

State of Louisiana
Department of Revenue

JOHN BEL EDWARDS
Governor



KIMBERLY LEWIS ROBINSON
Secretary

October 5, 2018

Via E-mail/R.R.R. to:

apa.h-wm@legis.la.gov
The Honorable Neil Abramson, Chairman
House Committee on Ways & Means
P.O. Box 94062
Baton Rouge, Louisiana 70804

apa.s-r&f@legis.la.gov
The Honorable Jean-Paul J. Morrell, Chairman
Senate Committee on Revenue & Fiscal Affairs
P.O. Box 94183
Baton Rouge, Louisiana 70804

RE: **Proposed Regulation LAC 61:I.4301, 4404 and 4408 - Commercial Farmer Definition for Sales and Use Tax Exemption for Feed, Seed and Fertilizer**

Chairman Abramson and Chairman Morrell:

On August 10, 2018 a copy of the *Notice of Intent* issued by the Department of Revenue for promulgation of the proposed regulation, LAC 61:I.4301, 4404 and 4408, *Commercial Farmer Definition for Sales and Use Tax Exemption for Feed, Seed and Fertilizer*, was sent to your committee for review. The purpose of this *Notice of Intent* is to implement Act 378 of the 2017 Regular Session (Act 378), which set forth the definition of commercial farmer at R.S. 47:301(30) and limited the exemptions found at 47:301(10)(e), 47:305.3 and 47:305.8 to commercial farmers.

The *Notice of Intent* was published in the August 2018 issue of the *Louisiana Register*. A public hearing was held in the LaSalle Building on Monday, September 24, 2018. Six attendees were present at the public hearing. No written comments were received. Oral Comments were received from three attendees as noted below.

Oral Comments

Mrs. Amelia Kent with the Farm Bureau and Kent Farms

Comments: Louisiana farmers are at a disadvantage compared to their peers due to the complicated and inconsistent tax system in Louisiana. She noted that different farm input items purchased in Louisiana are taxed at different rates, whereas in Mississippi all input items are purchased at a

Contributing to a better quality of life.

617 North Third Street, Post Office Box 44098, Baton Rouge, Louisiana 70804-4098
Telephone (225) 219-2780 • Fax (225) 219-2759
www.revenue.louisiana.gov

single rate. She also testified that there is confusion as to what items are taxed at what rates on the part of both vendors and farmers. She also testified that children participating in 4-H should not have their inputs taxed.

Response to comments: The purpose of the proposed rule is to define commercial farmer in order to determine who is entitled to the feed, seed and fertilizer exemptions and to allow vendors to rely on commercial farmer certifications rather than personal knowledge of farming operations. While Ms. Kent's comments do concern the farming industry as a whole, they are not relevant to the implementation of Act 378, which does not address expanding or interpreting exemptions or tax rates.

Marty Wooldridge, Chairman of the Louisiana Farm Bureau Livestock Committee

Comments: Vendors are burdened by the confusion of the tax system and farmers are crossing state lines to buy farm inputs elsewhere, putting Louisiana vendors at risk of going out of business. Fewer Louisiana vendors makes it more difficult for producers who have to travel further to purchase inputs. There is confusion as to what exemption form to use and what items are covered by the various exemptions. He also expressed concern over 4-H kids who did not have Schedule Fs and therefore would not be entitled to farming exemptions.

Response to Comments: The purpose of the proposed rule is to define commercial farmer in order to determine who is entitled to the feed, seed and fertilizer exemptions and to allow vendors to rely on commercial farmer certifications rather than personal knowledge of farming operations. While Mr. Wooldridge's comments do concern the farming industry as a whole, they are not relevant to the limited scope of the proposed rule which is the implementation of Act 378.

Joe Mapes with Mapes and Mapes

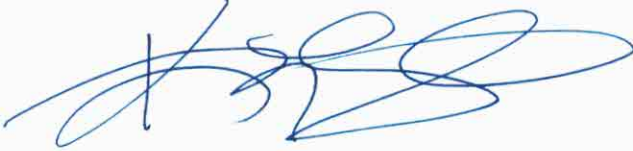
Comments: Farm Bureau will be educating the farmers once the rule comes out and would like a clarification in the rule as to what inputs are covered by the various agricultural exemptions.

Response to Comments: The purpose of the proposed rule is to implement Act 378 which defines commercial farmer and limits the feed, seed and fertilizer exemptions to commercial farmers. Act 378 does not address the full breath of agricultural exemptions, therefore this rule is not the appropriate place to address that request.

This report is being made in accordance with R.S. 47:968(D)(1)(b) of the Administrative Procedure Act. The Department of Revenue has considered the oral comments regarding the regulation. After careful review and analysis of the public comments, the Department of Revenue has concluded that no changes will be made to the text of the rule before it is finalized. As summarized above, the oral comments received were beyond the scope of this proposed rule which is to implement Act 378. The purpose of Act 378 is to ensure that farming exemptions are only extended to commercial farmers (as opposed to hobby or recreational farmers) and to enable vendors to rely on the commercial farmer certification issued by the Department of Revenue in lieu of having independent knowledge of the farming operations of buyers. Act 378 and the proposed rule do not modify in any way exemptions available to farmers, but rather seeks to make them available only to legitimate commercial farmers.

Unless otherwise directed, the proposed rule will be submitted for publication as a final rule in the November 2018 edition of the *Louisiana Register*. Should you have any questions or need additional information, please contact me at (225) 219-2700.

Sincerely,

A handwritten signature in blue ink, appearing to read 'K. Lewis Robinson', with a large, stylized flourish at the end.

Kimberly Lewis Robinson
Secretary

NOTICE OF INTENT

Department of Revenue Policy Services Division

Commercial Farmer Definition for Sales and Use Tax
Exemption for Feed, Seed and Fertilizer
(LAC 61:I.4301, 4404, and 4408)

Under the authority of R.S. 47:301(10)(2), 47:301(30), 47:305.3, 47:305.8, 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to amend LAC 61:I.4301, 4404 and 4408.

The purpose of these proposed amendments is to implement Act 378, of the 2017 Regular Session, which set forth the definition of commercial farmer at R.S. 47:301(30) and limited the exemptions found at R.S. 47:301(10)(e), 47:305.3 and 47:305.8 to commercial farmers.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 43. Sales and Use Tax

§4301. Uniform Sales and Local Sales Tax Definitions

A. - B. ...

C. All examples included in the text of these rules and regulations are for illustration only and in no case should they be construed to impose a limitation.

Commercial Farmer—

a. Commercial Farmer is defined by R.S. 47:301(30) to mean persons, partnerships or corporations who:

i. are occupationally engaged in producing food or agricultural commodities for sale or for further use in producing food or such commodities for consumption or sale;

ii. regularly engage in the commercial production for sale of vegetables, fruits, crops, livestock and other food or agricultural products; and

iii. report farm income and expenses on a federal Schedule F or similar federal tax form, including but not limited to, Forms 1065, 1120 and 1120S under a North American Industry Classification System (NAICS) Code beginning with 11.

b. For purposes of this definition, agricultural products shall mean any agronomic, aquacultural, floricultural, horticultural, maricultural, silvicultural, or viticultural crop, livestock or product.

c. For purposes of this definition livestock means any animal, except dogs and cats. This definition includes bees, cattle, buffalo, bison, oxen, and other bovine; horses, mules, donkeys and other equine; sheep; goats; swine; domestic rabbits; fish, turtles, and other animals identified with aquaculture that are located in artificial reservoirs or enclosures that are both on privately owned property and constructed so as to prevent, at all times, the ingress and egress of fish life from public waters; imported exotic deer and antelope, elk, farm-raised white tailed deer, farm-raised ratites, and other farm-raised exotic animals; chickens, turkeys, and other poultry; and animals placed under the jurisdiction of the commissioner of agriculture and forestry and any hybrid, mixture, or mutation of any such animal.

d. A person, partnership or corporation shall not be considered a commercial farmer if their livestock or crops are produced or maintained for reasons other than commercial use, such as recreational or personal consumption.

e. In order to file a Schedule F or similar federal tax form, a farm must be operated for profit. If farming activity is not carried on for profit, as defined in 26 CFR 1.183-2, then expenses must be itemized on a Schedule A.

f. The department will issue certifications to commercial farmers upon application and satisfaction of all legal requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:301 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Department of Revenue and Taxation, Sales Tax Division, LR 21:957 (September 1995), LR 22:855 (September 1996), amended by the Department of Revenue, Policy Services Division, LR 27:1703 (October 2001), LR 28:348 (February 2002), LR 28:1488 (June 2002), LR 28:2554, 2556 (December 2002). LR 29:186 (February 2003), LR 30:1306 (June 2004), LR 30:2870 (December 2004), LR 31:697 (March 2005), LR 32:111 (January 2006), LR 32:865 (May 2006), LR 44:

Chapter 44. Sales and Use Tax Exemptions

§4404. Seeds Used in Planting Crops

A. The sale at retail of seeds for use by a commercial farmer in the planting of crops of any kind is exempt from state and local sales or use tax. Crops do not include the planting of a garden to produce food for the personal consumption of the planter and his family. Neither is it intended to cover seed used in the planting of growth for landscape purposes unless the commercial farmer is engaged in the business of harvesting those plants and selling them in the commercial market.

B. It is not necessary that the farm operation result in a net profit or that a given acreage of any particular crop be planted. The only requirement is that the planting be made by a commercial farmer.

C. A commercial farmer must present a valid commercial farmer certification certificate and applicable exemption certificate at the time of the purchase. The seller must keep a record of the presentation of such documentation. If the dealer fails to retain evidence of the valid certification and exemption certificate then the dealer will be liable for the sales tax on such purchase.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:305.3, R.S. 47:337.2, R.S. 47:337.9 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Department of Revenue, Policy Services Division, LR 31:99 (January 2005), LR 44:

§4408. Pesticides Used for Agricultural Purposes

A. General. R.S. 47:305.8 provides an exemption from state and local sales or use tax for the sale at retail to commercial farmers of pesticides used for agricultural purposes. This exemption includes, but is not limited to, insecticides, herbicides, and fungicides used for agricultural purposes.

B. Definitions

C. Dealer Requirements. A commercial farmer must present a valid commercial farmer certification certificate and applicable exemption certificate at the time of the purchase. The seller must keep a record of the presentation of such

documentation. If the dealer fails to retain evidence of the presentation of valid certification and exemption certificate then the dealer will be liable for the sales tax on such purchase.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:305.8, R.S. 47:337.2, R.S. 47:337.9 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Department of Revenue and Taxation, Sales Tax Division, LR 21:401 (April 1995), amended by the Department of Revenue, Policy Services Division, LR 31.95 (January 2005), LR 44:

Family Impact Statement

This Family Impact Statement is provided as required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature. Implementation of this proposed Rule should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically, the implementation of this proposed Rule will have no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform this function.

Poverty Impact Statement

The proposed Rule will have no known impact on poverty as described in R.S. 49:973.

Small Business Analysis

It is anticipated that these proposed amendments should not have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic factors has considered and, where possible, utilized regulatory methods in drafting these proposed amendments to accomplish the objectives of applicable statutes while minimizing any anticipated adverse impact on small businesses.

Provider Impact Statement

The proposed regulation will have no known or foreseeable effect on:

1. the staffing levels requirements or qualifications required to provide the same level of service.
2. the total direct and indirect effect on the cost to the provider to provide the same level of service.
3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written data, views, arguments, or comments regarding this proposed rule to Stacey Gréaud, Attorney, Policy Services Division, Office of Legal Affairs by mail to P.O. Box 44098, Baton Rouge, LA 70804-4098. Written comments will be accepted until 4:30 p.m., September 21, 2018.

Public Hearing

A public hearing will be held on September 24, 2018 at 10:30 a.m. in the LaBelle Room, on the first floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802.

Kimberly Lewis Robinson
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Commercial Farmer Definition for Sales and Use Tax Exemption for Feed, Seed and Fertilizer

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This proposal adopts rules implementing Act 378 of 2017 Regular Session of the Louisiana Legislature, which provides a definition of "commercial farmer" and restricts the sales tax exemptions on certain agricultural inputs to purchases made by commercial farmers. Act 378 defines commercial farmer as persons occupationally engaged in producing food or agricultural commodities for sale. It limits the term to those regularly engaged in commercial production who report farm income and expenses on a federal Schedule F or similar tax form such as Form 1065, 1120 or 1120S with a North American Industry Classification System (NAICS) code beginning with 11. Act 378 provides that the sales tax exemptions for feed, seed, fertilizer, pesticides, insecticides, herbicides, fungicides, diesel fuel, butane, propane and other liquefied petroleum gases are limited to purchases made by a commercial farmer.

LDR will require farmers to apply for certification and will initiate a farmer certification process similar to the one currently administered for the manufacturing machinery and equipment exemption. The applicant will need to provide a copy of the federal form, such as a Schedule F, where they claim farm income and expenses, or in the case of beginning farmers, an attestation that they are a beginning farmer and will claim farm income and expenses on the current year's tax return. Approved applications will receive a certification from LDR. Act 378 became effective on January 1, 2018. However, LDR will honor existing farmer exemption certificates until July 1, 2019.

LDR will develop forms for application and certification and will require minor software modifications to document the exemption in current tax software. There is no anticipated direct material effect on governmental expenditures as a result of this measure. Costs for implementation of this proposal will be absorbed within the current LDR budget allocation.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This rule limits the availability of sales tax exemptions for certain agricultural inputs to commercial farmers only. Collections may increase to the extent that such purchases were being made by entities who do not meet the definition of commercial farmers or who do not chose to comply with the application process. The revenue impact should be an increase for both the general fund and local funds. LDR has no readily-available data on the amount of purchases under these conditions, so an estimate of the revenue impact is not feasible. However, it seems likely that transactions falling outside of this definition of commercial farmer are relatively small, and that the revenue increase will be small as well.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Commercial farmers will be required to complete an application process and provide a copy of the federal form used to report farm income and expenses. Taxpayers are already required to provide similar data when applying for the manufacturing machinery and equipment exemption which applies to items such as tractors and attachments. Taxpayers are not currently required to apply for the exemptions for feed, seed, fertilizer, pesticides, insecticides, herbicides, fungicides, diesel fuel, butane, propane and other liquefied petroleum gases. Persons who do not qualify for commercial farmer certification,

or who do not apply for a commercial farmer certification will be required to pay sales tax on their purchases.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)

This proposed rule should not affect competition or employment.

Kimberly L. Robinson
Secretary
1808#025

Greg Albrecht
Chief Economist
Legislative Fiscal Office