

Agricultural feed; sales; tax exemptions

Breakdown of HB 2326 as passed in 2016

HB 2326 amended a number of sections of state statute relating to agricultural feed, sales, and tax exemptions. The text in blue is new language added as a result of HB 2326.

<p>Provision 1: Includes animal feed under the definition of "food product." ARS 3-561</p>	<p>3-561. <u>Definitions</u> In this article, unless the context otherwise requires: 1. "Food product" includes: (a) Every product of the soil in its natural or manufactured state. (b) Beef and beef products. (c) Swine and pork products. (d) Fowls and poultry products. (e) Eggs and egg products. (f) Milk and milk products. (g) Lamb and sheep products. (h) ANIMAL FEED THAT IS GROWN OR RAISED BY THE PRODUCER AND SOLD AS FEED FOR LIVESTOCK, POULTRY OR RATITES PURCHASED OR RAISED FOR SLAUGHTER, INCLUDING LIVESTOCK PURCHASED OR RAISED FOR PRODUCTION OR USE, SUCH AS MILK COWS, BREEDING BULLS, LAYING HENS AND RIDING OR WORK HORSES.</p>
<p>Provision 2: Voids any municipal ordinance that imposes a tax, license or fee on a purchaser of food products from a producer. ARS 3-563</p>	<p>3-563. <u>Tax, license or fee against producers and purchasers prohibited</u> A. A tax, license or fee MAY NOT be imposed OR levied ON OR demanded or collected from: 1. A producer for a sale of a food product 2. A PURCHASER OF A FOOD PRODUCT FROM A PRODUCER. B. A penalty or punishment MAY NOT be imposed on account of the sale OF A FOOD PRODUCT, except for A violation of laws providing for inspection. C. A municipal ordinance THAT seeks to impose or subject a producer, OR A PURCHASER OF A FOOD PRODUCT FROM A PRODUCER, to a tax, license or fee IS void, except that all such products in common with similar products offered for sale by persons not the producers thereof ARE subject to inspection. A municipal ordinance providing for inspection IS not valid unless it applies in the same manner and terms to other persons offering similar products for sale.</p>

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Provision 3: Removes the requirement for owners, proprietors or tenants of agricultural lands or farms that sell livestock or poultry feed grown on their lands to obtain a transaction privilege tax exemption certificate or resale certificate when selling to anyone that: ARS 42-5009 and ARS 42-5022

- 1) Feeds their own livestock or poultry;
- 2) Produces livestock or poultry commercially
- 3) Feeds livestock or poultry commercially or board livestock noncommercially

A hay broker or retail business would still need to obtain such a certificate

42-5009. Certificates establishing deductions; liability for making false certificate

A. A person who conducts any business classified under article 2 of this chapter may establish entitlement to the allowable deductions from the tax base of that business by both:

1. Marking the invoice for the transaction to indicate that the gross proceeds of sales or gross income derived from the transaction was deducted from the tax base.

2. Obtaining a certificate executed by the purchaser indicating the name and address of the purchaser, the precise nature of the business of the purchaser, the purpose for which the purchase was made, the necessary facts to establish the appropriate deduction and the tax license number of the purchaser to the extent the deduction depends on the purchaser conducting business classified under article 2 of this chapter and a certification that the person executing the certificate is authorized to do so on behalf of the purchaser. The certificate may be disregarded if the seller has reason to believe that the information contained in the certificate is not accurate or complete.

B. A person who does not comply with subsection A of this section may establish entitlement to the deduction by presenting facts necessary to support the entitlement, but the burden of proof is on that person.

N. THE REQUIREMENTS OF SUBSECTIONS A AND B OF THIS SECTION DO NOT APPLY TO OWNERS, PROPRIETORS OR TENANTS OF AGRICULTURAL LANDS OR FARMS WHO SELL LIVESTOCK OR POULTRY FEED THAT IS GROWN OR RAISED ON THEIR LANDS TO ANY OF THE FOLLOWING:

1. PERSONS WHO FEED THEIR OWN LIVESTOCK OR POULTRY.

2. PERSONS WHO ARE ENGAGED IN THE BUSINESS OF PRODUCING LIVESTOCK OR POULTRY COMMERCIALY.

3. PERSONS WHO ARE ENGAGED IN THE BUSINESS OF FEEDING LIVESTOCK OR POULTRY COMMERCIALY OR WHO BOARD LIVESTOCK NONCOMMERCIALY.

42-5022. Burden of proving sale not at retail

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	<p>The burden of proving that a sale of tangible personal property was not a sale at retail shall be ON the person who made THE SALE, unless EITHER:</p> <ol style="list-style-type: none"> 1. THE person has taken from the purchaser a certificate signed by and bearing the name and address of the purchaser that the property was purchased for resale in the ordinary course of business and that he has a valid license, with the number thereof, to sell the kind of property purchased. 2. THE PERSON IS EXEMPT FROM THE REQUIREMENT OF A CERTIFICATE PURSUANT TO SECTION 42-5009, SUBSECTION N. <p>42-5159. <u>Exemptions</u></p> <ol style="list-style-type: none"> A. The tax levied by this article does not apply to the storage, use or consumption in this state of the following described tangible personal property: <ol style="list-style-type: none"> 8. PURCHASES OF: <ol style="list-style-type: none"> (a) LIVESTOCK AND POULTRY TO PERSONS ENGAGING IN THE BUSINESSES OF FARMING, RANCHING OR PRODUCING LIVESTOCK OR POULTRY. (b) Livestock AND poultry FEED, supplies, salts, vitamins and other additives SOLD TO PERSONS for use or consumption in the businesses of farming, ranching and PRODUCING OR feeding livestock or poultry OR FOR USE OR CONSUMPTION IN NONCOMMERCIAL BOARDING OF LIVESTOCK. For the purposes of this paragraph, "poultry" includes ratites.
<p>Provision 4: Extends TPT and use tax exemptions to include sales of livestock and poultry feed, salts, vitamins and other additives for livestock and poultry consumption to persons who:</p> <ol style="list-style-type: none"> 1. Feed their own livestock or poultry; or 2. Board livestock noncommercially <p>ARS 42-5061(A)(42)</p> <p>There are similar use tax exemptions in ARS 42-5159(A)(8)</p> <p>***This section also applies to hay brokers and feed stores as well, in addition to producers selling their own livestock feed.***</p>	<p>42-5061. <u>Retail classification; definitions</u></p> <ol style="list-style-type: none"> A. <u>The retail classification is comprised of the business of selling tangible personal property at retail.</u> The tax base for the retail classification is the gross proceeds of sales or gross income derived from the business. <u>The tax imposed on the retail classification does not apply to the gross proceeds of sales or gross income from:</u> <ol style="list-style-type: none"> 42. SALES OF: <ol style="list-style-type: none"> (a) LIVESTOCK AND POULTRY TO PERSONS ENGAGING IN THE BUSINESSES OF FARMING, RANCHING OR PRODUCING LIVESTOCK OR POULTRY. (b) Livestock and poultry feed, salts, vitamins and other additives for livestock or poultry consumption that are sold to persons FOR USE OR CONSUMPTION BY THEIR OWN LIVESTOCK

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	<p>OR POULTRY, FOR USE OR CONSUMPTION in THE BUSINESSES OF FARMING, RANCHING AND producing OR FEEDING livestock, poultry, or livestock or poultry products or FOR USE OR CONSUMPTION IN NONCOMMERCIAL BOARDING OF LIVESTOCK. For the purposes of this paragraph, "poultry" includes ratites.</p>
<p>Provision 5: Exempts farmers who grow, package and market their own agricultural products from the presumption that they are engaged in retail business and subject to TPT. ARS 42-5061(H)</p>	<p>42-5061. <u>Retail classification; definitions</u></p> <p>H. A person who engages in manufacturing, baling, crating, boxing, barreling, canning, bottling, sacking, preserving, processing or otherwise preparing for sale or commercial use any livestock, agricultural or horticultural product or any other product, article, substance or commodity and who sells the product of such business at retail in this state is deemed, as to such sales, to be engaged in business classified under the retail classification. This subsection does not apply to:</p> <p style="padding-left: 40px;">1. AGRICULTURAL PRODUCERS WHO ARE OWNERS, PROPRIETORS OR TENANTS OF AGRICULTURAL LANDS, ORCHARDS, FARMS OR GARDENS WHERE AGRICULTURAL PRODUCTS ARE GROWN, RAISED OR PREPARED FOR MARKET AND WHO ARE MARKETING THEIR OWN AGRICULTURAL PRODUCTS.</p>