

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

HOUSE BILL 3466

By: Grego

AS INTRODUCED

An Act relating to sales tax exemption; amending 68 O.S. 2021, Sections 1358 and 1358.1, which relate to the agricultural sales tax exemption and permit; defining term; providing exception; requiring the Oklahoma Tax Commission to provide certain renewal form; providing eligibility for permit renewal upon submission of form; making it a felony to submit false or fraudulent information; updating statutory language; 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

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

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

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

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

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

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

b. feed purchased in ~~Oklahoma~~ this state for the purpose of being fed to and which is fed by the purchaser to

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

9 2. "For profit agricultural production" means what is
10 ordinarily considered a farming or ranching operation intended for
11 profit. The term refers to the raising of food crops or livestock
12 for sale and includes ranches, orchards, and dairies. Also included
13 is any feedlot operation, whether the land upon which a feedlot
14 operation is located is used to grow crops to feed the livestock in
15 the feedlot and regardless of whether the livestock fed are owned by
16 persons conducting the feedlot; and

17 3. "Ranching" or "ranch" shall include the business, or
18 facilities for the business, of raising horses.

19 Provided, sales of items at race meetings as defined in Section
20 200.1 of Title 3A of the Oklahoma Statutes shall not be exempt
21 pursuant to the provisions of this section and Section 1358.1 of
22 this title.

23 SECTION 2. AMENDATORY 68 O.S. 2021, Section 1358.1, is
24 amended to read as follows:

1 Section 1358.1 A. In order to qualify for any exemption
2 authorized by Section 1358 of this title, at the time of sale, the
3 person to whom the sale is made shall be required to furnish the
4 vendor proof of eligibility for the exemption as required by this
5 section.

6 B. All vendors shall honor the proof of eligibility for sales
7 tax exemption as authorized by this section and sales to a person
8 providing such proof shall be exempt from the tax levied by this
9 article, Section 1350 et seq. of this title.

10 C. The agricultural exemption permit, the size and design of
11 which shall be prescribed by the Oklahoma Tax Commission, shall
12 constitute proof of eligibility for sales tax exemptions authorized
13 by Section 1358 of this title. The permit shall be obtained by
14 listing personal property used in farming or ranching by the person
15 with the county assessor each year as provided by law. If the
16 assessor determines that the personal property is correctly listed
17 and assessed for ad valorem taxation and the county treasurer
18 certifies whether the person has delinquent accounts appearing on
19 the personal property tax lien docket in the county treasurer's
20 office, the assessor shall certify the assessment upon a form
21 prescribed by the Oklahoma Tax Commission. One copy shall be
22 retained by the assessor, one copy shall be forwarded to the
23 Oklahoma Tax Commission and one copy shall be given to the person
24 listing the personal property. Upon verification that the applicant

1 qualifies for the exemptions authorized by Section 1358 of this
2 title and that the applicant has no delinquent accounts appearing on
3 the personal property tax lien docket in the office of the county
4 treasurer, a permit shall be issued as prescribed by this section.
5 The permit shall be renewable every three (3) years in the manner
6 provided by this section, or as provided by subsection I of this
7 section.

8 D. A person who does not otherwise qualify for a permit
9 pursuant to subsection C of this section, except as provided in
10 subsection E of this section, shall file with the Oklahoma Tax
11 Commission an application for an agricultural exemption permit
12 constituting proof of eligibility for the sales tax exemptions
13 authorized by Section 1358 of this title, setting forth such
14 information as the Tax Commission may require. The application
15 shall be certified by the applicant that the applicant is engaged in
16 custom farming operations or in the business of farming or ranching.
17 If the applicant is a corporation, the application shall be
18 certified by a legally constituted officer thereof.

19 The Oklahoma Tax Commission shall accept any of the following as
20 proof of eligibility for the exemptions authorized by this section
21 or pursuant to Section 1358 of this title-:

22 1. A copy of IRS Schedule F, a copy of IRS form 1065 or a copy
23 of IRS form 4835, or any equivalent form prescribed by the Internal
24 Revenue Service, with respect to a federal income tax return;

1 2. A one-page business description form provided by the
2 Oklahoma Tax Commission;

3 3. Farm Service Agency form 156EZ; or

4 4. Other documents at the discretion of the Oklahoma Tax
5 Commission that verify active agriculture production.

6 E. Except as provided in this subsection, for a person who is a
7 resident of another state and who is engaged in custom farming
8 operations in this state, the person shall provide the vendor proof
9 of residency, the name, address and telephone number of the person
10 engaging the custom farmer and certification on the face of the
11 invoice, under the penalty of perjury, that the property purchased
12 shall be used in agricultural production as proof of eligibility for
13 the sales tax exemption authorized by Section 1358 of this title.

14 Any person who is a resident of another state and who is engaged in
15 custom farming operations in this state and who owns property in
16 this state, shall obtain proof of eligibility as provided in
17 subsection C or D of this section.

18 F. If an agricultural exemption permit holder purchases
19 tangible personal property from a vendor on a regular basis, the
20 permit holder may furnish the vendor proof of eligibility as
21 provided for in subsections C and D of this section and the vendor
22 may subsequently make sales of tangible personal property to the
23 permit holder without requiring proof of eligibility for each
24 subsequent sale. Provided, the permit holder shall notify the

1 vendor of all purchases which are not exempt from sales tax under
2 the provisions of Section 1358 of this title and remit the
3 applicable amount of tax thereon. If the permit holder fails to
4 notify the vendor of purchases not exempt from sales tax, then
5 sufficient grounds shall exist for the Oklahoma Tax Commission to
6 cancel the agricultural exemption permit of the permit holder who so
7 failed to notify the vendor.

8 G. If an out-of-state agricultural exemption permit holder
9 purchases tangible personal property from a vendor within this state
10 who is not in the business of shipping the tangible personal
11 property purchased, then the out-of-state agricultural exemption
12 permit holder is responsible for providing an export bill of lading
13 or other documentation to the vendor from whom the tangible personal
14 property was purchased showing that the point of delivery of such
15 goods for use and consumption is outside this state.

16 H. A purchaser who uses an agricultural exemption permit or
17 provides proof of eligibility pursuant to subsection E of this
18 section to purchase, exempt from sales tax, items not authorized for
19 exemption under Section 1358 of this title shall be subject to a
20 penalty in the amount of Five Hundred Dollars (\$500.00).

21 I. The Tax Commission shall provide a form for the renewal of
22 the agricultural exemption permit provided by this section. The
23 form shall include a checkbox next to a statement attesting that the
24 permit holder has continued agricultural production activities.

1 Individuals that submit the renewal form with their signature and a
2 marked checkbox shall be eligible for a renewed permit. Any person
3 that willfully provides false or fraudulent information pursuant to
4 the provisions of this subsection, upon conviction, shall be guilty
5 of a felony punishable by the imposition of a fine of Two Thousand
6 Dollars (\$2,000.00) or imprisonment for not more than two (2) years.

7 SECTION 3. This act shall become effective November 1, 2022.

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