

## Notes for IS-2023-40

- **Vendor Lists of Exempted Products for the Agriculture Sales Tax Exemption**
  - Producers have raised concerns about purchasing products they believe qualify for exemption but are charged sales tax at the point of purchase.
  - Cashiers will state that the exemption is automatically applied when the item is scanned, and there is a predetermined list of products that are exempt. If the product is not included in the list, then sales tax is charged, even if the producer claims the product will be used for agricultural production.
  - Producers have claimed their purchases of fence posts and cattle chutes were determined to not be exempt when scanned at certain retail establishments, when it seems that both are exempt from the provided examples of exempt items in OAC 710:65-13-15-(k).
  - **Question for OTC:** Does OTC provide to vendors any guidance or list of products that qualify for exemption, other than the language provided in OAC 710:65-13-15 and 68 O.S. Section 1358? Do vendors have any communication with OTC about what products are included in these lists?
- **Answer:** In addition to the guidance provided by the applicable statutory and administrative code provisions vendors with questions regarding certain items qualification for the sales tax exemption for agricultural production can, and do with regularity, contact the OTC directly by telephone, email or in writing to obtain guidance or request a letter ruling. In addition, a database of previously issued letter rulings and Commission Orders with personal taxpayer information redacted are maintained on the OTC website [[LR.database](#)] [[OTC.Order.database](#)]. Further, upon request redacted rulings relating to the subject matter at issue herein have been researched and provided when available.

Please note that in accordance with 68 O.S. § 1358.1, it is the purchaser's/exempt permit holder's responsibility to notify the vendor of all purchases which are not exempt from sales tax pursuant to Section 1358 of Title 68 of Oklahoma Statutes.

- **Signed Statements of Certification**
  - Producers have raised concerns that they must certify, by signature, under oath, and under penalty of perjury that

the items they purchased qualify for exemption and are used directly in agricultural production.

- o There are several requirements in statute and code that require the purchaser to certify, in writing, that the purchases are exempt for agricultural production purposes.
- o Those requirements include paragraphs 3, 5, and 8 of subsection A of Section 1358, of Title 68 of the Oklahoma Statutes, and subsections (b) and (d) of OAC 710:65-13-17.
- o The instances where statute and code require written certification are:
  - The sale of baby chicks, turkey poults, and starter pullets sold for use in the commercial production of chickens, turkeys, and eggs (68 O.S., Section 1358, subsection A, paragraph 3);
  - Sales of agricultural fertilizer to commercial applicators when applied land used in agricultural production and owned by an exempt producer (only for providing the name of the agricultural producer and address) (68 O.S., Section 1358, subsection A, paragraph 5);
  - Sales of construction materials used for facilities used in the production of livestock to a person contracted by the producer to construct the facilities (68 O.S., Section 1358, subsection A, paragraph 8; and OAC 710:65-13-17-(d));
  - Sales of feed for draft animals (OAC 710:65-13-17-(b)); and
  - Sales to residents of other states who are engaged in custom farming operations in this state (OAC 710:65-13-18-(b)-(1)).
- o The instances cited above do not include the purchase of most of the exempt products when purchase by an agricultural permit holder.
- o **Question for OTC:** Is there a requirement that all transactions with an agricultural sales tax exemption include written certification with a signature provided by the purchaser? If not, could we ask you to speculate why the vendors require this on every purchase, according to certain producers' statements, especially considering that vendors typically provide the exemption on a predetermined basis?

- **Answer:** With certain statutory exceptions, the only documentation required to be furnished to the vendor at the time of sale to prove eligibility for the sales tax exemption for agricultural production is the agricultural sales tax

exemption permit<sup>1</sup> issued by the OTC to qualifying applicants. The additional requirement of written certification of a qualifying use by the purchaser on the face of the invoice/sales ticket is limited to the exemptions for purchases of baby chicks, turkey poults and starter pullets used in the commercial production of chickens, turkeys and eggs; feed for draft animals and materials for the construction of livestock facilities authorized in Section 1358(A)(3)(4)&(8) of Title 68. It is speculated that vendors may require written certification for all claimed agricultural production purchases for ease of administration. Further, no statutory provision currently exists which prevents this practice.

- **Liability for Vendors**

- Is there any liability on the vendor side regarding the agriculture sales tax exemption, either through verification of exempt producers or determining the products that qualify for exemption, or is the liability solely on the permit holder? Can the vendor be subject to penalty?

- **Answer:** Section 1358.1 of Title 68 provides that the exemption claimed by an agricultural exemption permit holder must be honored by the vendor who is relieved from liability for the collection of sales tax as long as the vendor accepts from the purchaser and retains in their business files and records the properly completed documentation outlined in OAC 710:65-7-11. Upon determination that the item purchased does not qualify for exemption, the vendor has obtained the required documentation for purposes of relief from liability, the purchaser shall be liable for the remittance of the tax, interest and penalty due thereon and the Tax Commission shall pursue collection thereof from the purchaser in any manner in which sales tax may be collected from a vendor. 68 O.S. § 1361(A)(4). Further, a purchaser who uses an agricultural exemption permit to purchase, exempt from sales tax, items not authorized for exemption under Section 1358 of Title 68 shall be subject to a penalty in the amount of Five Hundred Dollars (\$500.00). 68 O.S. § 1358.1(H).

Notwithstanding the above provisions, currently there is no punitive action that can be directed towards a vendor who chooses not to honor a customer's agricultural exemption issued in accordance with Section 1358 of Title 68. Consequently, any customer who is of the opinion that they erroneously paid sales tax on a transaction may request a refund of the tax directly

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<sup>1</sup> 68 O.S. § 1358.1

from the Tax Commission. A refund application may be made by forwarding Form 13-9 *Application for Credit or Refund of State and Local Sales or Use Tax*, with documentation supporting the claim to the Credits/Refunds Section, Business Tax Services Division of the Oklahoma Tax Commission. OTC Form 13-9

Only under circumstances where the vendor does not obtain the properly completed documentation from the purchaser and also does not charge tax on the purchase of items which do not qualify for exemption will the vendor be held responsible for the sales tax and applicable interest and penalty. 68 O.S. § 217

- **Interest and Penalties**

- **Question for OTC:** Aside from the penalty for marketplace facilitators (68 O.S., Section 1396; due hardship or good cause shown), are all delinquent/deficient payments automatically charged penalty and interest pursuant to 68 O.S., Sections 217 and 2375 (for income tax), or is there discretion as to when those penalties and interest are applied? If not, is the only way done by taxpayer request pursuant to OAC 710:1-5-12? If there is discretion, is that always determined by the Commissioners? (Specifically subsection E of Section 217 and subsection C of Section 2375, where it states the commission *may* assess a 25% penalty.)

- **Answer:** Penalty and interest amounts are set by statute, and any waiver of assessed penalty and interest is subject to approval by the Commissioners. The OTC does not have discretion on when/if to assess penalty and interest. Except for the additional penalty allowed by 217(E).

- **Penalty & Interest amounts set by statute:**

- **68 OS § 217(A)**- there shall be collected on the total delinquent tax interest at the rate of 1 ¼ % per month
- **68 OS § 217(C)**- a penalty of 10% on the total amount of tax due shall be added thereto, collected and paid (unless paid within 60 days)
- **68 OS § 217(E)**- if a taxpayer is negligent or refuses to pay, the OTC may assess and collect a 25% penalty
- **68 OS § 2375(B)**- a penalty of 5% shall be added thereto, collected and paid (unless paid within 60 days)

- o **68 OS § 2375(C)**- if a taxpayer is negligent or refuses to pay, the OTC may assess and collect a 25% penalty
  - **Commission discretion:**
    - o **68 OS § 220(A)**- The interest or penalty or any portion thereof ordinarily ... may be waived or remitted by the Oklahoma Tax Commission ...
    - o **710:1-5-12** - Waiver of interest or penalty associated with a tax assessment or failure to file a return or report is within the discretionary authority of the Commission pursuant to the provisions of 68 O.S. §220.
- **Protests and Objections**
  - o A taxpayer may object to proposed tax assessments, audits, and denials for refunds and obtain amendments and adjustments through further discussions with the assessing tax Division pursuant to OAC 710:1-5-10-(b).
  - o **Questions for OTC:** Can a taxpayer obtain a waiver of interest and penalties through discussions with the assessing tax division if they receive any amendments or adjustments to their assessments or audits?
    - **Answer:** Per statute, any waiver of assessed penalty and interest is subject to approval by the Commissioners.
      - **68 OS § 220(A)**- The interest or penalty or any portion thereof ordinarily ... may be waived or remitted by the Oklahoma Tax Commission ...
  - o Can a taxpayer receive a waiver of interest and penalties for delinquent payments through discussions with the assessing tax division, whether it be from a failed objection or simply requesting it after payment?
    - **Answer:** Per statute, any waiver of assessed penalty and interest is subject to approval by the Commissioners
      - **68 OS § 220(A)**- The interest or penalty or any portion thereof ordinarily ... may be waived or remitted by the Oklahoma Tax Commission ...
  - o Upon the filing of a formal protest by a taxpayer, pursuant to OAC 710:1-5-10-(C), several steps are taken to resolve the protest, first in discussions with the taxing Division, then by negotiations with the staff attorney of the General Counsel's Office, after the protest is forwarded to the ALJ's Office and a Pre-

Hearing Conference is scheduled, followed by a hearing presided by an ALJ.

○ **Questions for OTC:**

- At any step in the process of the protest by a taxpayer, can the taxing Division, staff attorney, or ALJ waive interest and penalties?
  - **Answer:** No, per statute, any waiver of assessed penalty and interest is subject to approval by the Commissioners.
    - **68 OS § 220 (A)** - The interest or penalty or any portion thereof ordinarily ... may be waived or remitted by the Oklahoma Tax Commission ...
- If the objection or protest is withdrawn by the taxpayer at any of these steps, can the taxing Division, staff attorney, or ALJ waive interest and penalties?
  - **Answer:** No, per statute, any waiver of assessed penalty and interest is subject to approval by the Commissioners.
    - **68 OS § 220 (A)** - The interest or penalty or any portion thereof ordinarily ... may be waived or remitted by the Oklahoma Tax Commission ...
- After ruling by an ALJ, the Commission may adopt or modify, in part or in whole, the ruling. If interest and penalties are waived by the taxing Division or the staff attorney, is the Commission required to adopt or reject the waiver?
  - **Answer:** Per statute, any waiver of assessed penalty and interest is subject to approval by the Commissioners.
    - **68 OS § 220 (A)** - The interest or penalty or any portion thereof ordinarily ... may be waived or remitted by the Oklahoma Tax Commission ...