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Sales Tax Exemptions for Products Purchased for Agricultural Use

**A Report Prepared for the
Joint Standing Committee on Taxation
&
Joint Standing Committee on Agriculture, Conservation and Forestry
Pursuant to Resolves 2009, c. 25**

**Department of Administrative and Financial Services
Maine Revenue Services**

January 5, 2009

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On May 4, 2009, the Governor signed into law Resolves 2009, Chapter 25 (“the resolve,” attached hereto) regarding the review and update of sales tax exemptions for products purchased for agricultural use. That resolve requires, among other things, the Bureau of Revenue Services (“the bureau”) to review its rules related to sales tax exemptions for the purchase of products used in commercial agricultural crop production or in animal agriculture and the refund of sales taxes related to machinery and equipment purchases for commercial agricultural production. The bureau is required to provide a report of its findings and recommendations to both the Joint Standing Committee on Taxation and the Joint Standing Committee on Agriculture, Conservation and Forestry.

The resolve contains three sections as summarized below.

Sec. 1. Review of rules and bulletins by the Department of Agriculture, Food and Rural Resources (“the department”).

Section 1 of the resolve required the department to review all rules and bulletins issued by the bureau that are related to sales tax exemptions for the purchase of products used in commercial agricultural crop production or in animal agriculture pursuant to the Maine Revised Statutes, Title 36, §1760, sub-§§7-B and 7-C and to the refund of sales taxes related to machinery and equipment purchases for commercial agricultural production pursuant to Title 36, §2103. The department was required to determine whether or not the appropriate products, machinery and equipment were included in the bureau’s rules or bulletins. The department’s review was to be provided to the bureau no later than September 15, 2009 along with any recommended changes to the bureau’s rules and bulletins.

On July 9, 2009, the bureau provided to Mr. Ned Porter, Deputy Commissioner of the department, electronic links to the bureau’s Bulletins 14 and 45 and Rule 323. On October 7, 2009, the department provided to the bureau the results of their review and findings. See attachment. As explained in the department’s memo, “(t)he members [of the ad hoc task force convened by the Department] arrived at a consensus that wading through the items used in agriculture to create a list of those that should be captured in the bulletins as exempt would be self limiting. They said that an itemized list of products would preclude the ability to account for or readily adapt to any advances in technology or improvements in machinery or chemical formulations.” Instead, the department decided to approach the requirement in the resolve by recommending changes to MRS’ procedures; the ad hoc task force intends to submit legislation, separate from this report, to either the Joint Standing Committee on Taxation or to the Joint Standing Committee on Agriculture, Conservation and Forestry.

Sec. 2 Notice of revisions to and interpretations of rules and bulletins.

Section 2 of the resolve required the bureau to provide to the department a process for notifying retailers and the public of significant administrative guidance. To be included in the notification were “amendments to the bureau’s rules and revisions to the bureau’s bulletins regarding products qualifying for sales tax exemptions or equipment and machinery eligible for a sales tax refund” and how “the bureau responds to requests

for an interpretation of the statutes, rules or bulletins developed to implement the statutes.” In addition, the bureau, in consultation with the department, was charged with developing an improved protocol for documenting requests from taxpayers for interpretations and responding to them in an effort to improve the bureau’s ability to deliver consistent responses to inquiries and accountability within the bureau.

On October 7, 2009, the bureau provided the following information to the department regarding its methods of disseminating information and responding to taxpayer inquiries, specifically for issues related to agriculture.

Telephone Calls

The Division operates a sales tax assistance telephone line that is staffed with up to seven employees, comprised of three Accounting Associate II’s, two Tax Examiners, a Tax Section Manager, and the Deputy Director. All staff are trained to answer general sales, use, and service provider tax questions. In addition, each Tax Examiner has specific areas of expertise. The Accounting Associate II’s are encouraged to transfer calls with more complex issues to the appropriate Tax Examiner or one of the managers.

Many taxpayers and taxpayer representatives who call on a regular basis with issues deal directly with the relevant Tax Examiner or a manager.

Unique issues are discussed with the Division Director and managers in the Audit Division.

E-mails

The Division has a general web-based e-mail address where taxpayers can send inquiries. E-mails are also forwarded by other Divisions from web-based e-mail accounts or State employee direct account addresses. In the past, these e-mails were answered by a Senior Tax Examiner, the Tax Section Manager, or the Deputy Director. The Senior Tax Examiner retired in August 2009. Questions that rise to the level of a request for an advisory opinion are handled in the manner outlined below.

Correspondence

The Division receives a variety of general correspondence. Written responses are prepared by the Tax Examiners or the Tax Section Manager. Responses of a non-routine nature are reviewed by a supervisor before being sent.

Advisory Opinions

Requests in the form of an advisory opinion or those of a unique nature are referred to an Advisory Opinion review board. A response is prepared and circulated among the members before the finalized response is sent. The request and proposed response may be circulated to others as appropriate. Advisory Opinion requests and the associated responses are circulated to the administrative and audit staff when finalized.

The Advisory Board is currently comprised of:

- Director of Maine Revenue Service’s Sales, Fuel & Special Tax Division
- Director of Maine Revenue Service’s Compliance and Special Enforcement Division
- Director of Maine Revenue Service’s Appellate Division
- General Counsel for Maine Revenue Service
- Acting State Tax Assessor
- Assistant Attorney General in the Litigation & Civil Appellate Division

Sec. 3 Report and recommendations submitted to joint standing committees.

Section 3 of the resolve requires the bureau to report out its findings and recommendations to both the Joint Standing Committee on Taxation and the Joint Standing Committee on Agriculture, Conservation and Forestry by January 15, 2010. The requirements of the bureau and the bureau's responses to those requirements are as follow.

1) REQUIREMENT: Review the recommendations of the department under section 1 and prepare proposed changes to the bureau's rules and bulletins based on the recommendations

RESPONSE: The department has not recommended any changes to any of the bureau's bulletins or rules; therefore no changes are being proposed by the bureau.

2) REQUIREMENT: Prepare a response to the department's recommended changes that includes the bureau's comments on each recommended change and any statutory changes needed to implement the department's recommendations, and include this information in its report to the legislative committees along with an estimate of the fiscal impact of each recommendation

RESPONSE: To date the department has not made any recommended changes that would require statutory changes. The bureau's comments regarding the department's recommendations are noted in 3 below.

3) REQUIREMENT: Include a description of an improved protocol to respond to requests for interpretations as developed under section 2. The department's recommendations to improve transparency and consistency, and the bureau's comments regarding those recommendations, are as follows:

A. Department recommendation: A request from the public for interpretation of "whether a product, or machinery, or equipment is exempt" should be responded to in writing. The response should be posted on the internet or otherwise made publicly available.

Bureau comment: Written requests for interpretation are already responded to in writing. Telephone calls are not followed up in writing due to their lack of documentation to support the question and the facts surrounding the issue. This policy prevents the dissemination of misinformation, due either to the caller after the fact stating "that's not what I said" or "that's not what I meant" or the responder not understanding what the issue is that is being asked, causing the response to be applied to a scenario not addressed by the original question. A written request spells out the question being asked as well as the facts. To ensure

that the best possible advice is given, all callers are advised to put their request in writing if they want a written response.

The bureau's bulletins are the means of disseminating our interpretations to the public. Issues that are raised as well as interpretations that are made are collected and included in upcoming revisions to the bulletins. These bulletins are available in hard copy form as well as on the bureau's publicly-accessible web page. The bureau will make every effort to update bulletins as frequently as necessary.

B. Department recommendation: A question from the bureau of "whether a product, or machinery, or equipment" is used in commercial crop production or in animal agriculture should be posed to an outside reference panel consisting of subject matter experts.

Bureau comment: Obtaining an opinion from an outside reference panel may delay our ability to respond timely to requests and may end up being one-sided if the panel doesn't understand the application of the relevant statute. The bureau does perform research to determine whether an item is subject to taxation under Maine law. Furthermore, if such a procedure were ever implemented, it would have to be made clear that the panel's recommendations or decisions cannot be binding on the State Tax Assessor, who is the person charged with administering the provisions of Title 36.

However, the bureau is certainly open to the idea of meeting periodically with the department, the Maine Farm Bureau and a few subject matter experts. This group would review pending issues and any determinations or interpretations the bureau may have made since the last meeting.

C. Department recommendation: Auditors should receive training on agriculture matters both to ensure that individuals are better informed and to ensure the rules and bulletins are applied with consistency.

Bureau comment: Auditors do receive training periodically in specific subject matter areas. In an effort to ensure consistency in recent audits, the bureau has used a limited pool of auditors in the types of audits involving areas in which they have received this subject matter area training.

Resolve, To Review and Update Sales Tax Exemptions for Products Purchased for Agricultural Use

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, interpretations of statute and communication of interpretations are essential for consistent implementation of laws; and

Whereas, the review of certain sales tax exemptions by 3 state agencies is a first step in developing recommendations for improvements in rules and bulletins; and

Whereas, these recommendations need to come back to the joint standing committees of jurisdiction; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

Sec. 1 Review of rules and bulletins. Resolved: That the Department of Agriculture, Food and Rural Resources, referred to as "the department" in this resolve, shall review the rules and bulletins of the Department of Administrative and Financial Services, Bureau of Revenue Services, referred to in this resolve as "the bureau," related to sales tax exemptions for the purchase of products used in commercial agricultural crop production or in animal agriculture pursuant to the Maine Revised Statutes, Title 36, section 1760, subsections 7-B and 7-C and the refund of sales taxes related to machinery and equipment purchases for commercial agricultural production pursuant to Title 36, section 2013. The department shall determine whether or not the appropriate products, machinery and equipment are included in rules or in bulletins written and distributed by the bureau to interpret the statutory provisions for sales tax exemptions and sales tax refunds pertaining to agriculture.

The department shall confer with the Department of Conservation on the advisability of including the growing of trees for harvest in the definition of "commercial agricultural crop production." No later than September 15, 2009, the department shall provide the bureau with any recommended changes to the bureau's rules and bulletins; and be it further

Sec. 2 Notice of revisions to and interpretations of rules and bulletins. Resolved: That the bureau shall provide the department with a description of the process used to notify the public, and retailers and wholesalers in particular, of amendments to the bureau's rules and revisions to the bureau's bulletins regarding products qualifying for sales tax exemptions or equipment and machinery eligible for a sales tax refund. The bureau shall also provide the department with a description on how the bureau responds to requests for an interpretation of the statutes, rules or bulletins developed to implement the statutes. The bureau, in consultation with the department, shall develop a protocol for documenting requests for interpretations and responding to them. The goal of this review is to improve the bureau's ability to deliver consistent

responses to inquiries and accountability within the bureau; and be it further

Sec. 3 Report and recommendations submitted to joint standing committees. Resolved: That the bureau shall review the recommendations of the department under section 1 and prepare proposed changes to the bureau's rules and bulletins based on the recommendations. The bureau shall prepare a response to the department's recommended changes that includes the bureau's comments on each recommended change and any statutory changes needed to implement the department's recommendations, and include this information in its report to the legislative committees along with an estimate of the fiscal impact of each recommendation.

The bureau shall report its findings and any recommendations to the Joint Standing Committee on Taxation and the Joint Standing Committee on Agriculture, Conservation and Forestry by January 15, 2010. The report must include a description of an improved protocol to respond to requests for interpretations as developed under section 2. The recommendations may include revisions to the bureau's bulletins or rules or convey a decision to adopt rules to clarify products eligible for the sales tax exemption and purchases eligible for a refund of sales tax. The Joint Standing Committee on Taxation and the Joint Standing Committee on Agriculture, Conservation and Forestry may each submit legislation to the Second Regular Session of the 124th Legislature relating to the report.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

To: Peter Beaulieu, director
Maine Revenue Services
From: Ned Porter, deputy commissioner
Maine Department of Agriculture
Re: Resolve Chapter 25, to Review and Update Sales Tax Exemptions
for Products Purchased for Agricultural Use

The Resolve directs the Department of Agriculture to review the rules and bulletins of the Bureau of Revenue Services related to sales tax exemptions for agriculture and to make recommendation to the Bureau, which in turn is to report to the Joint Standing Committee on Agriculture, Conservation and Forestry, and the Joint Standing Committee on Taxation. To meet its charge, the Department convened an ad hoc task force of people who worked to secure passage of the resolve last session.

The group met twice and will likely meet at least once more. To date participants have included:

Dale Cole, dairy farmer; Julie Marie Bickford, executive director Maine Dairy Industry Association, Pam Harnden, executive director Maine Beef Producers Association; Jon Olson, executive director Maine Farm Bureau; Jim Zahner, owner Zahner Equipment; Marc West, Paris Farmers Union; and Bob Tardy, former legislator.

Any future meetings would likely include representatives of farmers engaged in crop production in addition to animal agriculture.

Section 1 of the Resolve directs the Department to determine whether the appropriate products, machinery and equipment are included in the Bureau's rules or bulletins.

The task force reviewed the rules and bulletins as well as the underlying statute, and tax laws from a variety of other states. The members arrived at a consensus that wading through the items used in agriculture to create a list of those that should be captured in the bulletins as exempt would be self limiting. They said that an itemized list of products would preclude the ability to account for or readily adapt to any advances in technology or improvements in machinery or chemical formulations.

They felt that at the heart of the issue was the fact that the underlying statute was vague and too open to misguided interpretations. They decided to look at changes to the statute with the goal of making it clearer and simpler to interpret. The task force will focus its efforts in future meetings on a legislative proposal, recognizing it was not necessarily within the scope of the Resolve but feeling it was in the best interest of Maine agriculture. The members intend to develop a draft language for consideration by either the Agriculture or Taxation committee, both of which have authority under the resolve to report out legislation in the coming session.

Section 1 also directs the Department to confer with the Department of Conservation on the advisability of growing trees for harvest in the definition of commercial agricultural crop production. However, Chapter 422 of the public laws of 2009 appears to have addressed that issue; 36 MRSA §1760, sub-§7-B now reads:

7-B. Products used in commercial agricultural and silvicultural crop production. Sales of seed, fertilizers, defoliant and pesticides, including, but not limited to, rodenticides, insecticides, fungicides and weed killers, for use in the commercial production of an agricultural or silvicultural crop.

A consultation with Conservation found that there was agreement with the interpretation that Chapter 422 obviated the need for to confer further as outlined by the Agriculture Committee in Resolve Chapter 25.

So while the members of the ad hoc task force did not come up with recommended changes to the rules and bulletins, they did agree to some recommendations on changes to the process that would improve transparency and consistency.

- 1) A request from the public for interpretation of whether a product, or machinery, or equipment is exempt should be responded to in writing. The response should be posted on the internet or otherwise made publicly available.
- 2) A question from the Bureau of whether a product, or machinery, or equipment is used in commercial crop production or in animal agriculture should be posed to an outside reference panel consisting of subject matter experts.
- 3) Auditors should receive training on agriculture matters both to ensure individuals are better informed and to ensure the rules and bulletins are applied with consistency.