examples of “farm animals” as used in this subchapter:
  - i. Cows raised for their milk for sale;
  - ii. Pigs raised for their meat for sale;
  - iii. Horses bred and raised for sale;
  - iv. Draught animals used for productive farm work; and
  - v. Herding dogs used by a sheep farmer.
  
2. The following are not examples of “farm animals” as used in this subchapter:
  - i. Farmer’s pet dogs, hunting dogs, watch dogs;
  - ii. Horses being boarded and trained for customers; and
  - iii. Animals not raised for sale, which are used on the premises where they are maintained for purposes other than farm work, for example, trout in a stream stocked for fishermen, animals in a petting zoo, and horses in a riding academy.

“Farmer” means a person who owns, operates or manages a farming enterprise for gain or profit.

“Farming enterprise” means a business or part of a business which, using land and improvements to the land, is engaged primarily in producing agricultural or horticultural commodities for sale.

1. The following are examples of “farming enterprises”;
  - i. A fruit orchard that raises apples, pears and cherries for sale to the public;
  - ii. A tree nursery that grows trees for sale to contractors and property owners;
  - iii. A game farm that raises pheasants and other game animals for sale to butchers, supermarkets and sporting clubs;
  - iv. A fish hatchery that raises fish for sale to restaurants, food stores and fish processors;
  - v. A cranberry facility that grows cranberries for sale to distributors and food processors;
  - vi. A greenhouse that grows flowering plants for sale to retail stores;
  - vii. A sod farm that grows sod for sale to landscapers;
  - viii. A poultry farm that raises chickens for their meat and eggs for sale;
  - ix. A horse farm that breed horses for sale to horse dealers and to the public;
  - x. A dairy farm that raises cows in order to sell their milk;
  - xi. A grain farm that produces crops for either human consumption or livestock forage; and
  - xii. A vegetable farm.
  
2. The following are not “farming enterprises”:
  - i. A horse boarding enterprise;
  - ii. A horse training enterprise;
  - iii. A botanical garden primarily engaged in displaying plants;
  - iv. A hunting game preserve;
  - v. A lake that is stocked with trout, for sporting and recreational use;
  - vi. Farmers’ markets, produce stores, dairy product stores, florist shops;
  - vii. A kennel that raises dogs for sale; and
  - viii. Rural property on which the owner may grow or raise horses, barnyard animals, flowers, vegetables and fruits primarily for his own use rather than for sale.

“Handling and preservation” means the care and maintenance of farm animals and of agricultural and horticultural commodities during production for sale and up to the point when the commodity reaches a marketable state, and the prevention of spoilage or deterioration of

agricultural and horticultural commodities during and after production until they reach a marketable state.

“Production services” means services purchased by a farmer that are part of the process of planting, breeding, propagating, feeding, raising, or harvesting agricultural or horticultural commodities on that farmer’s farming enterprise for the purpose of selling those commodities.

1. The following are examples of “production services”:
  - i. Plowing a field in preparation for planting;
  - ii. Spraying pesticide on a sod field;
  - iii. Shoeing horses used for breeding purposes;
  - iv. Shearing sheep raised for their wool; and
  - v. Picking and packing berries grown for sale.
  
2. The following are not examples of “production services”:
  - i. Cleaning a retail store facility operated by the farmer;
  - ii. Services of repairing farm production equipment;
  - iii. Grooming pet horses; and
  - iv. Making repairs on farm workers’ housing.

### **19.3 Scope of exemption**

The exemption provided by N.J.S.A. 54:32B-8.16 applies to the purchases of:

1. Tangible personal property;
2. Production services; and
3. Conservation services.

The exemption applies only when the property or service is purchased for use or consumption directly and primarily in the production for sale, handling for sale or preservation for sale of agricultural or horticultural commodities.

The exemption provided by N.J.S.A. 54:32B-8.16 applies only to purchases by the farmer of property or services to be used in that farmer’s own farming enterprise.

1. The exemption does not apply to purchases by a contractor of tangible personal property to be installed on a customer’s farm premises or consumed during the work performed by the contractor on that property.
2. The exemption does not apply to purchases of items used by a service provider in rendering services to a farmer, regardless of whether the services rendered will be exempt.

The Exemption does not apply to purchases of the following categories of tangible personal property:

1. Automobiles
2. Energy; and
3. Materials used to construct a building or structure, with the following exceptions:
  - i. Silos;
  - ii. Greenhouses;
  - iii. Grain bins;
  - iv. Manure handling facilities.

### **19.4 Direct use**

In order to be exempt under N.J.S.A. 54:32B-8.16, a farmer's purchase of qualified tangible personal property or services must be used directly in the production, handling or preservation for sale of agricultural or horticultural commodities on the purchaser's farming enterprise.

In determining whether a service or an item of tangible personal property is used directly for an exempt purpose, the following factors are to be considered:

1. The physical proximity of the item in question to the production, handling or preservation for sale process in which it is used;
2. The proximity of the time of use of the property or service to the time of use of other property or services employed before or after it in the production, handling or preservation of agricultural or horticultural commodities; and
3. The active causal relationship between the use of the property or service in question and the production, handling or preservation of an agricultural or horticultural commodity.

Tangible personal property and services qualify for the farm use exemption when used primarily in growing agricultural or horticultural commodities, or in preserving agricultural commodities from the time of harvest until they are in a marketable state, or in maintaining farm animals or handling agricultural and horticultural commodities until they reach a marketable state.

1. Tangible personal property used in planting, propagating, growing, feeding, stimulating growth, or raising plant and animal agricultural or horticultural commodities is used directly in production for sale, for example, tilling equipment used in a vegetable farm, seeds used in a forage crop farm, fertilizer used in a sod farm, feed scoops used in a poultry farm, bull semen used in a cattle ranch, incubator used by a poultry farm. Repair and replacement parts for exempt farm equipment are also exempt from tax, but repair services are taxable.
2. Services of an outside service contractor of tilling, planting, or harvesting are used directly in production.
3. Property used to extract or separate an agricultural or horticultural commodity from farm animals, the soil, water, or plants is used directly in production, for example, milking equipment, egg collecting equipment, cherry picking devices, combines, sheep shearing tools, and ropes used by a tuna aquaculture enterprise.
4. Services of an outside service contractor of extracting agricultural or horticultural commodities from farm animals, soil, water or plants for the farmer are used directly in production, for example, picking fruit for an orchard, shearing sheep for a sheep farm, aerial spraying of pesticides on an orchard.
5. Tangible personal property or services are used directly in "handling and preservation" of agricultural or horticultural commodities for sale when used for the following purposes:
  - i. Maintaining the health of farm animals, handling and maintaining agricultural or horticultural commodities during production, and preparing them until they reach a marketable state, for example, equipment used to wash and pack fruit at a fruit orchard, ropes and harnesses used in moving livestock on a ranch, medicines for a sheep farmer's herding dog, debeakers used on a poultry farm, service of washing eggs on poultry farm, grooming and shoeing service provided for horse breeding farm; or
  - ii. Preventing the spoilage or deterioration of agricultural or horticultural commodities until they reach a marketable state, for example, refrigerators to cool and preserve raw milk on a dairy farm, disinfectants to sterilize milking equipment and cans on a dairy farm, cooling equipment to preserve harvested perishable fruits on an orchard, watering equipment to maintain the freshness

of balled and burlapped trees on a tree farm until shipment to market, pesticide application service to preserve horticultural products being prepared for sale by a farm.

A farmer's purchase of building materials used to construct a silo, greenhouse, grain bin or manure handling facility is exempt from sales tax if the silo, greenhouse, grain bin or manure handling facility will be used directly and primarily in producing, handling or maintaining the specific varieties of agricultural or horticultural commodities raised in the farmer's farming enterprise:

1. Repair or replacement parts purchased by the farmer for such structures are also exempt.
2. Tools and equipment used to construct such structures are not exempt.

Property or services used in producing secondary products, made from agricultural or horticultural commodities, are not deemed to be used "directly" in the production of an agricultural or horticultural commodity and therefore are not eligible for the farm use exemption. (However, the manufacturing equipment exemption may apply in some circumstances. See N.J.S.A. 54:32B-8.13a and N.J.C.18:24-4.)

1. For example, property or services used in making butter, sausage, jellies, flour, cider, cheese, ice cream, woolen fabric, floral wreaths, herbal sachets, bees wax candles, finished lumber, furniture and other items which are made from farm products, but which are not in themselves agricultural or horticultural commodities, are not eligible for exemption under the farm use exemption provision, N.J.S.A. 54:32B-8.16
2. Property and services used directly and primarily in producing an agricultural or horticultural commodity are exempt for tax, even though the farmer may also operate another enterprise, which is not a farming enterprise, in which he produces and sells secondary products made from his farm products:
  - i. For example, a corporation which raises sheep for their wool, which it then uses to make sweaters and blankets for sale, is eligible for the farm use exemption on purchases of tangible personal property used in raising sheep and shearing the wool;
  - ii. A business that raises flowers and herbs in order to produce wreaths, sachets, teas and jellies for sale is eligible for the farm use exemption on seeds, fertilizers and farming equipment used in planting, raising and harvesting the herbs and flowers.

The fact that a particular item of tangible personal property or service may be essential to the conduct of a farmer's business because its use is required by law or practical necessity does not, by itself, mean that the property or service is used "directly" in production, handling or preservation for sale of agricultural or horticultural commodities.

1. Example: A vegetable farmer's purchase of a smoke alarm to install in farm workers' housing is not exempt under N.J.S.A. 54:32B-8.16 because the item is not used "directly" in production, handling or preservation of agricultural or horticultural commodities.
2. Example: A sod farmer's purchase of books, CD-ROMs and other employee training materials regarding the safe use of pesticides, although necessary, is not exempt because it is not used "directly" in production.

Property and services used in personal, administrative, clerical, financial, personnel management, promotional, repair, sales and other nonfarming activities are not used directly in

the production, handling and preservation of agricultural and horticultural commodities and, therefore, are not eligible for the farm use exemption.

1. Following are examples of taxable tangible personal property not used “directly” in production, handling or preservation of agricultural or horticultural commodities:
  - i. Office furniture, equipment and supplies; books and educational materials;
  - ii. Advertising and promotional materials;
  - iii. Equipment and supplies used in transporting products to market or to customers, or in displaying products for sale or in operating a store;
  - iv. Computers and software;
  - v. Items used to prevent or fight fires, first aid supplies, safety and accident prevention equipment; and
  - vi. Property used for the personal comfort or convenience of the farmer, his employees, service personnel, suppliers or customers, for example, planking for crosswalks, beds and fans for migrant labor camp; telephones.
  
2. Following are examples of taxable services not used “directly” in the production, handling and preservation for sale of Agricultural and horticultural commodities:
  - i. Repairing farming equipment;
  - ii. Janitorial services;
  - iii. Landscaping, snow removal, and grounds cleanup and maintenance services;
  - iv. Grooming dogs, horses and other animals kept for the farmer’s personal use and enjoyment.
  - v. Repairing a greenhouse;
  - vi. Imprinting the farmer’s stationery with his business logo;
  - vii. Direct mail processing services of promotional literature sent to potential New Jersey customers;
  - viii. Painting and maintaining a silo;
  - ix. Cleaning and repairing a grain bin; and
  - x. Repairing a farm truck.

## **19.5 Primary use**

In order to be exempt under N.J.S.A. 54:32B-8.16, a farmer’s purchase of qualified tangible personal property or services must be used primarily in the production, handling and preservation for sale of agricultural or horticultural commodities on the purchaser’s farming enterprise.

When a service or piece of tangible personal property is put to use in more than one way, the item of service or property is not exempt under this section unless it is used more than 50 percent of the time directly in the production, handling and preservation for sale of agricultural or horticultural commodities.

Examples:

1. A farmer is in the business of raising vegetable plants for sale to garden centers and other retail sellers of plants. He buys tilling equipment, which he uses to prepare the soil for planting. The equipment is used directly in the production of the horticultural commodities he raises for sale. The farmer also occasionally uses the tiller to prepare a small decorative flower border at the entrance of his farm, adjacent to the road. The tiller is used approximately 90 percent of the time in preparing the growing areas for plants

raised for sale, and 10 percent in preparing the decorative border. The tiller qualifies for exemption because it is used directly in production for sale more than 50 percent of the time.

2. A partnership breeds and raises horses for sale. It also uses a portion of its property as a boarding and training facility for customers' horses. It makes the following purchases: food additives, horse shoeing tools, grooming equipment. The food additives are used approximately 60 percent of the time in feeding the horses used for breeding for sale and 40 percent in feeding the horses being boarded; the horse shoeing tools are used approximately 75 percent of the time on the horses being bred for sale and 25 percent on the horses boarded for customers; the grooming equipment is used approximately 20 percent on the horses bred for sale, 80 percent on the horses boarded or trained for customers.

The food additives and horse shoeing tools qualify for exemption because they are used more than 50 percent of the time directly in the production, handling and preservation of an agricultural product, that is, horses, for sale. The grooming equipment does not qualify because it is used directly for exempt purposes only 20 percent of the time; its use in the boarding and training of customers' horses is not a use in the production, handling and preservation of horses for sale.

3. A corporation is in the business of operating a botanical garden. It charges the public a fee for admission to its greenhouses to view the plant collections and displays. Part of each greenhouse is used for propagating and growing plants. Most of the plants are grown for display in the portions of the greenhouses open to the public. Approximately 15 percent of the plants are grown for sale in the botanical garden's gift shop or for sale to plant stores.

The corporation is purchasing materials to construct an additional greenhouse in the complex, which will be used in the same way as the existing greenhouses. The materials purchased to construct a greenhouse will not qualify for exemption because they will not be used more than 50 percent of the time in the production, preservation or handling of horticultural products for sale.

4. A corporation operates a tree nursery, which raises trees for sale. It uses the land adjacent to the tree nursery to operate an arboretum, which grows and maintains trees that are not for sale and provides free tours to the public. The corporation contracts with an aero-spray service to spray pesticide on the nursery and arboretum as needed. The service is used 70 percent of the time on the tree nursery and 30 percent of the time on the arboretum.

The lump sum fee for the service is exempt, since the aero-spraying of pesticides is a production service used directly in the production and preservation of horticultural products for sale 70 percent of the time.

5. A tree nursery and landscaping business grows shade trees which it installs for its customers as part of its landscaping operation. It purchases tree seedlings, watering equipment, and digging equipment. The watering equipment is used during the growing process, and the digging equipment is used approximately 70 percent in the growing operations and 30 percent in the landscaping operations.

The purchase of the watering equipment is eligible for the farming use exemption because it is used directly in production in the nursery's farming operation. The digging equipment also qualifies for exemption because, although it is used part of the time in the

landscaping operations, it is used for than 50 percent of the time, that is, primarily, in production of an agricultural commodity (trees). The seedlings are not eligible for exemption because they become the property which the business installs in its landscaping operation. When this business installs trees or performs other landscaping jobs on its customers' real property, it is acting as a contractor, rather than as a farmer. Contractors are liable for sales or use tax on the materials they install on their customers' real property.

The eligibility of a particular purchase for exemption under the farm use exemption provision (N.J.S.A. 54:32B-8.16) depends upon the nature and extent of its use in the farming enterprise.

1. The fact that an item of service or tangible personal property is purchased by a farmer does not in itself make the purchase eligible for exemption.
  
2. Examples:
  - i. A vegetable farmer raises vegetables for sale. He also raises a goat, sheep, and several ducks for the enjoyment of his family and guests, but does not sell the animals or their products. His purchase of feed for the animals is not exempt.
  - ii. A neighboring farmer raises goats, sheep and ducks for their meat, milk, wool and eggs for sale. He also grows vegetables solely for his family's consumption. His purchase of fertilizer and a hoe for his vegetable garden are not eligible for exemption.
  - iii. Three farms maintain horses on their premises. Farm No. 1 breeds and raises horses for sale. Farm No. 2 raises corn and beans for sale, and also boards a few horses for customers. Farm No. 3 raises horticultural products for sale in a greenhouse and also has a few horses which it raised for the use and enjoyment of the farmer's family. The purchases of feed, equine medicine, and horse grooming supplies by Farm No. 1 qualify for the farm exemption. Purchases of the same items by Farm No. 2 and Farm No. 3 are taxable, because the items are not used directly and primarily in the production, handling and preservation of horses ("agricultural product") for sale by that farm.
  - iv. A sod farmer grows most of his sod for sale to landscaping contractors. However, he sometimes acts as a "contractor" by supplying fully installed sod to his customers. The farmer purchased two pieces of equipment: a cutting implement used to cut and harvest mature sod for sale, and a roller used in planting and installing sod on customers' property. The cutter is eligible for the farm use exemption. The roller is not, because it is used in contracting work, not in the farming operation.

## **19.6 Exclusions; exceptions to exclusions**

The exemptions provided by N.J.S.A. 54:32B-8.16 does not apply to purchases of the following categories of tangible personal property, even if they are used directly and primarily in the production of agricultural and horticultural commodities:

1. Automobiles;
2. Energy; and
3. materials use to construct a building or structure, with the exception of the following single-use agricultural facilities: silos, greenhouses, grain bins, manure handling facilities.



The exclusion from exemption for materials used to construct a building or structure does not apply to farming equipment used directly and primarily in the production, handling and preservation of agricultural or horticultural commodities, even if the equipment must be permanently affixed to an existing building or structure. Purchases of such equipment are deemed to be exempt purchases of farming equipment; they are not deemed to be purchases of materials used to construct a building or structure.

Examples:

1. A vegetable farmer makes the following three purchases: a farm tractor used in preparing fields for planting, a commercial truck with manufacturer's gross vehicle weight rating over 18,000 pounds which he registers with Motor Vehicle Services as a farm vehicle, and an all-terrain vehicle which he used to transport workers and farming implements to the work site. The all-terrain vehicle does not qualify for exemption; as an "automobile." The commercial truck qualifies for exemption under the commercial truck exemption provision, N.J.S.A. 54:32B-8.43, regardless of whether it is used "directly and primarily" in production. The farm tractor, which is not required to be registered as a motor vehicle, is not an "automobile." It is farm equipment, which is exempt when used directly and primarily in production.
2. A poultry farmer purchases animal feeders, which must be permanently installed onto an existing farm building. The purchase qualifies for exemption as tangible personal property used directly and primarily in production of agricultural products.
3. A farmer who grows horticultural products in greenhouses purchases building materials, which he intends to use to construct a permanent addition to his greenhouse. The farmer's purchase qualifies for exemption as tangible personal property used directly and primarily in production. Because the materials will be used to construct a greenhouse, they are not the kind of building materials that are excluded from the scope of the exemption.
4. The same farmer hires a contractor to build a new greenhouse for him. The contractor purchases materials to construct the greenhouse for the farmer. The contractor must pay tax on his purchase of materials. The farm use exemption is available only to the farmer and does not pass through to the contractor.
5. A farmer purchases lumber and other materials to build a barn. The farmer must pay tax on his purchase of materials. The exemption does not apply to materials used to construct a building, with certain exceptions; barns are not among the four exceptions enumerated in the statute.
6. A farmer uses electric and gas utility services directly and primarily in some of his production activities. The electric and gas utility services are subject to sales tax. The exemption does not apply to purchases of energy even when used directly and primarily in production.
7. A farmer purchases fuel oil and water utility services for use in his business and his home. Oil, water, and other fuels and utilities, except natural gas and electricity, are exempt from sales tax under N.J.S.A. 54:32B-8.7. They need not be used in farming in order to qualify for exemption, and they do not fall within the definition of "energy" in N.J.S.A. 54:32B-8.16.

## **19.7 Farmer's Exemption Certificate: ST-7**

A farmer claiming exemption from sales tax pursuant to N.J.S.A. 54:32B-8.16 on a purchase of qualified tangible personal property or services must present the vendor with a signed, property completed Farmer's Exemption Certificate (ST-7) disclosing a proper basis for exemption. Purchases, which are not supported by a properly executed exemption certificate, shall be treated as taxable retail sales by the vendor.

A signed, completed blanket Farmer's Exemption Certificate may be furnished to the vendor by the farmer to cover additional purchases of the same type of goods or services.

1. The blanket certificate may be used only as long as all of the information furnished on the certificate remains unchanged.
2. Each sales slip or invoice based on such blanket certificate must show the farmer's name, address and New Jersey tax registration number.

The Farmer's Exemption Certificate may not be used to support claims for exemption based on provisions other than N.J.S.A. 54:32B-8.16.

### **19.8 Other exemptions specifically for farmers**

Containers, wrapping supplies and packing supplies are exempt from sales and use tax when purchased by a farmer for any use in that farmer's farming enterprise. N.J.S.A. 54:32B-8.15

1. The use of the containers in the farming enterprise need not be "direct" or "primary" in order for the purchase to qualify for exemption.
2. Examples:
  - i. Crates used to store farming implements on the farm qualify for the container exemption;
  - ii. Returnable and nonreturnable pallets used by a sod farmer to ship sod to market qualify for the container exemption;
  - iii. Burlap used to wrap the root balls of trees dug for sale on a tree farm qualify for container exemption.

The sale, rental or lease of a commercial truck having a manufacturer's gross vehicle weight rating in excess of 18,000 pounds and registered as a farm vehicle pursuant to N.J.S.A. 39:3-24 or N.J.S.A. 39:3-25 is exempt from sales and use tax pursuant to N.J.S.A. 54:32B-8.43(a)(3). See N.J.A.C. 18:24-7.18. A properly executed Exempt Use Certificate (ST-4) shall be used to support a claim for exemption based on (a) or (b) of this subsection.