

**§ 105-164.13E. Exemption for farmers.**

(a) Exemption. – 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. For purposes of this section, the term "income from farming operations" means sales plus any other amounts treated as gross income under the Code from farming operations. A qualifying farmer includes a dairy operator, a poultry farmer, an egg producer, a livestock farmer, a farmer of crops, and a farmer of an aquatic species, as defined in G.S. 106-758. A qualifying farmer may apply to the Secretary for an exemption certificate number under G.S. 105-164.28A. The exemption certificate expires when a person fails to meet the income threshold for three consecutive taxable years or ceases to engage in farming operations, whichever comes first.

The following tangible personal property, digital property, and services are exempt from sales and use tax if purchased by a qualifying farmer and for use by the farmer in farming operations. For purposes of this section, an item is used by a farmer for farming operations if it is used for the planting, cultivating, harvesting, or curing of farm crops or in the production of dairy products, eggs, or animals:

- (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.
- (6) Any of the following substances when purchased for use on animals or plants, as appropriate, held or produced for commercial purposes. This exemption does not apply to any equipment or devices used to administer, release, apply, or otherwise dispense these substances:
  - a. Remedies, vaccines, medications, litter materials, and feeds for animals.
  - b. Rodenticides, insecticides, herbicides, fungicides, and pesticides.
  - c. Defoliants 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) Baby chicks and poults sold for commercial poultry or egg production.
- (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.

(b) Conditional Exemption. – A person who does not meet the definition of a qualifying farmer in subsection (a) of this section may apply to the Department for a conditional exemption certificate under G.S. 105-164.28A. A person with a conditional exemption certificate is allowed to purchase items exempt from sales and use tax to the same extent as a qualifying farmer under subsection (a) of this section. To receive a conditional exemption certificate under this subsection, the person must certify that the person intends to engage in farming operations, as that term is described in subsection (a) of this section, 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.

A conditional exemption certificate issued under this subsection is valid for the taxable year in which the certificate is issued and the following two taxable years, provided the person to whom the certificate is issued is engaged in farming and provides copies of applicable State and federal income tax returns to the Department within 90 days following the due date of an income tax return for each taxable year covered by the conditional exemption certificate, including an extension of the due date granted by the Secretary under G.S. 105-263. A conditional exemption certificate issued under this subsection may not be extended or renewed beyond the original three-year period. The Department may not issue a conditional exemption certificate to a person who has had a conditional exemption certificate issued under this subsection during the prior 15 taxable years.

A person who purchases items with a conditional exemption certificate must maintain documentation of the items purchased and copies of State and federal income tax returns that reflect activities from farming operations for the period of time covered by the conditional exemption certificate for three years following the expiration of the conditional exemption certificate. The Secretary may require a person who has a conditional exemption certificate to provide any other information requested by the Secretary to verify the person met the conditions of this subsection. A person who fails to provide the information requested by the Secretary in a timely manner or who fails to meet the requirements of this subsection becomes liable for any taxes for which an exemption under this subsection was claimed. The taxes become due and payable at the expiration of the conditional exemption certificate, and interest accrues from the date of the original purchase. Additionally, where the person does not timely provide the information requested by the Secretary, the misuse of exemption certificate penalty in G.S. 105-236(a)(5a) applies to each seller identified by the Department from which the person made a purchase.

(c) Contract with a Farmer. – A qualifying item listed in subdivisions (5), (8), and (9) of subsection (a) of this section purchased to fulfill a contract with a person who holds a qualifying farmer exemption certificate or a conditional farmer exemption certificate issued

under G.S. 105-164.28A is exempt from sales and use tax to the same extent as if purchased directly by the person who holds the exemption certificate. A contractor that purchases one of the items allowed an exemption under this section must provide an exemption certificate to the retailer that includes the name of the qualifying farmer or conditional farmer exemption certificate holder and the qualifying farmer or conditional farmer exemption certificate number issued to that holder.

(d) Definition. – For purposes of this section, the term "taxable year" has the same meaning as defined in G.S. 105-153.3. (2013-316, s. 3.3(a); 2013-363, s. 11.4; 2014-3, s. 3.1(a); 2015-6, s. 2.13(a); 2016-5, s. 3.12(a); 2016-94, s. 38.5(j).)