

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)

103 KAR 30:091. Sales to farmers.

RELATES TO: KRS 139.010, 139.260, 139.470, 139.480

STATUTORY AUTHORITY: 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS [~~139.010~~],131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. KRS 139.480 exempts specified property from sales and use taxes. This administrative regulation establishes the sales and use tax requirements for sales to farmers.

Section 1. Definitions. (1) "Attachments" means tangible personal property that:

(a) Is necessary for the operation of farm machinery and is purchased primarily to improve efficiency to diversify the function which the machinery is capable of performing; and

(b) Includes replacement attachments, or repair or replacement parts for the attachments.

(2) "Crops" means plants, trees, or shrubs grown for sale, including corn, flowers, fruit, hay, sod, soybeans, straw, timber, tobacco, vegetables, and wheat[~~, straw, fruit, vegetables, timber, and flowers~~].

(3) "Farmer" means any person that is regularly engaged in the occupation of:

(a) Tilling and cultivating the soil for the production of crops as a business;

(b) Raising livestock or poultry, if the livestock or poultry, or the products of the livestock or poultry, are for sale;

(c) Producing milk for sale; or

(d) Breeding or producing:

1. Aquatic organisms;

2. Buffalos;

3. Cervids;

4. Llamas or alpacas; or

5. Ratites.[

~~1. Ratites;~~

~~2. Llamas or alpacas;~~

~~3. Buffalos;~~

~~4. Aquatic organisms; or~~

~~5. Cervids.]~~

(4) "Farm machinery" is defined by KRS 139.480(11).

(5) "Livestock" means animals of a kind the products of which ordinarily constitute food for human consumption.

(6) "On-farm facility" means property used in the pursuits provided under KRS 139.480 as follows:

(a) Fencing or structures permanently affixed to or installed on the premises of the property;

(b) Improvements to real property such as ponds;

(c) Any materials incorporated into the construction, renovation, or repair of the fencing, structures, or improvements described in paragraph (a) or (b); and

(d) Any equipment, machinery, or attachments including repair or replacement parts for the equipment, machinery, or attachments used in the operation of the facility.

(7) "Person" is defined by KRS 139.010(26)[~~(49)~~].

Section 2. The examples of taxable and nontaxable items contained in this administrative regulation shall be used for illustrative purposes only and are not intended to be all inclusive.

Section 3. Farm Machinery. In addition to the more commonly recognized items that are classified as "farm machinery", the list provided in this section shall serve as examples of the items that shall qualify for exemption if used exclusively and directly for farming as provided in KRS 139.480(11):

- (1) All terrain vehicles (ATV) or utility vehicles;
- (2) Automatic or portable feeding equipment including:
 - (a) Livestock creep feeders; and
 - (b) Poultry feeders;
- (3) Automatic egg gathering systems;
- (4) Automatic washers;
- (5) Automatic waterers;
- (6) Brooders;
- (7) Bulk tanks (mechanical);
- (8) Bush hogs;
- (9) Chain saws;
- (10) Cleaning machinery (mechanical);
- (11) Clippers for livestock;
- (12) Coke stoves for curing tobacco;
- (13) Cooling units or cooling fans;
- (14) Egg processing machinery;
- (15) Farm wagons;
- (16) Grain or hay elevators;
- (17) Hay mowers;
- (18) Heaters (portable);
- (19) Incubators;
- (20) Insecticide sprayers (hand-held);
- (21) Irrigation systems;
- (22) Log splitters;
- (23) Milking machines;
- (24) Posthole diggers (mechanical);
- (25) Roller mills;
- (26) Seed sowers (automatic);
- (27) Shop welders or other machinery (mechanical) used exclusively to maintain other farm machinery;
- (28) Silo unloaders (augers);
- (29) Tilt table for livestock;
- (30) Tobacco curing machinery;
- (31) Tobacco setter;
- (32) Tobacco transplant system machinery, including:
 - (a) Clipping equipment;
 - (b) Heating equipment;
 - (c) Injector systems;
 - (d) Seeding equipment; and
 - (e) Ventilation equipment; or
- (33) Tractor mounted sprayer.

Section 4. Exempt Chemicals. In addition to more commonly recognized items that are classified as "farm chemicals", the list provided in this section shall serve as examples of items that shall qualify for the farm chemical exemption as provided in KRS 139.480(8):

- (1) Adjuvant to enhance herbicide coverage of crops;
- (2) Antiseptic wipes to clean cows' udders;
- (3) Insecticidal dipping chemicals;
- (4) Insecticidal ear tags;
- (5) Lime or hydrated lime for disinfectant;
- (6) Methyl bromide gas or similar tobacco chemicals; or
- (7) Seed flow enhancers to optimize seed planting and spacing, including talc or graphite.

Section 5. Exempt Feed. The list provided in this section shall serve as examples of items that shall qualify for the feed and feed additive exemptions as provided in KRS 139.480(9):

- (1) Bag or block salt;
- (2) Dietary supplements as a feed additive;
- (3) Fish pellets, grain, corn gluten, peanut hulls, soybean hulls, or distiller's grain;
- (4) Milk replacer;
- (5) Mineral blocks;
- (6) Protein blocks;
- (7) Protein supplements; or
- (8) Special medicated feed pre-mixes.

Section 6. On-farm Facilities. The list provided in this section shall serve as examples of items the sale or purchase of which shall qualify for the exemption provided for all on-farm facilities under KRS 139.480:

- (1) Branding iron heaters or irons;
- (2) Bucket racks;
- (3) Building materials, including:
 - (a) Concrete;
 - (b) Gravel;
 - (c) Guttering;
 - (d) Insulation;
 - (e) Lumber;
 - (f) Nails;
 - (g) Paint;
 - (h) Rock;
 - (i) Roofing materials; or
 - (j) Sand;
- (4) Culvert pipe;
- (5) Drainage tile;
- (6) Erosion mats;
- (7) Farm gates;
- (8) Feeding system materials or equipment, including:
 - (a) Feed buckets;
 - (b) Feed bunks for farm wagons;
 - (c) Hoses;
 - (d) Nozzles;
 - (e) Pipelines;

- (f) Round bale feeders;
- (g) Salt or mineral feeders; or
- (h) Tubes;
- (9) Fencing materials, including:
 - (a) Cattle guards;
 - (b) Fence chargers;
 - (c) Insulators or other components used in an electrical fence system;
 - (d) Planks;
 - (e) Posts;
 - (f) Staples; or
 - (g) Wire;
- (10) Handling facilities, including:
 - (a) Corral panels, chutes, or sweeps;
 - (b) Farrowing crates;
 - (c) Headgates; or
 - (d) Holding crates or hutches;
- (11) Insect control (electric);
- (12) Livestock oilers;
- (13) Manure pit for livestock;
- (14) Pond sealers;
- (15) Silos, silo covers, or silage covers;
- (16) Water hydrants or water tanks; or
- (17) Water pipe including plastic or other material.

Section 7. Packaging Materials. The list provided in this section shall serve as examples of items the sale or purchase of which shall be exempt from sales and use tax if used in the packaging of products for sale, in addition to the exemption provided for twine and wire used for baling hay and straw in KRS 139.480(26)~~(27)~~:

- (1) Bags or sacks;
- (2) Baskets;
- (3) Crates;
- (4) Net Wrap [~~Shrink wrap~~]; or
- (5) Shrink Wrap [~~Net wrap~~].

Section 8. Farm Work Stock. The list provided in this section shall serve as examples of farm work stock the sale or purchase of which shall be exempt from sales and use tax as provided in KRS 139.480(6):

- (1) Donkeys or burros;
- (2) Draft horses;
- (3) Guard dogs, including the Pyrenees or Polish Tatra breeds, to protect sheep, goats, or other livestock;
- (4) Herd dogs for herding sheep, cattle, or other livestock;
- (5) Jacks; or
- (6) Mules.

Section 9. Attachments, Repair and Replacement Parts. (1) Attachments sold or purchased for use on farm machinery which are necessary to the operation of the farm machinery shall be exempt from sales and use tax. The list provided in this subsection shall serve as examples of items of sale or purchase of which shall be exempt from sales and use tax:

- (a) Dual wheel assemblies;
- (b) Hitches;
- (c) Hydraulic systems;
- (d) Water tanks; or
- (e) Weights.

(2) Repair and replacement parts sold or purchased for use on farm machinery which are necessary to the operation of the machinery shall be exempt from sales and use tax. The list provided in this subsection shall serve as examples of items the sale or purchase of which shall be exempt from sales and use tax:

- (a) Batteries;
- (b) Bolts;
- (c) Chain saw repair parts;
- (d) Cutting parts;
- (e) Fan belts;
- (f) Farm machinery filters;
- (g) Miscellaneous motor repair parts;
- (h) Mufflers;
- (i) Plow points;
- (j) Spark plugs;
- (k) Springs;
- (l) Tires; or
- (m) V-belts.

Section 10. Taxable Items. The list provided in this section shall serve as examples of items commonly used on farms, the sale or purchase of which shall not be exempt from the sales or use tax as provided by KRS 139.480:

(1) Hand tools or wholly hand-operated equipment, including:

- (a) Axes;
- (b) Barn brooms;
- (c) Barn forks;
- (d) Brooms;
- (e) Drench guns;
- (f) Grease guns;
- (g) Hoes;
- (h) Jacks (manual or electronic);
- (i) Ladders;
- (j) Pitchforks;
- (k) Pliers;
- (l) Post hole diggers (manual);
- (m) Rakes;
- (n) Shovels;
- (o) Tobacco balers (hand operated);
- (p) Wheelbarrows; or
- (q) Wrenches;

(2) Accessories not essential to the operation of the farm machinery except if sold as a part of an assembled unit, including:

- (a) Air conditioning units;
- (b) Cabs;
- (c) Canopies;

- (d) Cigarette lighters;
- (e) Deluxe seats;
- (f) Lubricators;
- (g) Radios;
- (h) Seat cushions or covers; or
- (i) Tool or utility boxes;
- (3) Miscellaneous equipment, materials, or supplies, including:
 - (a) Antifreeze, oil, grease, lubricant, hydraulic fluid, or transmission fluid;
 - (b) Bedding materials including:
 1. Chicken bedding;
 2. Chicken litter;
 3. Straw;
 4. Sawdust; or
 5. Wood shavings;
 - (c) Bird seed;
 - (d) Bromo gas applicators;
 - (e) Bumper hitch trailers;
 - (f) Calcium chloride;
 - (g) Castrators or elastrator bands or rings;
 - (h) Chains;
 - (i) Charcoal for cistern filtration;
 - (j) Chicken transport cages;
 - (k) Coke for curing tobacco;
 - (l) Copper sulphate;
 - (m) Dehorners;
 - (n) Dog food;
 - (o) Feed for work stock animals;
 - (p) Identification tags;
 - (q) Lawn or garden equipment, including:
 1. Push mowers;
 2. Riding lawn mowers;
 3. Rotor tillers;
 4. Weed eaters; or
 5. Zero turn mowers;
 - (r) Livestock oil unless containing insecticide;
 - (s) Milk cans, milk strainers, or milk storage tanks;
 - (t) Rope;
 - (u) Snaps or washers;
 - (v) Tobacco canvas or other plant bed covers;
 - (w) Tobacco knives, tobacco spears, or tobacco sticks;
 - (x) Tobacco transplant system materials, including:
 1. Plastic;
 2. Trays; or
 3. Ventilation curtains.
 - (y) Tractor paint;
 - (z) Truck batteries and truck tires; or
 - (aa) Work shoes or boots, work clothes, or safety goggles;
- (4) Items sold or purchased for use in raising, feeding, showing, exhibiting, or breeding of horses except water as provided in KRS 139.470(12);[(14);]

(5) Items sold or purchased for use in the raising and keeping of bees;

~~(6)(5)~~ Medicines, vaccines, vitamins, or wormers; ~~[or]~~

~~(7)(6)~~ Veterinary instruments, including:

(a) Needles;

(b) Operating tables; or

(c) Syringes.

Section 11. Exemption Certificates. (1) A farmer shall issue a Farm Exemption Certificate, Form 51A158, ~~[Farm Exemption Certificate,]~~ or a Streamlined Sales and Use Tax Agreement – Certificate of Exemption, Form 51A260, ~~[Streamlined Sales and Use Tax Agreement – Certificate of Exemption, which are incorporated by reference in 103 KAR 3:020,]~~ for the exempt purchase of tangible personal property other than tangible personal property referenced in subsection 2 of this section. ~~[exempted under KRS 139.480.]~~

(2)(a) A farmer shall issue an On-farm Facilities Certificate of Exemption for Materials, Machinery and Equipment, Form 51A159, ~~[which is incorporated by reference in 103 KAR 3:020,]~~ for the exempt purchase of tangible personal property for incorporation into the construction, repair, or renovation of on-farm facilities exempt under the provisions of KRS 139.480.

(b) A farmer shall issue a separate, individual certificate for new construction, repairs, or renovations. Unless the certificate has an expiration date when submitted jointly with a contractor, the certificate shall remain effective for each project type (new construction, repairs, or renovations) until the purchaser notifies the seller in writing that it is no longer valid.

(3)(a) A contractor may jointly execute an On-farm Facilities Certificate of Exemption for Materials, Machinery, and Equipment, Form 51A159, with a farmer for building materials, machinery, and equipment that are for incorporation into the construction, repair, or renovation of an on-farm facility.

(b) A contractor shall not use the certificate for the purchase, rental, or lease of construction equipment, consumable supplies, or other tangible personal property that is not for incorporation into the on-farm facility.

(c) A jointly executed On-farm Facilities Certificate of Exemption for Materials, Machinery, and Equipment, Form 51A159, with a contractor shall be acceptable only for purchases made for periods within the effective dates indicated on the certificate at the time of purchase.

(d) A contractor shall jointly execute a new certificate with a farmer for additional purchases of materials, machinery, or equipment required for the same project after the initial expiration date or for additional projects.

Section 12. Service Providers. (1) Persons engaged in spraying fertilizer, hauling agricultural lime, or providing other services to persons regularly engaged in farming shall not qualify for the farm machinery exemption.

(2) The service provider shall not execute an exemption certificate on behalf of the farmer for the purchase of fertilizer, agricultural lime, or other tangible personal property used to perform the service.

(3) Services otherwise treated as landscaping services pursuant to KRS 139.200(2)(g), including fence clearing, mowing, spraying, and tree trimming provided to a farmer where the service is performed on land that is regularly used in the business of farming are not subject to sales tax.

Section 13. Non-taxable service and installation labor. Charges for labor or services rendered in installing or applying property sold that is not subject to sales tax shall also not be

subject to sales tax. This treatment includes charges for the installation or repair of tax-exempt farm machinery and any tax-exempt attachments, repair or replacement parts thereto.

Section 14[43]. (1) This administrative regulation shall replace Revenue Policies 51P090, 51P100, 51P105, 51P120, 51P130, 51P135 and 51P360.

(2) Revenue Policies 51P090, 51P100, 51P105, 51P120, 51P130, 51P135 and 51P360 are hereby rescinded and shall be null, void, and unenforceable 103 KAR 30:091

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: July 13, 2021

FILED WITH LRC: July 13, 2021 at 1:16 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2021, at 10:00 a.m. in Room 11A, State Office Building, 501 High Street, Frankfort, Kentucky 40601. The hearing may be conducted by video teleconference at the discretion of the agency. An individual interested in being heard at this hearing shall provide written notification to the agency of the intention to attend the hearing at least five (5) business days prior to the date scheduled for the hearing.. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Gary Morris, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-0424, fax (502) 564-3875, email Gary.Morris@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gary Morris

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends 103 KAR 30:091 to insert updated language to provide guidance for the interpretation of the sales and use tax law as it applies to sales to farmers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide guidance to farmers on tangible personal property that is exempt from sales and use tax or subject to sales and use tax.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed regulatory language conforms with the provisions of KRS 13A that require an agency to maintain the most up to date guidance and statutory references in its regulations to avoid deficiency.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed regulatory language will provide farmers with the most up to date guidance on the taxability of common tangible personal property used in farming activities.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The proposed amendment will change the existing administrative regulation by alphabetizing examples; adding the treatment of sod as an example to consolidate the guidance for dirt and sod contained within 103 KAR 28:170; adding tax treatment related to bees; and providing clarifying language.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide updated and accurate information regarding guidance on the sales and use tax law as it applies to sales to farmers.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed regulatory language conforms with the provisions of KRS 13A that require an agency to maintain the most up to date guidance and statutory references in its regulations to avoid deficiency.

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendment will change the existing administrative regulation by alphabetizing examples; adding the treatment of sod as an example to consolidate the guidance for dirt and sod contained within 103 KAR 28:170; adding tax treatment related to bees; and providing clarifying language.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All farmers engaged in farming for business as well as retailers who makes sales to farmers.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions are necessary to comply with the amendment. This amendment does not add any requirements, it is only intended to provide updated guidance regarding the taxability of transactions involving farmers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to comply with the amended regulation. This regulation does not add any additional fees or costs to be incurred by farmers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anyone who accesses the regulation will benefit from the information contained therein.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: It is not anticipated that there will be any additional costs to implement this regulation. Additional costs that may have been created by the statutory changes (for example, taxpayer outreach efforts to inform the general public of the changes in KSR 139.200) have already been and will continue to be absorbed through current staff and budgeted funding. Current staff are already answering questions to provide guidance to farmers.

(b) On a continuing basis: There is no cost expected on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional funding or increase in fees is needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the

proposed regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed regulation will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenues are expected to be generated by this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: