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Sec. 12-412(63)-1. Farmer tax exemption permits

(a) Definitions.

(1) “Agricultural production” means “agricultural production” as defined in Section 12-412(63) of the Connecticut General Statutes;

(2) “Applicant” means a person who has completed and submitted an application to DRS;

(3) “Application” means a Form REG-8, *Application for Farmer Tax Exemption Permit* (or Form REG-8R, *Renewal Application for Farmer Tax Exemption Permit*, in the case of a renewal), or a document providing the information that is described in subdivision (2) of subsection (e) of this section;

(4) “Commissioner” means the Commissioner of Revenue Services;

(5) “DRS” means the Department of Revenue Services;

(6) “Engaged in agricultural production as a trade or business” means engaging in agricultural production with a profit motive and materially participating in such production;

(7) “Permit” means a Form OR-248, *Farmer Tax Exemption Permit*;

(8) “Permittee” means a person to whom a permit has been issued by DRS; and

(9) “Person” means “person” as defined in Section 12-407(a)(1) of the Connecticut General Statutes.

(b) To whom is DRS required to issue a permit?

DRS is required to issue a permit to a person who is engaged in agricultural production as a trade or business and who meets the other criteria established in Section 12-412(63) of the Connecticut General Statutes.

(c) What are some examples of “agricultural production?”

(1) In general, “agricultural production” includes raising and harvesting any agricultural or horticultural commodity as a trade or business. Some examples of “agricultural production” include the following activities when engaged in as a trade or business:

(A) Boarding, caring for, feeding, raising, shearing, training, or otherwise managing horses or other livestock owned by others.

(B) Breeding livestock (unless the livestock breeder is required for federal income tax purposes to treat his or her income from the sales of livestock as capital gains);

(C) Dairy farming;

(D) Forestry;

(E) Operating a fish farm or hatchery, including raising and harvesting fish, oysters, clams, mussels, or other molluscan shellfish;

(F) Selling timber if the seller is engaged in farming or forestry management.

(2) Agricultural production does not include selling agricultural products that were purchased for resale. For example, a person who sells cut flowers or plants at a roadside stand is not engaged in agricultural production if the person bought the flowers or plants for resale.

(d) In whose name does DRS issue a permit?

DRS issues a permit in the name of the applicant, and, if spouses submit an application, DRS issues a permit in the name of the spouses.

(e) How does a person apply for a permit?

(1) An applicant shall complete and submit an application to DRS. Forms REG-8 and REG-8R are available from the DRS Forms Unit, the DRS Taxpayer Services Division, or the DRS website.

(2) In lieu of completing and submitting an application, an applicant may submit a document that is signed and dated by the applicant and that:

(A) Provides the applicant's name, home address (including number and street, city, town or post office, state and ZIP code), Social Security Number, if the applicant is an Individual, and Federal Employer Identification Number, if the applicant is other than an individual;

(B) Provides the applicant's farm information, including the farm's name, telephone number and street address and town, the total acreage of the farm, and the total number of acres that the applicant used in agricultural production during the preceding taxable year;

(C) Indicates whether the applicant is applying as an individual, partnership, corporation, limited liability company, limited liability partnership, fiduciary, or other entity;

(D) Indicates whether the applicant is applying for a permit because the applicant purchased an existing farm, changed its business structure, wishes to renew its permit, or is a start-up farmer;

(E) Indicates whether the applicant was engaged in agricultural production as a trade or business during the preceding taxable year;

(F) Indicates whether the applicant owns the farmland, leases the farmland, or owns part and leases part of the farmland;

(G) Lists the farm products, including livestock, that the applicant raised during the preceding taxable year;

(H) Lists the farm products, including livestock, that the applicant intends to raise during the current taxable year and the immediately succeeding taxable year;

(I) Indicates whether the applicant has been issued a Sales and Use Tax Permit by DRS, and if so, provides the applicant's 10-digit Connecticut Tax Registration Number;

(J) Indicates whether the applicant has employees, and if so, provides the applicant's 10-digit Connecticut Tax Registration Number;

(K) Provides the amount of gross income that the applicant derived solely from agricultural production as reported on the applicant's federal income tax return in each of the two preceding taxable years;

(L) Provides the average amount of gross income the applicant derived solely from agricultural production as reported on the applicant's federal income tax return in each of the two preceding taxable years;

(M) Indicates whether the applicant qualifies for a permit because the applicant purchased an existing agricultural business in the current or preceding taxable year, even though the applicant's gross income derived solely from agricultural production as reported on the applicant's federal income tax return in each of the two preceding taxable years is less than \$2500, and if so, provides the name and Farmer Tax Exemption Permit Number of the seller; and

(N) Has attached to it a copy of the applicant's most recently filed federal income tax return and schedules thereto pertaining to the applicant's gross income from agricultural production (for example, Schedule C or Schedule F).

(3) An application may be submitted by mail or in person at any DRS office. The application need not be notarized. However, the person signing the application is required to declare that he or she has examined the application and that, to the best of his or her knowledge or belief, it is true, complete and correct. The person signing the application is also required to declare that he or she understands that

the penalty for willfully delivering a false statement to DRS is a fine of not more than \$5,000, or imprisonment for not more than five years, or both.

(f) What is required to be submitted with the application?

When applying for a permit, an applicant who is an individual is required to submit a copy of the first two pages of his or her signed federal Form 1040 for the preceding year and a copy of the Schedule C or Schedule F to that return. An applicant that is not an individual is required to submit a copy of the first two pages of its signed federal income tax return, and a federal Form 1040, Schedule F that is prepared only for informational purposes for DRS. DRS may permit or require the applicant to submit copies of other schedules to determine if the criteria established in Section 12-412(63) of the Connecticut General Statutes are met and if the applicant is eligible for a permit.

(g) Is a person not previously engaged in agricultural production as a trade or business eligible to be issued a permit?

(1) Yes. Even if an applicant does not meet the income requirements for agricultural production in Section 12-412(63)(A) of the Connecticut General Statutes, DRS shall issue a permit to the applicant if the applicant establishes, to the commissioner's satisfaction, that the applicant intends to carry on agricultural production as a trade or business for at least two years.

(2) The commissioner shall consider the following factors in determining whether the applicant intends to carry on agricultural production as a trade or business for at least two years and is eligible to be issued a permit under this subsection:

(A) How will the applicant conduct the agricultural production business? The applicant is required to identify and describe the product or service the applicant intends to sell, the applicant's prospective customers, competition, sales strategy, the amount of profits expected, and the applicant's plan for minimizing specific business risks.

(B) What is the applicant's agricultural production expertise and experience? The applicant is required to describe the applicant's agricultural production expertise and experience and that of any of the applicant's prospective advisors, employees, and independent contractors.

(C) How much time and effort will the applicant expend in agricultural production? The applicant is required to describe the time and effort that the applicant plans to expend in conducting the agricultural production business for at least the next two years.

(D) Has the applicant conducted any similar business in the past? The applicant is required to describe how the applicant conducted any similar business or businesses in the past, including the profitability of such business or businesses.

(E) Can the applicant afford to carry on agricultural production as a trade or business for at least two years? The applicant is required to describe the applicant's current financial status, including the applicant's income, assets, and financial obligations. The applicant is required to establish that the applicant has the financial ability to carry on agricultural production as a trade or business for at least two years.

(F) Attach to Application. The applicant shall attach the information required by subdivision (2) of this subsection to the application.

(3) When Section 12-412(63)(E)(ii) or (iii) of the Connecticut General Statutes applies, the permittee is also liable, under the provisions of Chapter 219 of the Connecticut General Statutes, for interest on the sales or use tax imposed on purchases made during the period commencing upon the issuance of the permit and

ending two years after the date of issuance of the permit. In such case, the tax is due, and interest begins to accrue, on the day after the due date of the sales and use tax return for the first taxable period ending after the expiration date of the permit, or, if the permittee is not required to file sales and use tax returns, the first day of the fifth month next succeeding the expiration date of the permit.

(h) How long is the permit valid?

DRS may issue a permit that is valid for up to two years from the date it is issued. DRS shall print the permit's expiration date on the permit. A permittee may not make exempt purchases after the permit expires. Therefore, if a permittee does not file an application to renew a previously issued permit in sufficient time to be issued a new permit before the previously issued permit expires, the permittee may not make exempt purchases during the period following the expiration date of the previously issued permit until the date the new permit is issued.

(i) What kinds of tax-exempt purchases may a permittee make with the permit?

(1) General Rule.

A permittee may buy items of tangible personal property, tax-exempt, that are to be used exclusively in agricultural production by the permittee. Purchases of items that are to be used partly in agricultural production and partly for other purposes are taxable. For example, if a permittee buys a truck that is to be used on the weekend to take farm produce to a regional market and during the week to commute to a job that is unrelated to farming, the permittee may not buy the truck tax-exempt because the truck is not to be used exclusively in agricultural production by the permittee.

(2) May a permittee lease farm equipment tax-exempt?

Yes. A permittee may lease equipment that is to be used exclusively in agricultural production by the permittee tax-exempt.

(3) If a permittee operates a farm and also does custom hire work such as plowing, fertilizer application, or harvesting for other permittees, may the permittee buy machinery and supplies, tax-exempt, to perform these?

No. A permittee may use a permit only to make tax-exempt purchases of equipment that is to be used exclusively in the operation of the permittee's own farm.

(4) May a permittee buy services like plowing, planting, harvesting, fertilizer application, or repairs to farm vehicles tax-exempt?

No. The tax exemption is limited to purchases of items of tangible personal property. Sales and use taxes are due on any taxable services that the permittee buys. However, although purchases of repair services are subject to tax, repair parts for vehicles and machinery that are to be used exclusively in agricultural production may be purchased tax-exempt with the permit.

(5) If a permittee hires a contractor to renovate a farm building, is the charge for the contractor's services subject to tax?

Yes. Because the exemption under Section 12-412(63) of the Connecticut General Statutes does not apply to purchases of taxable services, a permittee is liable for sales tax on the service charges for the renovation or repair of an existing farm structure.

(6) If a permittee renovates a building used exclusively for agricultural production, may the permittee buy materials for the renovation tax-exempt?

Yes. Lumber, hardware, and other building materials that are sold directly to a permittee for the construction or renovation of a farm structure that is to be used exclusively in agricultural production, such as a barn for farm animals or a storage building for the harvest, may be purchased tax-exempt. However, if the building

materials and supplies are sold, not to the permittee, but to a contractor hired to perform the construction services, the sales are taxable. Likewise, tax applies to the purchase of materials if the structure is not to be used exclusively in the agricultural production process. For example, if a permittee buys lumber to build or renovate a home, the purchase of the lumber is taxable.

(j) How does a permittee use the permit?

The permittee is required to provide a copy of the permit to the retailer each time the permittee buys items that the permittee will use exclusively in agricultural production. Alternatively, a permittee may write the words “Blanket Certificate” across the top of a copy of the permit and provide it to retailers from whom the permittee frequently buys items that the permittee will use exclusively in agricultural production. If the permittee does not provide a copy of the permit to the retailer at the time of purchase or have a blanket certificate on file, the retailer shall collect, and the permit holder shall pay, sales tax.

(k) Is a permittee entitled to a refund of sales or use tax paid on purchases made before DRS issued the permit?

No. A permittee is not entitled to a refund of sales or use tax on purchases made before DRS issued a permit. A permittee is required to present the permit when a purchase is made to claim the exemption.

(l) May a permittee transfer the permit?

No. The permit may not be transferred or assigned to anyone. Additionally, if the permittee ceases to be engaged in agricultural production, the permit is void and the permittee is required to return the permit to DRS.

(m) What is a permittee required to do if the permittee’s address, form of business, or farm location changes?

The permittee is required to apply for a new permit if the permittee’s address, form of business, or farm location changes. The permittee is required to submit a completed application to DRS with the correct information and to return the old permit to DRS.

(n) If a permittee transfers his or her agricultural trade or business to a member of the immediate family for no consideration, is DRS required to issue a permit to the transferee?

The permittee’s permit is not transferable so, in order for the transferee to be able to make tax-exempt purchases under Section 12-412(63) of the Connecticut General Statutes, the transferee is required to apply for a permit in the transferee’s name. The transferee is required to complete and submit an application to DRS and to return the transferor’s permit to DRS. The transferee is required to submit the specified pages of the transferor’s federal income tax return with the transferee’s application. The transferee is also required to provide the transferor’s name and permit number on the application. DRS is required to issue a permit to the transferee as long as the transferee is the permittee’s spouse, parent, child, or sibling and the activities of the transferee meet the other qualifications for a permit.

For example, a permittee decides to retire and transfers her farm for no consideration to her daughter, who will continue to run the farm. DRS is required to issue a permit to the daughter as long as she intends to engage in agricultural production as a trade or business, completes and submits an application to DRS, returns her mother’s permit to DRS, and submits the pages, as specified in subsection (f) of this section, of her mother’s federal income tax return with her application. To avoid delays in issuing a new permit, the daughter may include with her application a written explanation of her relationship to the transferor.

(o) If a permittee sells the permittee's agricultural trade or business, is DRS required to issue a permit to the transferee?

The permittee's permit is not transferable, so, in order for the transferee to be able to make tax-exempt purchases under Section 12-412(63) of the Connecticut General Statutes, the transferee is required to apply for a permit in the transferee's name. DRS is required to issue a permit to the transferee as long as the activities of the transferee meet the other qualifications for a permit. However, if the transferee completes and submits an application to DRS and DRS issues a permit to the transferee and the transferee does not carry on agricultural production for at least two years from the date of purchase, the transferee is liable for the sales or use tax otherwise due on purchases that were made during the two-year period. The transfer of the assets of the agricultural trade or business as part of the formation of a new business entity also qualifies as a sale for the purposes of this provision.

For example, a permittee who operates his farm as a sole proprietorship forms a limited liability company and transfers the farm to it. The limited liability company may not make tax-exempt purchases under Section 12-412(63) of the Connecticut General Statutes until it applies for a permit and is issued a permit by DRS. To avoid delays in issuing a new permit, the applicant may include with its application a written explanation of its relationship to the transferor.

(p) What penalties apply for making false statements or misusing the permit?

A permittee who misuses the permit also is liable for use tax on purchases made by the permittee while misusing the permit; interest that accrues on the use tax from the date of such purchases; and civil penalties under Chapter 219 of the Connecticut General Statutes.

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