



NEW LEGISLATION ALERT: SALES EXEMPTION FOR WATER SALES TO FARMERS AND NURSERY OPERATORS – PUBLIC CHAPTER NO. 427

On May 24, 2019, the Governor signed into law Public Chapter Number 427 (PC 427). PC 427 creates a new sales tax exemption for water sales which applies to “[water]... used directly in the production of food or fiber for human or animal consumption or to aid in the growing of a horticultural product for sale.” The effective date of this new sales tax exemption for water sales is July 1, 2019.

- Sales of electricity and natural gas to farmers and nursery operators have been exempt from sales tax for several years pursuant to T.C.A. § 67-6-207(a)(18). PC 427 adds water sales as an additional utility service which is exempt from sales tax under this section. To be exempt from sales tax, the water sale must be “used directly” by the farmer in the production of food for human or animal consumption or by a nursery operator to aid the growth of horticultural products. Water purchased by a farmer or nursery operator for any other use remains subject to the sales tax. For example, water purchased by a farmer or nursery operator for domestic household use is still subject to sales tax, and the water utility must continue to collect sales tax on such water sales.
- As a practical matter, the only way a water utility can know that water sales to a farmer or nursery operator are exempt is to ensure that such water sales are made by a separate connection to the utility’s main. Otherwise, the water utility has no way of knowing whether water sold is used for purposes other than the “production of food or fiber for human or animal consumption or to aid in the growing of a horticultural product for sale.”
- As with any other water sales which are exempt from the sales tax, the water utility cannot forego the collection of sales tax on exempt water sales until the customer actually provides the water utility with a sales tax exemption certificate issued by the Department of Revenue which confirms that the water sales to the customer are sales tax exempt. The water utility is obligated to collect sales tax until the exemption certificate is provided. According to the Tennessee Department of Revenue, the Agricultural Sales and Use Tax Certificate of Exemption must be presented to the water utility in one of the following forms:

- (1) A copy of the Tennessee Department of Revenue Agricultural Sales and Use Tax Certificate of Exemption;
- (2) A copy of the wallet-sized exemption card also provided by the Department of Revenue (see attached example); or
- (3) A fully-completed Streamlined Sales and Use Tax Certificate of Exemption, which includes the exemption number on the certificate or card issued by the Department.

The water utility must keep a copy of one of these documents on file. Farmers and nursery operators will retain their original documents in a safe place for future use during the exemption period.

- Therefore, to exempt water sales to a farmer or nursery operator from the sales tax, a water utility must be sure that: (1) the exempt water sales to the farmer or nursery operator are separately metered and measured; and, (2) the farmer or nursery operator has provided the water utility with a copy one of the three permitted agricultural exempt certificates listed above issued by the Department of Revenue.
- If the water utility has a rule, regulation or policy which establishes the terms and conditions under which a new water tap for an existing customer must be made, the water utility should follow such rule, regulation or policy, including the payment of any tap fee, connection fee or other charges, for a new tap to separately meter water “used directly in the production of food or fiber for human or animal consumption or to aid in the growing of a horticultural product for sale.”
- Again, the effective date of the new agricultural exemption for water sales is July 1, 2019.

You may find additional information on this agricultural exemption on the Department of

Revenue’s website: <https://www.tn.gov/revenue/taxes/sales-and-use-tax/agricultural-exemption.html>

CERTIFICATE OF EXEMPTION FROM SALES AND USE TAX
FOR TENNESSEE AGRICULTURAL EXEMPTIONS

Name:

Account Identification Number: 783880526

Type of Exemption: Sales and Use Tax - Agricultural

Effective Date: January 1, 2016

Expiration Date: December 31, 2019

I certify that all purchases of agriculture related goods and services made by me, unless otherwise specified on any order or invoice, are used directly and principally for the purpose of producing agricultural products, including nursery products, for sale and use or consumption off the premises.

Signature of purchaser:

