



# TAX BULLETIN 11-7

## *Virginia Department of Taxation*

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### **IMPORTANT INFORMATION REGARDING SALES OF EGGS AND AGRICULTURAL PRODUCTS AT FARMERS MARKETS AND ROADSIDE STANDS**

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Effective July 1, 2011, legislation enacted during the 2011 Session of the General Assembly (House Bill 1942, *Acts of Assembly 2011*, Chapter 466) provides a limited exemption from the Retail Sales and Use Tax for certain sales of eggs and agricultural products at farmers markets and roadside stands. In order to qualify for this exemption, the eggs and agricultural products must be sold at a farmers market or roadside stand by the individual who has raised the items, and the individual's annual sales of such items at farmers markets and roadside stands cannot exceed \$1,000. The legislation also provides an exemption from the Litter Tax regarding such sales so long as the bag or other container provided by the seller to hold the items has been previously used.

#### **Current Tax Treatment of Eggs and Agricultural Products Sold at Retail**

Several different taxes are imposed upon producers of eggs and agricultural products when these items are sold in Virginia, including the Retail Sales and Use Tax, the Litter Tax, and various excise taxes.

##### Retail Sales and Use Tax

The Retail Sales and Use Tax is imposed upon the retail sale of tangible personal property in Virginia. While the tax is generally imposed at the rate of 5%, "food purchased for home consumption" is taxed at a reduced rate of 2 ½%. The definition of "food purchased for home consumption" generally includes most staple grocery food items and cold prepared foods packaged for home consumption. Current law defines agricultural produce as "fruits and vegetables." Thus, eggs and agricultural products generally fall under the classification of "food purchased for home consumption." *Virginia Tax Bulletin* ("VTB") 05-7.

While qualifying food must meet the definition for “food purchased for home consumption,” the law presumes certain vendors are sellers of food for immediate consumption, and these vendors are not authorized to charge the reduced rate on eligible food. These vendors include: caterers, concession vendors, entertainment facilities, fair and carnival vendors, gift shops, hamburger and hotdog stands, honor and snack vendors, ice cream stands and trucks, mobile food vendors, movie theaters, newsstands, and vending machine vendors. Farmers markets, supermarkets, and specialty meat and produce stores are among the list of retailers generally authorized to charge the reduced tax rate on sales of eligible food and beverages. These retailers, however, are still required to collect the Retail Sales and Use Tax at the five percent rate on the sale of ineligible items, such as hot food for immediate consumption.

Farmers or other persons making regular or recurring sales of farm products or other goods at retail at a public market, roadside stand, farm, or any other place are required to collect the Retail Sales and Use Tax on the sale of these items. Persons making an occasional sale, defined in 23 Virginia Administrative Code 10-210-1080 as a sale by a person who is engaged in sales on three or fewer separate occasions within one calendar year are exempt from collecting tax on these sales. Sales at fairs, flea markets, circuses, carnivals, and sales made by peddlers and street vendors are not occasional sales. However, sales at wholesale are generally exempt from the Retail Sales and Use Tax.

To ease the administrative burden that would likely result from requiring sellers at farmers markets and similar events to collect tax on their sales, historically the Virginia Department of Taxation has allowed sponsors and operators of farmers markets, flea markets, circuses, fairs, carnivals and other similar establishments and events, upon written authorization by the Tax Commissioner, to collect the tax on behalf of their individual vendors.

### Litter Tax

The Virginia Litter Tax is imposed annually on manufacturers, wholesalers, distributors, and retailers of certain statutorily specified products, including, but not limited to food for human or pet consumption and groceries, at a rate of \$10 per establishment from which such business is conducted. TAX has interpreted groceries to include produce and dairy products. An additional \$15 annual litter tax per establishment is imposed upon manufacturers, wholesalers, distributors, and retailers of groceries, soft drinks, carbonated waters, beer and other malt beverages.

While a farmer is generally not considered to be a manufacturer, wholesaler, distributor or retailer, he is considered a retailer if he is selling the farm products to the ultimate consumer. Thus, prior to the effective date of House Bill 1942, in most cases, both litter taxes applied to agricultural producers engaged in the sale of eggs

or agricultural products at farmers markets, resulting in a total annual litter tax for such producers of \$25.

### Egg Excise Tax

The Virginia Egg Excise Tax is imposed on eggs purchased or sold for use or consumption in Virginia. The tax is imposed on the “handler” of eggs, which term includes any person who purchases, sells, or handles eggs used at the wholesale level for consumption in Virginia, and any person in Virginia who purchases eggs from anyone other than a registered handler for use or consumption at wholesale in Virginia. The tax is imposed at a rate of 5 cents per 30-dozen case, or, if the eggs are purchased or sold in other than shell form, 11 cents per 100 pounds of liquid eggs or liquid equivalent. The egg excise tax is levied only once, generally upon the last handler who sells eggs or egg products to a retailer. There is an exemption for egg producers selling less than 500 cases of eggs per year and eggs that are sold between registered egg handlers.

### **House Bill 1942 Exemption**

#### Retail Sales and Use Tax

House Bill 1942 provides a limited exemption from the Retail Sales and Use Tax for certain sales of agricultural products at farmers markets and roadside stands. In order to qualify for this exemption, the agricultural products must be sold at a farmers market or roadside stand by the individual who raised the items and the individual’s annual sales of such items at farmers markets and roadside stands must not exceed \$1,000.

House Bill 1942 provides a similar exemption for sales of eggs at farmers markets and roadside stands, and egg producers must meet the same requirements to qualify for exemption from the tax. In addition, in order to qualify for the exemption, the eggs must be sold by a producer who sells a total of 150 dozen eggs or less per week produced by his own hens, or who purchases a maximum of 60 dozen eggs per week for sale. Additionally, the eggs must be of edible quality and of the quality represented in order to qualify.

A qualified seller must register with TAX to collect the tax, but is not required to collect or remit the tax or file returns until his annual sales exceed \$1,000. If his income from such sales exceeds \$1,000, the agricultural producer must file returns and remit tax on all taxable sales, including the first \$1,000.

### Litter Tax

The new law also provides an exemption from the litter tax regarding sales that qualify for the Retail Sales and Use Tax exemption for eggs and agricultural products explained above. However, an additional requirement is imposed in order to qualify for the Litter Tax exemption. The bag or container provided by the seller to hold the items must have been previously used.

For additional information, please visit TAX's website, [www.tax.virginia.gov](http://www.tax.virginia.gov). If you have any questions regarding this Tax Bulletin, you may also contact TAX at (804) 367-8037 or through the "Live Chat" service on TAX's website, [www.tax.virginia.gov](http://www.tax.virginia.gov).