

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

SUBCOMMITTEE RECOMMENDATION
FOR

HOUSE BILL NO. 3637

By: Dempsey

SUBCOMMITTEE RECOMMENDATION

An Act relating to revenue and taxation; amending 68 O.S. 2021, Section 1358, which relates to sales tax exemptions for agriculture; expanding definition; defining terms; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 68 O.S. 2021, Section 1358, is amended to read as follows:

Section 1358. Exemptions - Agriculture.

A. There are hereby specifically exempted from the tax levied by Section 1350 et seq. of this title:

1. 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, as follows:

a. farm, orchard or garden products, and

1 b. dairy products sold by a dairy producer or farmer who
2 owns all the cows from which the dairy products
3 offered for sale are produced;

4 provided, the provisions of this paragraph shall not be construed as
5 exempting sales by florists, nursery operators or chicken
6 hatcheries, or sales of dairy products by any other business except
7 as set out herein;

8 2. Livestock, including cattle, horses, mules or other domestic
9 or draft animals, sold by the producer by private treaty or at a
10 special livestock sale;

11 3. Sale of baby chicks, turkey poults and starter pullets used
12 in the commercial production of chickens, turkeys and eggs, provided
13 that the purchaser certifies, in writing, on the copy of the invoice
14 or sales ticket to be retained by the vendor that the pullets will
15 be used primarily for egg production;

16 4. Sale of salt, grains, tankage, oyster shells, mineral
17 supplements, limestone and other generally recognized animal feeds
18 for the following purposes and subject to the following limitations:

19 a. feed which is fed to poultry and livestock, including
20 breeding stock and wool-bearing stock, for the purpose
21 of producing eggs, poultry, milk or meat for human
22 consumption,

23 b. feed purchased in Oklahoma for the purpose of being
24 fed to and which is fed by the purchaser to horses,

1 mules or other domestic or draft animals used directly
2 in the producing and marketing of agricultural
3 products, and

4 c. any stock tonics, water purifying products, stock
5 sprays, disinfectants or other such agricultural
6 supplies.

7 "Poultry" shall not be construed to include any fowl other than
8 domestic fowl kept and raised for the market or production of eggs.

9 "Livestock" shall not be construed to include any pet animals such
10 as dogs, cats, birds or such other fur-bearing animals. This
11 exemption shall only be granted and extended where the purchaser of
12 feed that is to be used and in fact is used for a purpose that would
13 bring about an exemption hereunder executes an invoice or sales
14 ticket in duplicate on a form to be prescribed by the Oklahoma Tax
15 Commission. The purchaser may demand and receive a copy of the
16 invoice or sales ticket and the vendor shall retain a copy;

17 5. Sales of items to be and in fact used in the production of
18 agricultural products. Sale of the following items shall be subject
19 to the following limitations:

20 a. sales of agricultural fertilizer to any person
21 regularly engaged, for profit, in the business of
22 farming or ranching,

23 b. sales of agricultural fertilizer to any person engaged
24 in the business of applying such materials on a

1 contract or custom basis to land owned or leased and
2 operated by persons regularly engaged, for profit, in
3 the business of farming or ranching. In addition to
4 providing the vendor proof of eligibility as provided
5 in Section 1358.1 of this title, the purchaser shall
6 provide the name or names of such owner or lessee and
7 operator and the location of the lands on which said
8 materials are to be applied to each such land,

9 c. sales of agricultural fertilizer, pharmaceuticals and
10 biologicals to persons engaged in the business of
11 applying such materials on a contract or custom basis
12 shall not be considered to be sales to contractors
13 under this article, and said sales shall not be
14 considered to be taxable sales within the meaning of
15 the Oklahoma Sales Tax Code. As used in this section,
16 "agricultural fertilizer", "pharmaceuticals" and
17 "biologicals" mean any substance sold and used for
18 soil enrichment or soil corrective purposes or for
19 promoting the growth and productivity of plants or
20 animals,

21 d. sales of agricultural seed or plants to any person
22 regularly engaged, for profit, in the business of
23 farming or ranching. This section shall not be
24 construed as exempting from sales tax, seed which is

1 packaged and sold for use in noncommercial flower and
2 vegetable gardens, and

3 e. sales of agricultural chemical pesticides to any
4 person regularly engaged, for profit, in the business
5 of farming or ranching. For the purposes of this
6 subparagraph, "agricultural chemical pesticides" shall
7 include any substance or mixture of substances
8 intended for preventing, destroying, repelling or
9 mitigating any insect, snail, slug, rodent, bird,
10 nematode, fungus, weed or any other form of
11 terrestrial or aquatic plant or animal life or virus,
12 bacteria or other microorganism, except viruses,
13 bacteria or other microorganisms on or in living man,
14 or any substance or mixture of substances intended for
15 use as a plant regulator, defoliant or desiccant.

16 The exemption provided in this paragraph shall only be granted
17 and extended to the purchaser where the items are to be used and in
18 fact are used in the production of agricultural products;

19 6. Sale of farm machinery, repair parts thereto or fuel, oil,
20 lubricants and other substances used for operation and maintenance
21 of the farm machinery to be used directly on a farm or ranch in the
22 production, cultivation, planting, sowing, harvesting, processing,
23 spraying, preservation or irrigation of any livestock, poultry,
24 agricultural or dairy products produced from such lands. The

1 exemption specified in this paragraph shall apply to such farm
2 machinery, repair parts or fuel, oil, lubricants and other
3 substances used by persons engaged in the business of custom
4 production, cultivation, planting, sowing, harvesting, processing,
5 spraying, preservation, or irrigation of any livestock, poultry,
6 agricultural, or dairy products for farmers or ranchers. The
7 exemption provided for herein shall not apply to motor vehicles;

8 7. Sales of supplies, machinery and equipment to persons
9 regularly engaged in the business of raising evergreen trees for
10 retail sale in which such trees are cut down on the premises by the
11 consumer purchasing such tree. This exemption shall only be granted
12 and extended when the items in fact are used in the raising of such
13 evergreen trees; and

14 8. Sales of materials, supplies and equipment to an
15 agricultural permit holder or to any person with whom the permit
16 holder has contracted to construct facilities which are or which
17 will be used directly in the production of any livestock, including,
18 but not limited to, facilities used in the production and storage of
19 feed for livestock owned by the permit holder. Any person making
20 purchases on behalf of the agricultural permit holder shall certify,
21 in writing, on the copy of the invoice or sales ticket to be
22 retained by the vendor that the purchases are made for and on behalf
23 of such permit holder and set out the name and permit number of such
24 holder. Any person who wrongfully or erroneously certifies that

1 purchases are for an agricultural permit holder or who otherwise
2 violates this subsection shall be guilty of a misdemeanor and upon
3 conviction thereof shall be punishable by a fine of an amount equal
4 to double the amount of sales tax involved or imprisonment in the
5 county jail for not more than sixty (60) days or by both such fine
6 and imprisonment.

7 B. As used in this section and Section 1358.1 of this title:

8 1. "Agricultural products" shall include horses and timber; and

9 2. "Farming" or "farm" shall include the production of timber,
10 seedling production, and forestry management;

11 3. "Livestock" shall include the breeding of game animals which
12 are animals bred to be hunted for sport or food; and

13 4. "Ranching" or "ranch" shall include the business, or
14 facilities for the business, of raising horses.

15 Provided, sales of items at race meetings as defined in Section
16 200.1 of Title 3A of the Oklahoma Statutes shall not be exempt
17 pursuant to the provisions of this section and Section 1358.1 of
18 this title.

19 SECTION 2. This act shall become effective November 1, 2022.

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