



Sales Tax Issues for Sales of Agricultural Products Directly to Consumers

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Please note that this fact sheet is not intended to provide financial or legal advice, and you should consult a tax professional or the Oklahoma Tax Commission to answer tax questions that are unique to your situation.

Introduction

Farmers markets, direct marketing cooperatives and other direct-to-consumer sales opportunities are on the rise. However, many agricultural producers may not be familiar with the rules for the collection of sales tax for these transactions. In some cases, farmers may be exempt from collecting and remitting sales taxes. This fact sheet reviews the limited exemptions for some agricultural sales transactions regarding state, county and municipal sales taxes for on-farm agricultural product sales and other kinds of direct-to-consumer sales.

State Sales Tax Exemption for Agricultural Products Sold Directly to Consumers

The Oklahoma Sales Tax Code exempts “sales of agricultural products produced in this state by the producer thereof directly to the consumer or user when such articles are sold at or from a farm and not from some other place of business.”¹ The Code then defines “agricultural products” as “farm, orchard or garden products and dairy products”² as well as “livestock.”³ Oklahoma Tax Commission regulations clarify that for the state sales tax exemption to apply, such agricultural products must be sold either (1) at the producer’s agricultural property⁴ directly to the consumer or user; (2) sold and shipped directly to the

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consumer or user; or (3) sold “directly to consumers or users at farmers markets, roadside stands, festivals or fairs, or other similar venues.”⁵ In other words, when a producer sells their agricultural products directly to a consumer via one of these three avenues, the producer is not required to collect and remit state sales tax for the transaction.

The Narrow Definition of "Agricultural Products" – Processed Products Not Included

Agricultural products processed beyond raw form are subject to all sales taxes. OTC regulations state:

"Agricultural production" and "production of agricultural products" is limited to what would ordinarily be considered a farming or ranching operation undertaken for profit. The term refers to the raising of food crops or livestock for sale. Included within the meaning of "agricultural production" and "production of agricultural products" are ranches, orchards and dairies.⁶

The definition of “agricultural products” here and in 68 OKLA. STAT. § 1358(A)(1)(a) as “farm, orchard and garden products” implies that only raw agricultural products are subject to the exemption and that processed products are not. For example, the term “farm, orchard or garden products” implies that fruits, vegetables or grains sold directly by the producer to the consumer would be exempt. Conversely, it seems to imply that jellies, salsas or baked goods would be subject to sales tax. Milk and perhaps separated cream would likely be exempt, but the statutory and regulatory language referencing “dairy

¹ 68 OKLA. STAT. § 1358(A), OKLA. ADMIN. CODE § 710:65-13-19(a).

² The Code further specifies the dairy products must be “sold by a dairy producer or farmer who owns all the cows from which the dairy products offered for sale are produced.”

³ 68 OKLA. STAT. § 1358(A)(1)(a),(b); § 1358(A)(2).

⁴ OKLA. ADMIN. CODE § 710:65-13-19(a) defines “agricultural property” as “the location at which the agricultural products were grown or where the animals from which the agricultural products are derived were raised or milked.”

⁵ OKLA. ADMIN. CODE § 710:65-13-19(a),(c). The statute is silent about ownership requirements for the location but instead merely states the products must be sold at the location where they were grown, neither does the statute make any reference to ownership, leasing or any other legal interest the grower may have in the property where the products are sold. Thus, sales of agricultural products from property leased by the producer or from a stall at a farmers market rented by the producer would seem to fit within the exemption.

⁶ OKLA. ADMIN. CODE § 710:65-13-15(a)(1).

products” makes it unclear whether butter, cheese or ice cream would be subject to sales tax.⁷ The statute also specifically exempts live animal sales,⁸ but the specific reference to “live animals” with no mention of “animal products” likely means any meats or other products derived from the processing of livestock would be subject to sales tax.

Exemption Includes County Sales Taxes

The Sales Tax Code exempts agricultural products sales tax.⁹ However, the Sales Tax Code also specifies “all items that are exempt from state sales tax shall be exempt from any sales tax levied by a county.”¹⁰ Thus, the on-farm sales tax exemption automatically includes county-level sales taxes.

Municipal Sales Taxes: Exemption?

Municipalities have much broader authority than counties to levy sales taxes.¹¹ In essence, municipalities can levy sales taxes on anything that the state could, while counties have very limited sales tax powers.

A 2003 Oklahoma Attorney General opinion indicates that a municipality is under no obligation to observe the same sales tax exemptions as the state, and could instead enact its own sales tax code.¹² However, if the municipality did that, it could no longer rely on the Oklahoma Tax Commission to collect and enforce its taxes. Also, note that Attorney General opinions do not have the force of

7 68 OKLA. STAT. § 1358(A)(1)(b) states “dairy products sold by a dairy producer or farmer who owns all the cows from which the dairy products offered for sale are produced” are exempt from state sales tax, and this language is mirrored in OKLA. ADMIN. CODE §710:65-13-19(b). It is possible the statute and regulation intend to exempt dairy-derived products so long as the ownership requirement is satisfied, but reading this language together with the siting requirements in OKLA. ADMIN. CODE §710:65-13-19(a) and (c) suggests that the products would have to be entirely produced on-site.

8 68 OKLA. STAT. §1358(A)(2).

9 68 OKLA. STAT. § 1358.

10 68 OKLA. STAT. § 1370(D).

11 See 68 OKLA. STAT. §2701.

12 2003 OK AG 29

law that a statute, regulation or court case does, but they can be a useful aid for interpreting language. The authors are not aware of any municipalities that have enacted their own tax code and collection procedures. However, producer-sellers whose points-of-sale are within municipal physical limits are strongly encouraged to examine the specific tax ordinances for that municipality to determine if their sales are exempt from the municipal tax.

The Oklahoma Tax Commission’s Sales and Use Tax Locator publishes the state, county, and municipal sales tax rates online at its Sales and Use Tax Rate Locator site, https://taxproject.csa.ou.edu/Rate_Locator. Using the Locator, you can search for the sales tax rates that apply at your location.

Currently, all municipalities and counties in the state of Oklahoma that levy a municipal sales and use tax have contracted with the Oklahoma Tax Commission for the administration and collection of their sales and use taxes, therefore all transactions or exemptions to state, county and municipal sales taxes are administered uniformly.

Summary

This fact sheet reviews the sales tax exemption for on-farm sales of agricultural products. There are several factors that help determine whether producer-sellers must collect sales taxes on agricultural goods sold directly to consumers. Unprocessed agricultural goods that are sold where they are produced are exempt from state, municipal and county sales taxes. Sales of processed goods are not exempt from state, municipal and county sales tax.

For More Information

Oklahoma Tax Commission—Audit Services 405-521-3251 or: <https://oklahoma.gov/tax.html>

Oklahoma Tax Commission—Sales and Use Tax website: <https://oklahoma.gov/tax/businesses/sales-use-tax.html>