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Issued July 10, 2009 (Updated February 10, 2015)

## **Understanding Sales and Use Taxes on Agricultural Products**

Sales and use taxes on sales of agricultural products are complex. With the definitions of food and prepared food, the original state of a product and the difference between wholesale and retail sales, it is very easy to misunderstand how sales and use tax applies to sales of agricultural products.

This quick reference guide is designed to help farmers, merchants and other retailers understand the sales and use tax obligations for specific kinds of sales of agricultural products. The types of sales are listed with their tax obligations, followed in some instances by the applicable tax law.

Note: The general 4.75% state and applicable local and transit rates of sales and use tax is mentioned throughout this quick reference guide. The rate is subject to change and varies from county to county. Click [here](#) to find out about the rate in your county.

Note 2: This document refers to producers of farm products and retail merchants. This difference often means the difference in how sales are taxed.

Who is a producer of farm products? Section 9-1 E.1. of the Technical Bulletins provides that persons “are selling primarily as **producers when the total dollar sales volume of their produced farm products in the original state regularly exceeds 50%** of the total dollar sales volume of their purchased products and their produced products.”

Who is a retail merchant? Section 9-1 E.2. of the Technical Bulletins provides that persons “are selling primarily in their capacity as **retail merchants when their total dollar sales volume of purchased products regularly exceeds 50%** of the total dollar sales volume of their purchased and produced products.”

Click [here](#) and look at subsection E for more information on producers and retailers.

### **Meat**

**Includes chicken, beef, lamb, veal, turkey, pork, rabbit**

- Live animals: exempt from tax when sold by a producer [G.S. 105-164.13(4b)].

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- Cuts of meat (uncooked): subject to the 2 percent rate on food when sold by a producer or retail merchant.
- Processed meat (example, uncooked sausage patty): subject to the 2 percent rate on food when sold by a producer or retail merchant.
- Cooked/smoked meat: subject to general 4.75% state and applicable local and transit rates of sales and use tax when cooked or smoked by a producer or retail merchant.

## **Fish/Seafood**

- Fish “off the boat:” exempt from tax when sold by a producer [G.S. 105-164.13(7)].

### **Farm-Raised Fish**

- Live: exempt from tax when sold by a producer [G.S. 105-164.13(4b)].
- Whole on ice or frozen (uncooked): exempt from tax when sold by a producer [G.S. 105-164.13(4b)] or subject to the 2 percent rate on food when sold by a retail merchant.
- Processed (uncooked): subject to the 2 percent rate on food when sold by a producer or retail merchant.

### **Crawfish**

- Live: exempt from tax when sold by a producer [G.S. 105-164.13(4b)].
- Cooked: subject to the general 4.75% state and applicable local and transit rates of sales and use tax when cooked or smoked by a producer or retail merchant.

### **Shrimp/Prawns/Crab/Lobster**

- Live: exempt from tax when sold by a producer [G.S. 105-164.13(7)] or subject to 2 percent rate on food when sold by a retail merchant.
- Fresh from the boat: exempt from tax when sold by a producer [G.S. 105-164.13(7)] or subject to a 2 percent rate on food when sold by a retail merchant.
- Frozen (uncooked): exempt from tax when sold by a producer [G.S. 105-164.13(7)] or subject to the 2 percent rate on food when sold by a retail merchant.
- Cooked: subject to the general 4.75% state and applicable local and transit rates of sales and use tax when cooked or smoked by a producer or retail merchant.

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## Farm Raised Clams/Oysters

- Live or Fresh (uncooked): exempt from tax when sold by a producer [G.S. 105-164.13(4b)] or subject to the 2 percent rate on food when sold by a retail merchant.

## Fruits/Vegetables

Raw vegetables sold by a producer are exempt [G.S. 105-164.13(4b)]. Raw vegetables (including mixed vegetables) that are cut up and placed in bags to be sold are also exempt. If the producer adds anything to the vegetables such as seasoning, the vegetables are no longer exempt and are subject to the 2 percent rate on food. Raw vegetables in any scenario as described above sold by a retail merchant are taxable at the 2 percent rate on food.

### Examples

- Farmer selling fruits or vegetables grown on his/her farm, regardless of where the sales take place (sold from the farm, at a farmer's market, etc.): exempt from tax because they are sold by the producer [G.S. 105-164.13(4b)].
- Farmer selling a combination of fruits or vegetables grown on his/her farm and another farmer's fruits or vegetables which were bought to be resold: those fruits or vegetables that are produced by the farmer are exempt from tax; however, those fruits or vegetables bought for resale are subject to the 2 percent rate on food.

Note this difference: This means the farmer would have to sell his or her own fruits and vegetables without charging sales tax, but would have to charge sales tax on the fruits and vegetables grown by another farmer.

This scenario is true as long as the farmer does not become a retail merchant as described earlier in this document. If the farmer is deemed a retail merchant then all fruits and vegetables sold, regardless if grown by the farmer or bought for resale, are subject to the 2 percent rate on food.

## Processed Food Products (pickles, salsas, chutneys, jellies, jams, cakes, etc.)

Jams, jellies, relishes, sauces, cakes, pies, and other similar items made and sold by farmers or any other preparers are subject to the general 4.75% state and any applicable local and transit rates of sales and use tax. This is based on the definition of prepared food as defined in G.S. 105-164.3(28). It does not matter if the farmer or preparer uses ingredients they grow themselves.

Note this difference: these same items purchased by retail merchants and resold are subject to the 2 percent rate on food.

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## Winery

- Wine: subject to the general 4.75% state and applicable local and transit rates of sales and use tax when sold by a producer or retail merchant.
- Gift shop sales: subject to the general 4.75% state and applicable local and transit rates of sales and use tax unless the item is exempt.

## Eggs

- Eggs: exempt from tax when sold by a producer [G.S. 105-164.13(4b)].

Note this difference: eggs are subject to the 2 percent rate on food when sold by a retail merchant.

## Milk

- Sales of pasteurized milk from the dairy farm: exempt from tax when sold by a producer [G.S. 105-164.13(4b)].

Note this difference: sales of pasteurized milk are subject to the 2 percent rate on food when sold by a retail merchant.

- Sales of butter or cheese made from milk from the farm: subject to the 2 percent rate on food when sold by a producer or retail merchant.

## Non-Food Farm Products

- Nursery Plants: exempt from tax when sold by a producer [G.S. 105-164.13(4b)].
- Cotton: exempt from tax when sold by a producer [G.S. 105-164.13(4b)]. Subject to the general 4.75% state and applicable local and transit rates of sales and use tax when sold by a retail merchant.
- Loose Cut Flowers: exempt from tax when sold by a producer [G.S. 105-164.13(4b)]. Subject to the general 4.75% state and applicable local and transit rates of sales and use tax when sold by a retail merchant. The flowers may be wrapped in tissue or similar covering and not affect the taxability of the flowers.

If the producer creates a flower arrangement, the flowers are no longer in their original state and the arrangement is subject to the general 4.75% state and applicable local and transit rates of sales and use tax.

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Any flowers sold loose or as part of an arrangement sold by a retail merchant are subject to the general 4.75% state and applicable local and transit rates of sales and use tax.

## **Questions, or To Get More Information**

Please call the Taxpayer Assistance and Collections Center at 1-877-252-3052 if you have any questions about this issue.