

701—17.9(422,423) Sales of breeding livestock, fowl and certain other property used in agricultural production. The gross receipts from the sales of the following tangible personal property relating to agricultural production is exempt from tax.

17.9(1) Sales of agricultural breeding livestock. “*Livestock*” means domestic animals which are raised on a farm as a source of food or clothing, *Van Clief v. Comptroller of State of Md.*, 126 A.2d 865 (Md. 1956) and *In the Matter of Simonsen Mill Inc.*, Declaratory Ruling of the State Board, Docket No. 211, April 24, 1980. The term includes cattle, sheep, hogs, and goats. On and after July 1, 1995, ostriches, rheas, and emus are livestock and their sales are also exempt from tax. On and after July 1, 1997, fish and any other animals which are products of aquaculture are considered to be livestock as well. Effective March 6, 2002, and retroactively to April 1, 1995, farm deer and bison are also included in the term “livestock.” “Farm deer” are defined as set forth in Iowa Code section 189A.2 and commonly include animals belonging to the cervidae family, such as fallow deer, red deer or elk and sika. However, “farm deer” does not include unmarked free-ranging elk. Sales of the foregoing are exempt from tax. Excluded from the term are horses, mules, other draft animals, dogs, cats, and other pets. Also excluded from the term are mink, fish (prior to July 1, 1997), bees, or other nondomesticated animals even if raised in captivity and even if raised as a source of food or clothing. Also excluded is any animal raised for racing. Effective May 23, 2003, the definition of “livestock” includes whitetail deer and mule deer, but not free-ranging whitetail deer and mule deer.

The sale of agricultural livestock is exempt from tax under this subrule only if the purchaser intends to use the livestock primarily for breeding at the time of purchase. The sale of agricultural livestock which is capable of, but will not be used for breeding or primarily for breeding, is not exempt from tax under this subrule. However, sales of most nonbreeding agricultural livestock to farmers would be a sale for resale and exempt from tax.

EXAMPLE 1: A breeding service purchases a prize bull from a farmer. At the time of sale the intent is to use the bull for breeding other cattle. The sale of the bull is exempt from tax even though three years later the breeding service sells the bull to a meat packer.

EXAMPLE 2: A farmer purchases dairy cows. To ensure production of milk over a sustained period of time, dairy cows must be bred to produce calves. If a farmer purchases dairy cows for the primary purpose of using them to produce milk and incidentally breeds them to ensure that this milk will be produced, the sale of the dairy cows to the farmer is not exempt from tax under this subrule. If the farmer purchases the dairy cows for the primary purpose of using them to produce calves and, incidental to that purpose, at times sells the milk which the cows produce, the sale of the dairy cows to the farmer is exempt from tax under this subrule.

17.9(2) Sales of domesticated fowl. “*Domesticated fowl*” means any domesticated bird raised as a source of food, either eggs or meat. The word includes, but is not limited to, chickens, ducks, turkeys, and pigeons raised for meat rather than for racing or as pets. On and after July 1, 1995, the word includes ostriches, rheas, and emus. Excluded from the meaning of the word are nondomesticated birds, such as pheasants, raised for meat or any other purpose. The purchase of any domesticated fowl for the purpose of providing eggs or meat is exempt from tax, whether purchased by a person engaged in agricultural production or not.

17.9(3) Sales of herbicides, pesticides, insecticides, food, medication, and agricultural drainage tile (including gross receipts from the installation of agricultural drainage tile) which are to be used in disease, weed, or insect control or health promotion of plants or livestock produced as part of agricultural production for market are exempt from tax. On and after April 1, 1990, sales of adjuvants, surfactants, and other products which enhance the effects of herbicides, pesticides, or insecticides used for the reasons listed above are also exempt from tax. As used in this subrule:

a. “*Adjuvant*” is any substance which is added to a herbicide, pesticide, or insecticide to increase its potency.

b. “*Agricultural production*” is limited to what would ordinarily be considered a farming operation undertaken for profit. The term refers to the raising of crops or livestock for market on an acreage. See *Bezdek's Inc. v. Iowa Department of Revenue* (Linn Cty. Dist. Ct., May 14, 1984). Included within the meaning of the phrase “agricultural production” is any feedlot operation whether or not

the land upon which a feedlot operation is located is used to grow crops to feed the livestock in the feedlot, and regardless of whether or not the livestock fed are owned by persons conducting the feedlot operation; operations growing and raising hybrid seed corn or other seed for sale to farmers; and nurseries, ranches, orchards, and dairies. On and after July 1, 1995, “agricultural production” includes the raising of flowering, ornamental, or vegetable plants in commercial greenhouse or elsewhere for sale in the ordinary course of business. On and after July 1, 1997, the phrase also includes any kind of aquaculture. The following are excluded from the meaning of “agricultural production”: commercial greenhouses (prior to July 1, 1995); logging; catfish raising (prior to July 1, 1997); production of Christmas trees; beekeeping; and the raising of mink, other nondomesticated furbearing animals, and nondomesticated fowl (other than ostriches, rheas, and emus). The above list of exclusions and inclusions within the term “agricultural production” is not exhaustive.

c. “*Food*” includes vitamins, minerals, other nutritional food supplements, and hormones sold to promote the growth of livestock.

d. “*Herbicide*” means any substance intended to prevent, destroy, or retard the growth of plants including fungi. The term shall include preemergence, postemergence, lay-by, pasture, defoliant, desiccant herbicides and fungicides.

e. “*Insecticide*” means any substance used to kill insects. Any substance used merely to repel insects is not an insecticide. Mechanical devices which are used to kill insects are not insecticides.

f. “*Livestock*.” See subrule 17.9(1) for the definition of this term. In addition, for the purposes of this subrule, the word “livestock” includes domesticated fowl.

g. “*Medication*” is not limited to antibiotics or other drugs administered to livestock.

h. “*Plants*” includes fungi such as mushrooms, crops commonly grown in this state such as corn, soybeans, oats, hay, alfalfa hay, wheat, sorghum, and rye. Also included within the meaning of the term are flowers, small shrubs, and fruit trees. Excluded from the meaning of the term are fir trees raised for Christmas trees and any trees raised to be harvested for their wood.

i. “*Pesticide*” means any substance which is used to kill rodents or smaller vermin, other than insects, such as nematodes, spiders, or bacteria. For the purposes of this subrule, a disinfectant is a pesticide. Excluded from the term “pesticide” is any substance which merely repels pests or any device, such as a rat trap, which kills pests by mechanical action.

j. “*Surfactant*” is a substance which is active on a surface.

The following are examples of taxable and nontaxable sales related to agricultural production for market:

1. The sale of any substance which is not itself an insecticide, herbicide, or pesticide used to make more effective or enhance the function of any insecticide, herbicide, or pesticide is subject to tax prior to April 1, 1990. On and after April 1, 1990, sales of adjuvants, surfactants, and other products which are used to enhance the effectiveness of any insecticide, herbicide, or pesticide used in agricultural production are exempt from tax.

2. The sale of herbicides, pesticides, insecticides, food, medication, drainage tile, and exempt products listed in “1” above to any person not engaged in agricultural production for market is exempt if the property sold will be used for an exempt purpose, e.g., disease control, on behalf of another person engaged in agricultural production for market.

17.9(4) The sale of fuel used to provide heat or cooling for livestock buildings is exempt from tax. For the purposes of this subrule, electricity is considered to be a “fuel,” and the term “livestock” includes domesticated fowl. If a building is used partially for housing livestock and partially for a nonexempt purpose, for any portions of the building which are heated or cooled, a proportional exemption from sales tax may be claimed based upon a percentage calculated from a fraction, the numerator of which is the number of square feet of the building heated or cooled and used for housing livestock, and the denominator of which is the number of square feet heated or cooled in the entire building.

17.9(5) On and after July 1, 1995, sales of fuel for heating or cooling greenhouses, buildings, or parts of buildings used for the production of flowering, ornamental, or vegetable plants intended for sale in the ordinary course of business are exempt from tax. See subrule 17.9(4) above for the formula for calculating exempt use if a building is only partly used for plant raising.

17.9(6) On and after July 1, 1997, sales of tangible personal property for use as a fuel in the raising of agricultural products by aquaculture are exempt from tax.

17.9(7) Fuel, gas, electricity, water and heat consumed in implements of husbandry.

a. An implement of husbandry is defined to mean any tool, equipment, or machine necessary to the carrying on of the business of agricultural production and without which that work could not be done. *Reaves v. State*, 50 S.W.2d 286 (Tex. Crim. App. Ct. 1932). An airplane or helicopter designed for and used primarily in spraying or dusting of plants which are raised as part of agricultural production for market is an implement of husbandry.

b. Treatment of fuel used in implements of husbandry prior to July 1, 1985, and subsequent to June 30, 1987. Prior to July 1, 1985, and subsequent to June 30, 1987, the sale of fuel used in any implement of husbandry, whether self-propelled or not, is exempt from tax if consumed while the implement is engaged in agricultural production. Thus, fuel used not only in tractors or combines but also fuel used in implements which cannot move under their own power is exempt from tax. The sale of fuel used in milk coolers and milking machines, stationary irrigation equipment, implements used to handle feed, grain and hay and to provide water for livestock, is exempt from tax even though these implements of husbandry would not, at least ordinarily, be “self-propelled.”

c. Sale of fuel used in implements of husbandry on and after July 1, 1985, to and including June 30, 1987. On and after July 1, 1985, to and including June 30, 1987, only the sale of fuel used in “self-propelled” implements was exempt from tax. A “self-propelled” implement of husbandry is one which is capable of movement from one place to another under its own power. An implement of husbandry is not self-propelled simply because it has moving parts. Tractors, combines, and motor trucks used exclusively for delivery and application of fertilizer would be nonexclusive examples of self-propelled implements of husbandry. An irrigation system, which rotates a shaft that dispenses water and a wheel or wheels which support the shaft in a circle about a wellhead which remains stationary, is not a “self-propelled” implement of husbandry.

d. For the purposes of this subrule, electricity used to power an implement of husbandry engaged in agricultural production or consumed in grain drying is considered to be a “fuel.”

e. On and after July 1, 1987, the gross receipts from the sale of gas, electricity, water, or heat used in implements of husbandry engaged in agricultural production which is not otherwise exempt under the previous provisions of this subrule, is exempt from tax. See subrule 17.9(3) for the characterization of “Agricultural production” applicable to this subrule.

17.9(8) Water, when sold to farmers who are purchasing water for both livestock production as well as for household and sanitation use, shall be subject to the imposition of the tax the same as electricity or steam in rule 17.3(422,423).

Water sold to farmers and others and used directly as drinking water for livestock or poultry products for market, shall be exempt from the imposition of tax. Water used for other purposes such as household use, sanitation, or swimming pools shall be subject to tax. When water is used in livestock production, as well as for other purposes, the water may, when practical, be separately metered and separately billed to clearly distinguish the water consumed for livestock purposes from other purposes. When it is impractical to separately meter water which is exempt from that which is taxable, the purchaser may furnish a statement to the seller which will enable the seller to determine the percentage of water subject to the exemption. In the absence of proof to the contrary, the retailer of the water shall bill and collect tax on the first 4,000 gallons of water per month. The first 4,000 gallons of water per month will be considered to be for nonexempt use and the balance will be considered to be used as part of agricultural production.

17.9(9) Refunds regarding farm deer and bison. Effective March 6, 2002, and retroactive to April 1, 1995, refunds of tax, penalty or interest may be claimed for sale of feed and feed supplements and additives when used for consumption by farm deer or bison. To be eligible for refund, the sale must have occurred between April 1, 1995, and March 6, 2002, and the refund claim must be filed prior to October 1, 2002. Refund claims are limited to \$50,000 in aggregate and will not be allowed if not timely filed.

If the amount of claims totals more than \$50,000 in aggregate, the department will prorate the \$50,000 among all the claimants in relation to the amounts of the claimants' valid claims.

This rule is intended to implement Iowa Code sections 422.42, 422.43, and 423.1 and 2003 Iowa Acts, chapter 149, sections 1 and 4.