

OFFICE OF FISCAL AND PROGRAM REVIEW

Date: January 10, 2012
To: Members, Joint Standing Committee on Taxation
From: Elizabeth Cooper, Legislative Analyst

L.D. 234, An Act To Provide a Sales Tax Exemption to Commercial Horticulturists

Summary: This bill enacts a definition of "commercial agricultural production" that it includes greenhouse and nursery products with the purpose of applying the sales tax exemption contained in current law to these products. As written, it expands the sales tax exemption for seeds, fertilizers and pesticides to include greenhouse and nursery products.

Action 1st Session:

- The public hearing was held March 25 and at the work session held on April 14, 2011, the Committee voted unanimously OTP-A with the amendment being a fiscal note only.
- The bill was passed to be enacted and placed on the Appropriations Table and the Joint Standing Committee on Appropriations and Financial Affairs voted to recommit it to the Taxation Committee as it will reduce General Fund and reduce revenue sharing.
- At the interim meeting of November 9, 2011, the Committee agreed to review this and other tax expenditure bills using the criteria proposed in the Committee bill.

Technical Issues: MRS identifies a number of issues in the memo dated Feb 16, 2011 that were not addressed during the first work session. Should the Committee choose to move forward with this bill, members may want to consider these issue. (See attachment.)

Public Hearing:

Proponents including nursery owners, a blueberry farmer, and representatives from the Ornamental Horticulture Council of Maine and the Maine Farm Bureau indicate that this addresses double taxation and competition with others in the industry growing the same crops. Proponents stated that no other state divides horticulture and agriculture. Additional written testimony was submitted.

Opposed – none

NFNA – none

Fiscal Information: The preliminary impact statement provided for the original bill appears to include in the calculation all intermediate purchases rather than just seeds, fertilizers and pesticides and needs to be revised. Maine Revenue Services estimates that as written the bill would generate approx. \$10,000 in revenue loss and if it includes machinery and equipment per section 2013 the cost would be approx. \$110,000.

Issued raised by Maine Revenue Services

- 1) **The phrase “greenhouse or nursery product is not defined. As written MRS would likely use the definition in 7 MRSA §2211(4)(A) and (B) in addition to seeds, cut flowers, dried flowers and herbs produced by a commercial greenhouse or nursery. Other bills have included definitions that are more specific.**

7 MRSA, §2211. DEFINITIONS

4. Nursery stock. "Nursery stock" means:

A. Woody plants, including ornamental and fruiting trees, shrubs, vines and all viable parts of these plants;

B. Herbaceous plants, including florist stock plants, annuals, perennials, vegetable seedlings, herbs, potted plants and all viable parts of these plants; and

C. Any other plant or plant part designated by the commissioner.

"Nursery stock" **does not** include cut Christmas trees, wreaths, field crops, seeds, dried herbs and flowers and cut flowers.

- 2) **As written, the production of seedlings and other nursery stock would still not qualify as commercial agriculture production for the purposes of §2013. Will need to amend §2013 if this is the intent. (36 MRSA §2013 is below.)**
- 3) **The phrase “commercial production of livestock” in Section 1 of the bill appears to be unnecessary and potentially confusing as 1760 (7-C) already applies to products used in animal agriculture.**

7-C. Products used in animal agriculture. Sales of breeding stock, semen, embryos, feed, hormones, antibiotics, medicine, pesticides and litter for use in animal agricultural production and sales of antiseptics and cleaning agents used in commercial animal agricultural production. Animal agricultural production includes the raising and keeping of equines.

§2013. Refund of sales tax on depreciable machinery and equipment purchases

1. Definitions. As used in this section, unless the context otherwise indicates, the following words have the following meanings.

A. "Commercial agricultural production" means commercial production of crops for human and animal consumption, including the commercial production of sod, an agricultural composting operation as defined in Title 7, section 152, subsection 1, the commercial production of seed to be used primarily to raise crops for nourishment of humans or animals and the production of livestock, including the removal and storage of manure from that livestock.

A-1. "Commercial aquacultural production" means the commercial production of cultured fish, shellfish, seaweed or other marine plants for human and animal consumption, including:

(1) All cultivating activities occurring at hatcheries or nurseries, from the egg, larval or spore stages to the transfer of the product to a growing site; and

(2) All cultivating activities occurring on water, from the receipt of fish, shellfish, seaweed or other marine plants from onshore facilities to the delivery of harvested products to onshore facilities for processing.

B. "Commercial fishing" means attempting to catch fish or any other marine animals or organisms with the intent of disposing of them for profit or trade in commercial channels and does not include subsistence fishing for personal use, sport fishing or charter boat fishing where the vessel is used for carrying sport anglers to available fishing grounds.

C. "Depreciable machinery and equipment" means that part of the following machinery and equipment for which depreciation is allowable under the Code and repair parts for that machinery and equipment:

(1) New or used machinery and equipment for use directly and primarily in commercial agricultural production, including self-propelled vehicles, but excluding motor vehicles as defined in section 1752, subsection 7; attachments and equipment for the production of field and orchard crops; new or used machinery and equipment for use directly and primarily in production of milk, animal husbandry and production of livestock, including poultry; and new or used machinery and equipment not used directly and primarily in commercial agricultural production, but used to transport potatoes from a truck into a storage location;

(2) New or used watercraft, nets, traps, cables, tackle and related equipment necessary to and used directly and primarily in the operation of a commercial fishing venture, but excluding motor vehicles as defined in section 1752, subsection 7; or

(3) New or used watercraft, machinery or equipment used directly and primarily for commercial aquacultural production, including, but not limited to: nets; ropes; cables; anchors and anchor weights; shackles and other hardware; buoys; fish tanks; fish totes; oxygen tanks; pumping systems; generators; water-heating systems; boilers and related pumping systems; diving equipment; feeders and related equipment; power-generating equipment; tank water-level sensors; aboveground piping; water-oxygenating systems; fish-grading equipment; safety equipment; and sea cage systems, including walkways and frames, lights, netting, buoys, shackles, ropes, cables, anchors and anchor weights; but excluding motor vehicles as defined in section 1752, subsection 7.

2. Refund authorized. Any person, association of persons, firm or corporation that purchases electricity, or that purchases or leases depreciable machinery or equipment, for use in commercial agricultural production, commercial fishing or commercial aquacultural production or that purchases fuel for use in a commercial fishing vessel must be refunded the amount of sales tax paid upon presenting to the State Tax Assessor evidence that the purchase is eligible for refund under this section.

Evidence required by the assessor may include a copy or copies of that portion of the purchaser's or lessee's most recent filing under the United States Internal Revenue Code that indicates that the purchaser or lessee is engaged in commercial agricultural production, commercial fishing or commercial aquacultural production and that the purchased machinery or equipment is depreciable for those purposes or would be depreciable for those purposes if owned by the lessee.

In the event that any piece of machinery or equipment is only partially depreciable under the United States Internal Revenue Code, any reimbursement of the sales tax must be prorated accordingly. In the event that electricity or fuel for a commercial fishing vessel is used in qualifying and nonqualifying activities, any reimbursement of the sales tax must be prorated accordingly.

Application for refunds must be filed with the assessor within 36 months of the date of purchase or execution of the lease.

3. Purchases made free of tax with certificate. Sales tax need not be paid on the purchase of electricity, fuel for a commercial fishing vessel or a single item of machinery or equipment if the purchaser has obtained a certificate from the assessor stating that the purchaser is engaged in commercial agricultural production, commercial fishing or commercial aquacultural production and authorizing the purchaser to purchase electricity, fuel for a commercial fishing vessel or depreciable machinery and equipment without paying Maine sales tax. The seller is required to obtain a copy of the certificate together with an affidavit as prescribed by the assessor, to be maintained in the seller's records, attesting to the qualification of the purchase for exemption pursuant to this section. In order to qualify for this exemption, the electricity, fuel for a commercial fishing vessel or depreciable machinery or equipment must be used directly in commercial agricultural production, commercial fishing or commercial aquacultural production. In order to qualify for this exemption, the electricity or fuel for a commercial fishing vessel must be used in qualifying activities, including support operations.

4. Information on processes for refunds and appeals. The assessor shall post information describing the process for requesting a refund under this section on the bureau's publicly accessible website along with a description of the process to appeal a denial of refund request.