

## FARM CLOSE-OUT SALE EXEMPTION

### 39-26-716.4(A)

- (1) **Exemption.** A farm close-out sale that meets the requirements set forth in §39-26-102(4), C.R.S. and as more fully described in this regulation is exempt from sales and use tax. See, §39-26-716(4)(a), C.R.S.
- (2) **Due Diligence of auctioneer.** A farm close-out sale is often conducted by an auctioneer. An auctioneer is a retailer and responsible for collecting, reporting, and remitting sales tax on an auction sale, unless the sale is exempt or the owner has a sales tax license. §39-26-102(1.3), C.R.S. An auctioneer who is responsible for collecting sales tax must exercise due diligence to determine whether goods sold at an auction sale are exempt under the “farm close out sale” exemption. The department will presume that an auctioneer exercised due diligence if the auctioneer obtained a written declaration, signed by the farm or ranch owner or owner’s agent, and the declaration contains the following:
  - (i) a description of each item of property offered for sale (regardless of whether such property is actually sold) and in such detail as to allow the specific property to be identified by a third-party (e.g., VIN of motor vehicles and “disc plow” are sufficient, but “farm implement” is not sufficient);
  - (ii) a declaration that:
    - (A) the property was used in the owner’s farming or ranching operation;
    - (B) the owner/owner’s agent is making or attempting to make a full and final disposition of all property used in the farming or ranching operation;
    - (C) the owner is abandoning the operation on the premises whereon the farming or ranching operation was previously conducted; and
    - (D) if the statement is signed by the owner’s agent, a declaration that the owner’s agent has personal knowledge of the facts supporting the statements or has confirmed with a person (whose name and address are set forth in the declaration) who has such personal knowledge, that the forgoing statements are true.
- (3) **Department may independently review declarations.** The department is not bound by such declarations and may independently review a farm close-out sale to determine whether the exemption applies.
  - a) **Purchasers.** A purchaser is liable for sales tax if the department later determines that the exemption does not apply.
  - b) **Auctioneers.** An auctioneer who, through the exercise of due diligence, reasonably concludes that the sale qualifies as an exempt farm close-out sale is not liable for sales tax if the department later determines that the sale is subject to tax. An auctioneer who has reasonable grounds to believe that any property sold does not qualify for the farm close-out sale exemption must collect sales tax on such property and, if the purchaser believes that such sale is exempt, advise the purchaser that he or she may apply to the department which will evaluate whether the sale is exempt.

- c) **Farm or Ranch Owners.** Farm and ranch owners typically are not “retailers” because they sell their farm and ranch produce at wholesale. Therefore, such owners do not have an obligation to collect tax on the sale of taxable goods. However, a farm or ranch owner who holds a sales tax license issued by the department must, among its other responsibilities as a retailer, exercise the same due diligence otherwise required of the auctioneer at a farm close-out sale.
- 4) **Claiming Farm Close-out sale exemption for motor vehicles.** The auctioneer or licensed owner shall provide, at the conclusion of the farm close-out auction sale, to the purchaser of exempt property a copy of the owner’s or owner’s agent’s written declaration, if such declaration has been made. The purchaser of a motor vehicle sold as part of a farm close-out auction sale shall present a copy of the declaration to the county clerk when the purchaser registers the motor vehicle. The county clerk shall not collect any sales or use tax administered by the department if presented with such a declaration. If a purchaser a motor vehicle is not provided a declaration, the purchaser who believes that the purchase is exempt must pay the appropriate sales or use tax to the county clerk and may file a claim for refund with the department which will review whether the sale is exempt.
- 5) **Retained ownership of real property.** A farmer or rancher may retain ownership of his improved and unimproved real property and his personal property not used in the farming or ranching operations and still be eligible for this exemption if he is abandoning his farming or ranching operations.