



Sales Tax Rules for Farmers Markets and On-Farm Sales: The Exemption Ends at the Farm Gate

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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. Many producers may not be familiar with the tax rules regarding these sales. In some cases, farmers are exempt from collecting sales taxes, and it is important to identify these situations. This fact sheet reviews some of the rules on sales taxes at the state, county and municipal level for on-farm and other kinds of direct-to-consumer sales and indicates when producer-sellers probably do not need to collect sales taxes.

On-farm Sales Exemption for State Sales Taxes

According to Oklahoma law,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 ... [including] farm, orchard or garden products [are exempt from state sales tax]." Oklahoma Tax Commission (OTC) regulations clarify the sale must occur at "the location at which the agricultural products were grown." In other words, when what is grown on the plot is sold on the plot, generally there are no state sales tax obligations from the sale.

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 leased land or community-owned gardens are still eligible for the exemption.

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

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To qualify for the state sales tax exemption, (1) the person or group must sell its own raw agricultural products (and not the products of any other party) and (2) those products must be produced at the location where they are sold (and not produced elsewhere and brought to the place where the sales occur). For this reason, most farmers markets require producer-sellers to have a sales tax certificate to participate in the market.

Exemption Includes County Sales Taxes

Oklahoma law exempts on-farm sales from state sales tax.² However, the law also states "all items that are exempt from state sales tax shall be exempt from any sales tax levied by a county."³ Thus, 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. In essence, municipalities can levy sales taxes on anything that the state could, while counties have very limited boundaries on what sales they can tax.⁴

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.⁵ However, if the municipality did that, it could no longer rely on the OTC to collect and enforce its taxes. Also, please note that Attorney General opinions do not have the force of law that a statute, regulation or court case does, but they can be a useful aid for interpreting language. The authors of this fact sheet are not aware of any municipalities that have enacted their own tax code and collection procedures. However, producer-sellers whose farm plots or gardens 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 OTC's Sales and Use Tax Locator publishes the state, county, and municipal sales tax rates online at Sales and Use Tax Rate Locator (ou.edu). Using the Locator, you can view municipal maps that help you determine whether you are located within municipal limits, find out what municipal

² 68 OKLA. STAT. § 1358.

³ 68 OKLA. STAT. § 1370(D).

⁴ See 68 OKLA. STAT. § 2701.

⁵ 2003 OK AG 29, June 30.

ordinance covers sales taxes and determine the sales tax rates that apply at your location.

No Exemption for Processed Goods

Agricultural products that are further processed beyond raw form are most likely subject to all sales taxes. Examples of processed goods are cheeses made from goat's milk, wine made from grapes, preserves, salsas made from fruits and vegetables and bread made from wheat. Processing and selling these goods falls under the category of a non-farm business that is not exempt from sales tax even if the products are sold on-farm. OTC regulations state "agricultural production" means "raising of food crops and livestock for sale" by ranches, orchards and dairies, and does not mention the sale of products derived from processing those goods.⁶

Narrow Definition of "Agricultural Production"

OTC regulations provide examples of activities that do not qualify for a sales tax exemption because they are not considered a farming, ranching or agricultural operation.⁶ These include operation of commercial greenhouses, operation of plant nurseries (except wholesale divisions), raising catfish and ownership of livestock solely for one's own use for pleasure riding etc. The definition of livestock does not include the raising of cats, dogs, other fur-bearing animals or non-domesticated fowl.

⁶ OKLA. ADMIN. CODE § 710:65-13-15

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. These include:

- Unprocessed agricultural goods that are sold where they are produced are exempt from state and county sales taxes.
- Such sales may not be exempt from municipal sales taxes. Check the municipal code to make sure.
- Sales away from where the goods were produced, including farmers markets and direct marketing cooperatives, are not exempt from state and county sales tax.
- Sales of processed goods, such as cheese and preserves, are probably not exempt from state and county sales tax.

For more information:

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

Oklahoma Tax Commission—Frequently Asked Questions:
Business - Sales Tax Questions:
<https://oklahoma.gov/tax/reporting-resources/publications.html?q=copos>

Oklahoma Tax Commission—Oklahoma Sales and Use Tax Locator: https://taxproject.csa.ou.edu/Rate_Locator/

Oklahoma Tax Commission—Business Tax Forms:
<https://oklahoma.gov/content/dam/ok/en/tax/documents/forms/businesses/general/Package-E.pdf>