



Virginia Retail Sales and Use Tax Regulations

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Navigating the process for charging and paying sales and use tax may sometime leave Virginia agricultural entrepreneurs a little uncertain about the correct action. However, there are resources available to you through the Virginia Department of Taxation along with the information in this publication that will assist you in finding the answers to your questions.

History

As part of its initiative to address transportation funding in Virginia, the Virginia General Assembly enacted legislation ([Acts of Assembly 2013, Chapter 766, HB 2313](#)), effective July 1, 2013, that increases the rate of the statewide Retail Sales and Use Tax from 4% to 4.3%. The rate of the local option sales tax remains at 1%, making the combined state and local rate 5.3%. The rate of tax on food purchased for home consumption is not impacted by this rate increase, and remains at 2.5% (1.5% state, 1% local).

Title 58.1, Chapter 6 of the Code of Virginia defines the application of retail sales and use taxation <https://law.lis.virginia.gov/vacode/title58.1/chapter6/section58.1-603/> which establishes a

“license or privilege tax on every person who engages in the business of selling at retail or distributing tangible personal property in this Commonwealth, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this Commonwealth any item or article of tangible personal property as defined in this chapter, or who leases or rents such property within this Commonwealth, in the amount of 4.3 percent:

1. Of the gross sales price of each item or article of tangible personal property when sold at retail or distributed in this Commonwealth.
2. Of the gross proceeds derived from the lease or rental of tangible personal property, where the lease or rental of such property is an established business, or part of an established business, or the same is incidental or germane to such business.
3. Of the cost price of each item or article of tangible personal property stored in this Commonwealth for use or consumption in this Commonwealth.
4. Of the gross proceeds derived from the sale or charges for rooms, lodgings or accommodations furnished to transients as set out in the definition of "retail sale" in [§ 58.1-602](#).
5. Of the gross sales of any services that are expressly stated as taxable within this chapter.

The 2013 legislation also imposes an **additional** regional sales and use tax in the Northern Virginia region and the Hampton Roads regions in the amount of 0.7%. As outlined in Table 1, the total state, local, and regional sales and use tax rate in the Hampton Roads and Northern Virginia regions is 6% (4.3% state, 1% local, 0.7% regional). Beginning July 1, 2018, there is an additional 1% regional sales and use tax in the City of Williamsburg, and the Counties of James City and York, increasing the total sales tax rate in the region to 7%. Food purchased for home consumption is not subject to the additional regional tax.

Table 1: 2018 Sales & Use Tax Rates

	Hampton Roads	Northern Virginia	Historic Triangle	Everywhere Else
General Sales Tax Rate	6%	6%	7%	5.3%
Food for Home Consumption	2.5%	2.5%	2.5%	2.5%

- Hampton Roads includes the Cities of Chesapeake, Franklin, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk and Virginia Beach, and the Counties of Isle of Wight and Southampton.
- Northern Virginia includes the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park; and the Counties of Arlington, Fairfax, Loudoun, and Prince William.
- Historic Triangle includes the City of Williamsburg, and the Counties of James City and York. For more information about the recent retail sales and use tax change in the Historic Triangle, please visit www.tax.virginia.gov/historic-triangle.

Source: <https://tax.virginia.gov/retail-sales-and-use-tax>

Certificate of Registration

Every individual, partnership, corporation, or other business type desiring to engage in or conduct business as a dealer in Virginia must file an application with the Virginia Department of Taxation <https://tax.virginia.gov/register-business-virginia>

The online registration process will only ask you for information that pertains to the type of business you have. You can start the registration process, save a draft, and come back later to complete your registration.

When you have completed your online registration, you will be assigned a Virginia Tax account number. It is important that you include your Virginia Tax account number on all tax returns, payments, and other information you file.

- If your business will be collecting sales tax, a Certificate of Registration is provided at the end of your registration process. This is your permit to collect sales tax, and issue and receive exemption certificates. The Certificate of Registration must be displayed at your physical place of business.
- If you plan to hire employees, you can easily register your business with the Virginia Employment Commission (VEC) at the same time you register with Virginia Tax. VEC is responsible for collecting unemployment tax.

Source: <https://tax.virginia.gov/register-business-virginia>

A separate application is required for each place of business located in Virginia and must be clearly displayed. The sales tax applies to regular or recurring sales of farm products by farmers or peddlers at public markets, roadside stands, farms, or any other place.

Sales & Use Tax

If you are selling your products, you should register your business, collect sales tax at the point of sale, and complete the payment process as defined by the Virginia Department of Taxation electronic process <https://tax.virginia.gov/sales-and-use-tax>.

As of 2008, farmers selling retail should be aware that sales-tax rates fall into two basic categories: 1) food and 2) nonfood. The basic sales tax for nonfood items is 5 percent of gross sales and is comprised of 4 percent for the state and 1 percent for the locality (see Table 1).

Remember, farmers may not be required to collect sales tax if they are making sales of qualifying agricultural produce or eggs at farmers' markets and meet the other statutory requirements. The only way a farmer does not have to collect sales tax from someone purchasing product for resale is if that person provides Form ST-10.

- **Occasional Sales.** Occasional sale is defined as three or fewer separate occasions within one calendar year. Sales at fairs, flea markets, circuses, and carnivals and ales made by peddlers and street vendors are not occasional sales.
<https://law.lis.virginia.gov/admincode/title23/agency10/chapter210/section1080/>
- **Interstate Commerce.** The sales tax does not apply to sales of tangible personal property in interstate commerce. A sale in interstate commerce occurs only when title or possession to the property being sold passes to the purchaser outside Virginia and no use of the property is made within Virginia. The seller can transport the property in his own vehicle, hire an independent carrier, have it delivered by a common carrier, such as the U.S. Post Office, without tax being applied. The purchase and immediate transport out-of-state by a dealer require that the dealer, even if registered in another state, have a valid certificate of exemption (Form St-14)
- **Rental and Leasing.** If farm property is rented/leased for agricultural production for market, the sales and use tax does not apply. It is important to note that the important distinction here is what the item is used for, not the item itself. For example, a leased tractor used in agricultural production may be exempt. If, instead, that tractor were used to cut the grass, the tractor lease would be taxable.

However, if the property is rented/leased for other purposes, the sales and use tax may apply. In August 2019 the Virginia Department of Taxation was asked to clarify a 2013 Commissioner of Taxation Ruling on retail sales and use tax as relates to farm renting space for events. The P.D. 13-212 doesn't specifically state that ground rentals without tangible personal property are exempt but the Virginia Department of Taxation Tax Policy office agrees with the following opinion:

- 1) Taxable – Rental of rooms if accommodations are less than 90 days
- 2) Taxable -- Rental of grounds if food and beverages are provided in addition to the "grounds"

- 3) Non-taxable - If the farmer is not in the business of renting rooms and just rents the grounds (e.g., a farmer that rents out the land just for space is not taxable, but the moment the farmer provides food then the entire transaction becomes taxable).

It is important to remember that should an auditor have a different interpretation and makes an assessment, the taxpayer may need to write the Virginia Department of Taxation for a formal ruling.

Sales Tax Electronic Filing Mandate

As of August, 2012 for monthly sales tax filers, and October, 2013 for quarterly filers, sales and use tax dealers must file their returns and remit sales tax payments electronically. The Department provides three methods for electronically filing sales and use tax returns. Those unable to meet the electronic filing requirement may request a temporary waiver from the Tax Commissioner by completing a Temporary Waiver Request Form.

Source: <https://tax.virginia.gov/sales-and-use-tax>.

Agricultural Exemption

As defined in §58.1-609.2, there are exemptions for agricultural operations.

<https://law.lis.virginia.gov/vacode/58.1-609.2> For example, a farmer engaged in the business of producing agricultural products for market may claim an agricultural exemption. However, a purchase for personal or family use or consumption is not exempt. In addition, a hobby farmer may not claim the tax exemption. A farm that is able to claim the tax exemption is one that is run as a business to make a profit. More specific definition between a hobby farm and a farm is defined by the Internal Revenue Code §1.183-2 Note: Horses for racing or showing and the associated feed and supplies are subject to the tax because horses used for racing are not deemed to be used in the production of an agricultural item for market.

Produce & Egg Sales not exceeding \$2,500. Legislation Approved March 19, 2018 (*Acts of Assembly* 2018, Chapter 362) exempts from the Retail Sales and Use Tax agricultural produce and eggs raised and sold by an individual at retail, sold at a local farmers' market or roadside stand, if the individual seller's annual income from such sales does not exceed \$2,500. This \$2,500 replaces the previous limit of \$1,000.

- In addition to these requirements, qualifying eggs must be sold by producers who sell a total of 150 dozen eggs or less per week produced by their own hens, or who purchase a maximum of 60 dozen eggs per week for sale; and must be edible.

Agricultural producers with annual sales of \$2,500 or less must continue to register to collect the sales and use tax, but are not required to collect or remit the tax until their annual sales exceed \$2,500.

The legislation (§ 58.1-1707) also provides an exemption from the Virginia Litter Tax for farmers who raise and sell agricultural produce, provided:

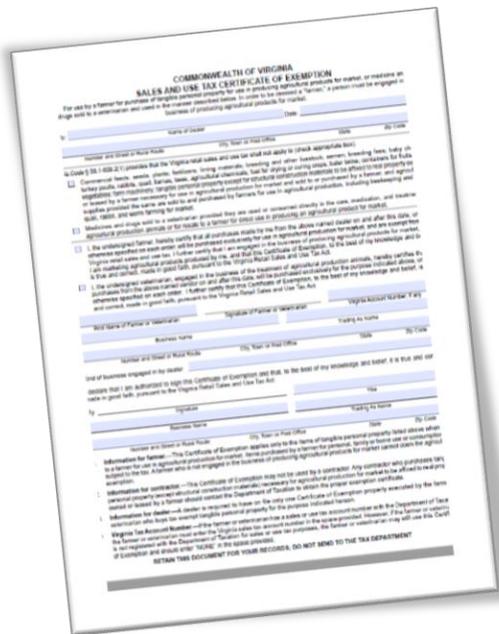
- 1) the produce is sold in local farmers' markets or roadside stands;
- 2) annual sales by the agricultural or egg producer do not exceed \$2,500; and
- 3) the container the producer provides to hold purchased items has not been used previously.

The list of exempt/non-exempt items included in § 58.1-609.2, though extensive, is very specific and should be reviewed case by case. This listing of exempt items includes:

1. Commercial feeds; seeds; plants; fertilizers; liming materials; breeding and other livestock; semen; breeding fees; baby chicks; turkey poults; rabbits; quail; llamas; bees; agricultural chemicals; fuel for drying or curing crops; baler twine; containers for fruit and vegetables; farm machinery; medicines and drugs sold to a veterinarian provided they are used or consumed directly in the care, medication, and treatment of agricultural production animals or for resale to a farmer for direct use in producing an agricultural product for market; tangible personal property, except for structural construction materials to be affixed to real property owned or leased by a farmer, necessary for use in agricultural production for market and sold to or purchased by a farmer or contractor; and agricultural supplies provided the same are sold to and purchased by farmers for use in agricultural production, which also includes beekeeping and fish, quail, rabbit and worm farming for market.
2. Every agricultural commodity or kind of seafood sold or distributed by any person to any other person who purchases not for direct consumption but for the purpose of acquiring raw products for use or consumption in the process of preparing, finishing, or manufacturing such agricultural or seafood commodity for the ultimate retail consumer trade, except when such agricultural or seafood commodity is actually sold or distributed as a marketable or finished product to the ultimate consumer. "Agricultural commodity," for the purposes of this subdivision, means horticultural, poultry, and farm products, livestock and livestock products, and products derived from bees and beekeeping.
3. Livestock and livestock products, poultry and poultry products, and farm and agricultural products, when produced by the farmer and used or consumed by him and the members of his family.
4. Machinery, tools, equipment, materials or repair parts therefor or replacement thereof; fuel or supplies; and fishing boats, marine engines installed thereon or outboard motors used thereon, and all replacement or repair parts in connection therewith; provided the same are sold to and purchased by watermen for use by them in extracting fish, bivalves or crustaceans from waters for commercial purposes.
5. Machinery or tools or repair parts therefor or replacements thereof, fuel, power, energy or supplies, and cereal grains and other feed ingredients, including, but not limited to, drugs, vitamins, minerals, nonprotein nitrogen, and other supplements or additives, used directly in making feed for sale or resale. Making of feed shall include the mixing of liquid ingredients.
6. Machinery or tools and repair parts therefor or replacements thereof, fuel, power, energy or supplies, used directly in the harvesting of forest products for sale or for use as a component part of a product to be sold. Harvesting of forest products shall include all operations prior to the transport of the harvested product used for (i) removing timber or other forest products from the harvesting site, (ii) complying with environmental protection and safety requirements applicable to the harvesting of forest products, (iii) obtaining access to the harvesting site, and (iv) loading cut timber or other forest products onto highway vehicles for transportation to storage or processing facilities.
7. Agricultural produce, as defined in § 3.2-4738, and eggs, as described in § 3.2-5305, raised and sold by an individual at local farmers markets and roadside stands, when such individual's annual income from such sales does not exceed \$2,500.

Source: <https://law.lis.virginia.gov/vacode/58.1-609.2>

To be tax exempt, these items must be purchased by a farmer or contractor or furnished to a contractor by a farmer to be affixed to real property owned or leased by the farmer and must be used in agricultural production for market. Exception: "Structural construction materials" are not included as exempt tangible personal property and, therefore, are subject to the tax. This group includes, but is not limited to, silos, barns, sheds, permanent storage bins, greenhouses, cattle guards, permanent fence, fuel storage tanks, electrical wiring, except wiring running from special purpose equipment to an off-on switch, plumbing, except as part of special purpose equipment.



Certificate of Exemption: Exempt items must be purchased under a Certificate of Exemption. The burden of proving that the tax does not apply rests with the dealer unless the dealer takes, in good faith from the purchaser, a certificate of exemption indicating that the property is exempt under the law. Certificates of Exemption exist for various categories. The Agricultural Certificate of Exemption is Form ST-18. An exemption certificate cannot be used to make tax-free purchase of any item of tangible personal property not covered by the exact wording of the certificate.

Use Tax: For most purposes the use tax is similar to sales tax and would be treated in the same manner as exemptions for agriculture. In brief, the use tax applies to property produced outside Virginia, purchased, and shipped into the state for consumption, without resale. The most common example is the purchase of an item from a mail-order store. The store does not collect tax, but as the consumer, you are supposed to pay tax on these items via the state income tax form.

Additional resources are available at the Virginia Department of Taxation Tax Policy Library found at <https://tax.virginia.gov/laws-rules-decisions>