

## **IMPORTANT NOTICE: EXPANSION OF THE SALES AND USE TAX EXEMPTION FOR FARMERS TO INCLUDE CERTAIN PURCHASES BY QUALIFYING AND CONDITIONAL FARMERS FOR ZOO OPERATIONS**

The following important information is addressed in this notice:

- Effective January 1, 2023, North Carolina expands the exemption for qualifying or conditional farmers to include certain purchases for zoo operations.
- Who can make exempt purchases?
- What items qualify for the exemption?
- How do you purchase exempt items?
- What additional guidance is available?

### **Background**

On July 7, 2022, Governor Cooper signed into law [Session Law 2022-45](#). The law creates an exemption from sales and use tax for certain items purchased by a qualifying farmer or conditional farmer who operates a zoo in addition to the farmer's farming operations. ("Exemption"). The Exemption applies to purchases made on or after January 1, 2023.

The Exemption exempts from sales and use tax:

Purchases of items by a qualifying farmer or conditional farmer who operates a zoo in addition to the farmer's farming operations. The Exemption from sales and use tax are the items listed under subsection (a) of N.C. Gen. Stat. § 105-164.13E, purchased by a qualifying farmer or conditional farmer and used by the farmer primarily in zoo operations. An item is used in a farmer's zoo operations if it is used for the housing, raising, or feeding of animals for public display.

### **Who is Eligible to Make Exempt Purchases?**

**A qualifying farmer or conditional farmer operating a zoo** – A farmer must meet both of the following requirements to use the Exemption to purchase qualifying items exempt from tax ("Qualifying Zoo Operator"):

- 1) hold a qualifying farmer or conditional farmer exemption certificate number; and
- 2) operate a zoo in addition to having farming operations.

In general, a qualifying farmer is a person who has an annual income from farming operations for the preceding taxable year of ten thousand dollars (\$10,000) or more or who has an average annual income from farming operations for the three preceding taxable years of ten thousand dollars (\$10,000) or more. Importantly, the income derived from a person's zoo operations is not included for purposes of determining whether the person meets the requirements of a

qualifying farmer. For additional requirements and information about a qualifying farmer exemption certificate number, review [Sales and Use Tax Bulletin 27-2](#).

A person who is not a qualifying farmer may apply for a conditional farmer exemption certificate number if the person certifies that the person intends to engage in farming operations and that the person will timely file State and federal income tax returns that reflect income and expenses incurred from farming operations during the taxable years that the conditional exemption certificate applies. Importantly, the income derived from a person's zoo operations is not included for purposes of determining whether the person meets the requirements for a conditional farmer exemption certificate number. For additional requirements and information about a conditional farmer exemption certificate number, review [Sales and Use Tax Bulletin 27-3](#).

**Service Provider** – A person who performs a service (“Service Provider”) for a Qualifying Zoo Operator may purchase certain qualifying items exempt from sales and use tax.

**Contractors** – A contractor who has a contract with a Qualifying Zoo Operator may purchase certain qualifying items exempt from sales and use tax.

### **What Items Qualify for the Exemption?**

The items that qualify for the Exemption depend on who purchases the item. The subsections below identify the qualifying items for each type of purchaser.

**Items Purchased by a Qualifying Zoo Operator** – The following items<sup>1</sup> qualify for the Exemption if purchased by a Qualifying Zoo Operator and used by the Qualifying Zoo Operator primarily for the housing, raising, or feeding of animals for public display:

- 1) Fuel, piped natural gas, and electricity that are measured by a separate meter or another separate device and used for a purpose other than preparing food, heating dwellings, and other household purposes.
- 2) Commercial fertilizer, lime, land plaster, plastic mulch, plant bed covers, potting soil, baler twine, and seeds.
- 3) Farm machinery, attachment and repair parts for farm machinery, and lubricants applied to farm machinery. The term "machinery" includes implements that have moving parts or are operated or drawn by an animal. The term does not include implements operated wholly by hand or motor vehicles required to be registered under Chapter 20 of the General Statutes.
- 4) A container used in the planting, cultivating, harvesting, or curing of farm crops or in the production of dairy products, eggs, or animals or used in packaging and transporting the farmer's product for sale.
- 5) A grain, feed, or soybean storage facility and parts and accessories attached to the facility.

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<sup>1</sup> Certain items on this list are not likely to qualify for the Exemption because they are not likely to be used for the housing, raising, or feeding of animals for public display. These items are listed in this notice because they are listed in the statute and may be used by qualifying and conditional farmers in their farming operations.

- 6) Any of the following substances when purchased for use on animals or plants, as appropriate, held or produced for commercial purposes:
  - a. Remedies, vaccines, medications, litter materials, and feeds for animals.
  - b. Rodenticides, insecticides, herbicides, fungicides, and pesticides.
  - c. Defoliant for use on cotton or other crops.
  - d. Plant growth inhibitors, regulators, or stimulators, including systemic and contact or other sucker control agents for tobacco and other crops.
  - e. Semen.
- 7) Any of the following animals:
  - a. Fowl.
  - b. Livestock.
- 8) Any of the following items concerning the housing, raising, or feeding of animals:
  - a. A commercially manufactured facility to be used for commercial purposes for housing, raising, or feeding animals or for housing equipment necessary for these commercial activities. The exemption also applies to commercially manufactured equipment, and parts and accessories for the equipment, used in the facility.
  - b. Building materials, supplies, fixtures, and equipment that become a part of and are used in the construction, repair, or improvement of an enclosure or a structure specifically designed, constructed, and used for housing, raising, or feeding animals or for housing equipment necessary for one of these commercial activities. The exemption also applies to commercially manufactured equipment, and parts and accessories for the equipment, used in the enclosure or a structure.
- 9) A bulk tobacco barn or rack, parts and accessories attached to the tobacco barn or rack, and any similar apparatus, part, or accessory used to cure or dry tobacco or another crop.
- 10) Repair, maintenance, and installation services.

**Items Purchased by a Service Provider** – An item purchased by a Service Provider must meet all of the following requirements to qualify for the Exemption:

- Purchased by the Service Provider to perform a service for a Qualifying Zoo Operator;
- Qualify for the Exemption if purchased directly by the Qualifying Zoo Operator; and
- Be one of the following substances<sup>2</sup> purchased for use on animals or plants, as appropriate, held or produced for commercial purposes:
  - Remedies, vaccines, medications, litter materials, and feeds for animals.
  - Rodenticides, insecticides, herbicides, fungicides, and pesticides.
  - Defoliant for use on cotton or other crops.
  - Plant growth inhibitors, regulators, or stimulators, including systemic and contact or other sucker control agents for tobacco and other crops.
  - Semen.

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<sup>2</sup> Certain substances on this list are not likely to qualify for the Exemption because they are not likely to be used for the housing, raising, or feeding of animals for public display. These substances are listed in this notice because they are listed in the statute and may be used by qualifying and conditional farmers in their farming operations.

**Items Purchased by a Contractor** – An item purchased by a Contractor must meet all of the following requirements to qualify for the Exemption:

- Purchased by the Contractor to fulfill a contract with a Qualifying Zoo Operator;
- Qualify for the Exemption if purchased directly by the Qualifying Zoo Operator; and
- Be one of the following items<sup>3</sup>:
  - A grain, feed, or soybean storage facility and parts and accessories attached to the facility.
  - Any of the following items concerning the housing, raising, or feeding of animals:
    - A commercially manufactured facility to be used for commercial purposes for housing, raising, or feeding animals or for housing equipment necessary for these commercial activities. The exemption also applies to commercially manufactured equipment, and parts and accessories for the equipment, used in the facility.
    - Building materials, supplies, fixtures, and equipment that become a part of and are used in the construction, repair, or improvement of an enclosure or a structure specifically designed, constructed, and used for housing, raising, or feeding animals or for housing equipment necessary for one of these commercial activities. The exemption also applies to commercially manufactured equipment, and parts and accessories for the equipment, used in the enclosure or a structure.
  - A bulk tobacco barn or rack, parts and accessories attached to the tobacco barn or rack, and any similar apparatus, part, or accessory used to cure or dry tobacco or another crop.

### **How to Make Eligible Purchases**

A person must provide a retailer a properly completed [Form E-595E, Streamlined Sales and Use Tax Certificate of Exemption](#), (“Form E-595E”), or the required data elements, to purchase an item exempt from sales and use tax. In addition, a person must maintain records that demonstrate the purchased item qualifies for the Exemption. The following subsections provide more specific instructions based on who purchases an item.

**Items Purchased by a Qualifying Zoo Operator** – A Qualifying Zoo Operator must provide the retailer a properly completed [Form E-595E](#), or the required data elements, to purchase a qualifying item exempt from sales and use tax. The required data elements are: the Qualifying Zoo Operator’s name, address, valid exemption number, type of business, reason for exemption, and, if providing a paper certificate, the Qualifying Zoo Operator’s signature. The Qualifying Zoo Operator should select “Agricultural, forestry, fishing, and hunting” as the type of business and select “Agricultural production” and provide the qualifying or conditional farmer’s exemption certificate number as the reason for the exemption.

A Qualifying Zoo Operator that purchases an item exempt from tax must maintain records that substantiate the purchased item qualifies for the Exemption.

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<sup>3</sup> Certain items on this list are not likely to qualify for the Exemption because they are not likely to be used for the housing, raising, or feeding of animals for public display. These items are listed in this notice because they are listed in the statute and may be used by qualifying and conditional farmers in their farming operations.

**Items Purchased by a Service Provider** – A Service Provider must provide the retailer a properly completed [Form E-595E](#), or the required data elements, to purchase an item exempt from sales and use tax. The Form E-595E, or required data elements, must include the following information:

- The Service Provider’s name
- The Service Provider’s address
- The Service Provider’s type of business
- The reason for exemption that includes all of the following information (Note: For a paper Form E-595E, in Section 4 select “other” and provide the reason in the space provided):
  - The Qualifying Zoo Operator’s name
  - The Qualifying Zoo Operator’s exemption certificate number
  - The following statement: “105-164.13E(c1)”
- If providing a paper Form E-595E, the Service Provider’s signature.

A Service Provider that purchases an item exempt from tax must maintain records that substantiate the item is used to provide a service for a Qualifying Zoo Operator and that the item qualifies for the Exemption.

**Items Purchased by a Contractor** – A Contractor that purchases a qualifying item exempt from sales and use tax must provide the retailer a properly completed [Form E-595E](#), or the required data elements. The Form E-595E, or required data elements, must include the following information:

- The Contractor’s name
- The Contractor’s address
- The Contractor’s type of business
- The reason for exemption that includes all of the following information (Note: For a paper Form E-595E, in Section 4 select “other” and provide the reason in the space provided):
  - The Qualifying Zoo Operator’s name
  - The Qualifying Zoo Operator’s exemption certificate number
  - The following statement: “105-164.13E(c)”
- If providing a paper Form E-595E, the Contractor’s signature.

A Contractor that purchases an item exempt from tax must maintain records that substantiate the item is used to fulfill a contract with a Qualifying Zoo Operator and that the item qualifies for the Exemption.

### **Additional Guidance**

The Department publishes [Sales and Use Tax Bulletins](#) (“Bulletins”) which interpret the North Carolina Sales and Use Tax Act. Some of the interpretations found in the Bulletins will apply to qualifying or conditional farmers operating a zoo. The applicable Bulletins<sup>4</sup> include:

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<sup>4</sup> Bulletin references are to the 2021 Bulletins published on April 25, 2022.

**Bulletin 27 – Farmers and Agriculture** – This Bulletin provides guidance about requirements for qualifying and conditional farmers; exemption certificate numbers; farm and agricultural exemptions; services for qualifying and conditional farmers; and contracts with qualifying and conditional farmers.

**Assistance**

If you have questions about this notice, you may call the Department at 1-877-252-3052 (8:00 am until 4:30 pm EST, Monday through Friday).

*To the extent there is any change in the rate or amount of tax, change to a statute or regulation, or new case law subsequent to the date of this notice, the provisions in this important notice may be superseded or voided. To the extent that any provisions in any other notice, directive, bulletin, or published guidance regarding the subject of this notice and issued prior to the date of this notice conflict with this important notice, the provisions contained in this important notice supersede the previous guidance.*