

Laws, Regulations and Taxes – Oh my!

Hal Pepper
Financial Analysis Specialist

January 30, 2014
Tennessee Horticultural Expo and Agritourism Conference

- Purpose of this session

- **Increase awareness** of the types of regulations and taxes that may be involved in agritourism
- Information provided is for educational purposes only – not intended as legal advice

- Understanding how laws and regulations apply to agritourism may be challenging
 - Different laws and regulations may come into play with agritourism that may not come into play in traditional agriculture operations
 - People administering laws and regulations may not know if or how laws and regulations apply to the various agritourism enterprises

- Chapter 8 in *Agritourism in Focus* (some regulations may be out of date and we have learned about more since published in 2005)
 - General Regulations
 - Employment Regulations
 - Permits and Licenses for Specific Attractions

Business License

- Who needs a business license?
- Who must file a business tax return?
- How to get a business license
- Paying business tax

Misconceptions about Business Tax

- “Farmers are always exempt from business tax.”
- “As long as most of what I sell was raised by me, I don’t have to get a business license and pay business tax.”

Who needs a business license?

Who must file a business tax return?

- Businesses in a county or municipality with less than \$10,000 in annual sales do not have to file a business tax return.
- Effective January 1, 2014, businesses with annual sales between \$3,000 and \$10,000 must pay \$15 each year to get a “minimal activity license” from the local clerk.
- Persons with \$3,000 or less in annual sales.
- Businesses with annual sales of \$10,000 or more must get a business license from the local clerk and file a business tax return. A \$15 license fee is required for all new businesses that can be renewed at no charge when the annual business tax return is filed.

Business Tax

- A privilege tax that permits you to engage in the business of:
 - Selling tangible personal property at wholesale or retail
 - Rendering certain services (such as agritourism ticket sales)

Exempt services are listed at:

<http://www.tn.gov/revenue/tntaxes/businessstax/classification3.shtml>

Exemption from Business Tax Exists for Farmers

“Tennessee gross sales of livestock, horses, poultry, nursery stock, and other farm products direct from the farm are exempt from the tax, provided that those sales are made directly by the producer, breeder, or trainer.”

Tennessee Department of Revenue's *Business Tax Guide*
Tennessee Code Annotated Section 67-4-712

Sales of Farm Products by the Farmer Who Raised Them

- “Products of the farm sold by the farmer who raised them” are exempt from business tax.
- Livestock
- Nursery Stock
- Fruits
- Vegetables
- Poultry



Sales of Farm Products by the Farmer Who Raised Them

- The farmer who raises the product may be a person or entity.
- When we talk about “sales of farm products by the farmer who raised them” we mean that the person or entity who sells the farm products to the consumer is the same person or entity who raised them.



Are There Exemptions From Business Tax on the Sale of Products the Farmer Didn't Raise?

- There is no exemption from **business tax** for a farmer's sale of purchased products.
- If a farmer purchases farm products, when he sells those purchased products they are subject to business tax.



Example 1: Raised Farm Products

- Farmer Brown raises 1,000 pumpkins and sells them to consumers for \$6.00 each for a total of \$6,000. Does Farmer Brown owe business tax when he sells the pumpkins?
- Answer: **No**. The sales are exempt from business tax because Farmer Brown raised the pumpkins.



Example 2: Purchased Farm Products

- In addition to the pumpkins he raised and sold for \$6,000, Farmer Brown buys gourds and fall decorations and sells them for \$6,000. Does Farmer Brown owe business tax when he sells the purchased gourds and fall decorations?
- Answer: **No**. The sales of the purchased gourds and fall decorations are not subject to business tax because Farmer Brown's sales of these products are less than \$10,000. However, he must pay \$15 to get a "minimal activity license" from the local clerk.

Example 3: Agritourism Ticket Sales

- In addition to selling the purchased gourds and fall decorations for \$6,000, Farmer Brown planted a corn maze and sold tickets for \$10,000. Does Farmer Brown owe business tax when he sells the purchased items and corn maze tickets?
- Answer. **Yes**. Farmer Brown owes business tax on \$16,000. Since these taxable sales total at least \$10,000, a business tax return must be filed and business tax paid.

Who Administers Business Tax?

- Business tax law allows local governments, by a local ordinance or resolution, to levy business tax.
- Local governments (counties and cities) issue licenses.
- Effective Jan 1, 2014 businesses in all 95 counties are subject to business tax; hundreds of cities also license businesses.
- The State of Tennessee is responsible for return processing, tax payments, audit and collection.

How to Get a Business License

- County clerks and designated city officials (city tax collectors) issue business licenses for a one-time registration fee of \$15. There is no additional fee for annual business license renewal.
- You must contact the respective county or city official for registration information and forms as required by that jurisdiction.
- If the business is located in a city and a county that both have approved a business tax, two separate tax returns must be filed.
- If the business conducts sales in multiple counties, the business must register with the respective counties and cities.

Paying Business Tax

- Taxes are paid when the annual business tax returns are filed with the Tennessee Department of Revenue. Tax returns for the county and city (if the city has a business tax) should be filed. A list of the tax returns for each business tax classification is available at <http://www.tennessee.gov/revenue/forms/business/index.shtml>.
- County clerks and designated city officials will renew the business license annually after the tax return has been filed with the Tennessee Department of Revenue.

Document Business Will Receive

Upon registering, a business will receive:

- **Business License** (for each county and municipality where sales occur)

The taxpayer must exhibit the license in the taxpayer's place of business.

Threshold When Business Tax Becomes Due

- Taxable product sales are more than \$10,000/year**

Business Tax Classifications

- There are five classifications of businesses.
- Each of these classifications is subject to a different rate.
- Rates within some classifications also vary according to whether the sales are made at wholesale or retail.
- Your dominant business activity determines your classification.

- A farmer whose taxable sales are mostly services (such as agritourism ticket sales) would be in Classification 3.
- In Example 3, Farmer Brown had taxable sales of \$16,000 (\$6,000 gourds and fall decorations plus \$10,000 corn maze ticket sales). Since most of the taxable sales are services, all of the sales are in Classification 3.

Business Tax Rates

CLASSIFICATION	RETAIL	WHOLESALE	TAX PERIOD	DUE DATE
Class 1A	0.001	0.00025	Jan 1 – Dec 31	February 28
Class 1B & 1C	0.001	0.000375	Jan 1 – Dec 31	February 28
Class 1D – Fuel	0.0005	N/A	Jan 1 – Dec 31	February 28
Class 2	0.0015	0.000375	April 1 – March 31	May 31
Class 3	0.001875	0.000375	July 1 – June 30	August 31
Class 4	0.001	N/A	Oct 1 – Sep 30	November 30
Class 5	0.003	.003	Jan 1 – Dec 31	February 28

Figuring the Tax

- The minimum tax for taxpayers in Classification 3 is \$22.
- The tax is computed by multiplying sales by 0.001875.
- In Example 3, Farmer Brown's business tax on taxable sales of \$16,000 would be \$30 ($\$16,000 \times 0.001875 = \30).

Filing Return and Paying the Tax

- Tax returns are filed annually, for the period that applies to the Classification.
- All businesses must file their business tax returns and make tax payments to the Department of Revenue electronically.

Take Home Messages

- Businesses with taxable sales between \$3,000 and \$10,000 are required to pay \$15 each year to get a “minimal activity license.”
- Businesses with annual sales of \$10,000 or more must get a business license from the local clerk. There is a one-time \$15 license fee and business tax paid annually to the Tennessee Department of Revenue.

Resources that may be helpful...

- Business Tax Information
- <http://www.tn.gov/revenue/tntaxes/business.shtml>
- Business Tax Guide
- <http://www.tennessee.gov/revenue/taxguides/bustaxguide.pdf>
- Tennessee Department of Revenue
 - (800)342-1003
 - <http://www.tn.gov/revenue/index.shtml>
 - Email TN.revenue@TN.gov

Sales Tax

- What are the sales tax rules and exemptions that apply to farmers who sell farm products?

Sales Tax Topics

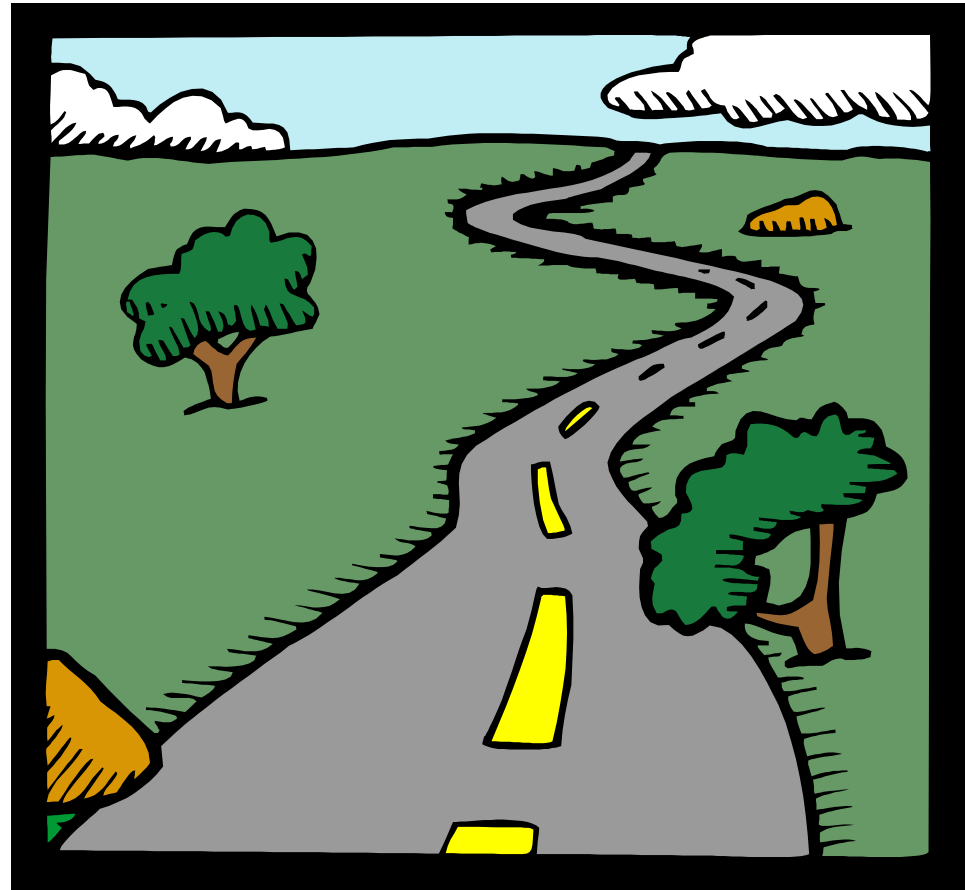
- Sales Taxes on Sales of:
 - Raised Farm Products
 - Purchased Farm Products
 - Agritourism Activities
- Sales Tax Liability and Registering with Tennessee Department of Revenue

Misconceptions about Sales Tax

- "Farmers are always exempt from sales tax."
- "Sales tax on food is only required when it's sold at the grocery store."

Question:

- A man is driving 65 miles per hour on Hwy 64.
- Is he breaking the law?



Keep in mind...

- Some points in the Law (Title 67 of Tennessee Code) are clearer than others
- Consult Tennessee Department of Revenue Tax Guides
 - *Agricultural Tax Guide*
 - *Sales and Use Tax Guide*
- For specific situations, consider requesting a Letter Ruling

Sales Tax

- A privilege tax that permits you to engage in the business of:
 - Selling tangible personal property at retail
 - Rendering certain services at retail
 - Charging admission to events

Exemptions from Sales Tax Exist for Farmers

- Sales of farm products by the farmer who raised them
- Certain sales of farm products that were purchased from the farmer who raised them



Sales of Farm Products by the Farmer Who Raised Them

- “Products of the farm sold by the farmer who raised them” are exempt from sales tax.

- Livestock
- Nursery Stock
- Fruits
- Vegetables
- Poultry



Sales of Farm Products by the Farmer Who Raised Them

- The *farmer* who raises the product may be a person or an entity.
- By “sales of farm products by the farmer who raised them” we mean sales to a consumer by the farmer or entity who raised them.



Sales of Purchased Farm Products

A farmer may buy farm products and sell them.

When the farmer sells these “purchased” farm products, the sale is exempt from sales tax if **both** of the following **two conditions** are met...



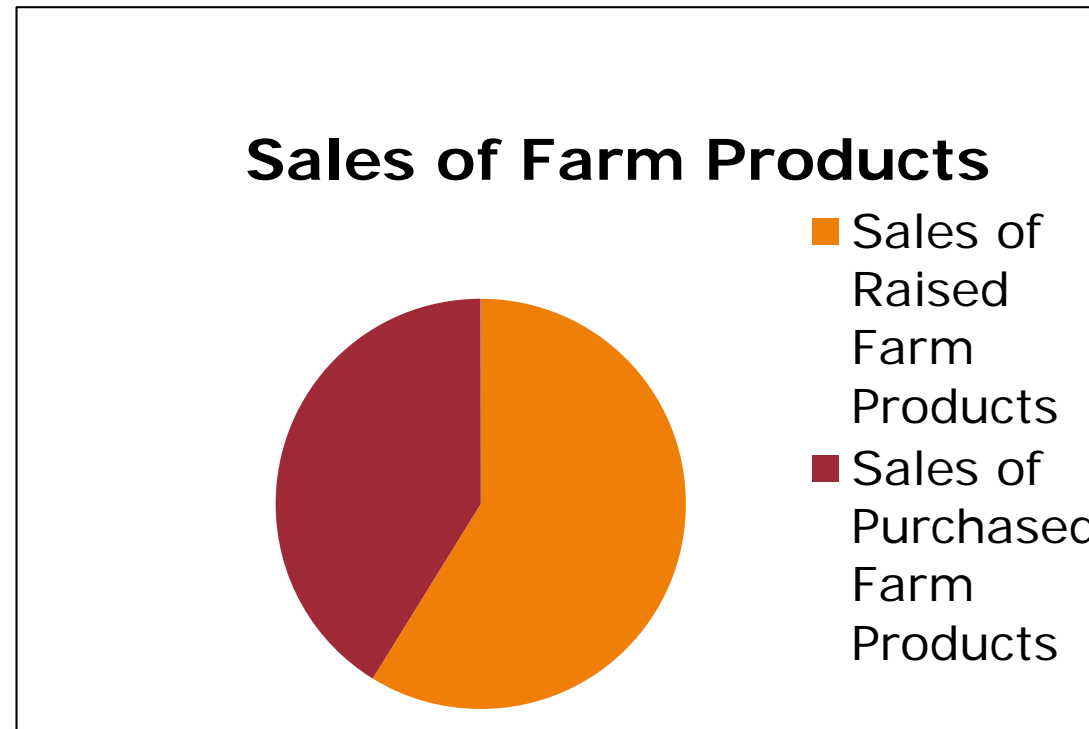
Two Conditions for Tax Exempt Sales of Purchased Farm Products

#1. The products must be purchased from the farmer who raised them, **and...**



Two Conditions for Tax Exempt Sales of Purchased Farm Products

#2. The **total** amount of farm products **raised** & sold in a calendar year **must be at least 50% of total sales** of farm products in the same calendar year.



Example 4: Raised Farm Products 100% of Total

- Farmer Smith raises 1,000 pumpkins and sells them to consumers for \$8.00 each for a total of \$8,000. Does Farmer Smith owe sales tax when he sells the pumpkins?
- Answer: No. The sales are exempt from sales tax because Farmer Smith raised the pumpkins.

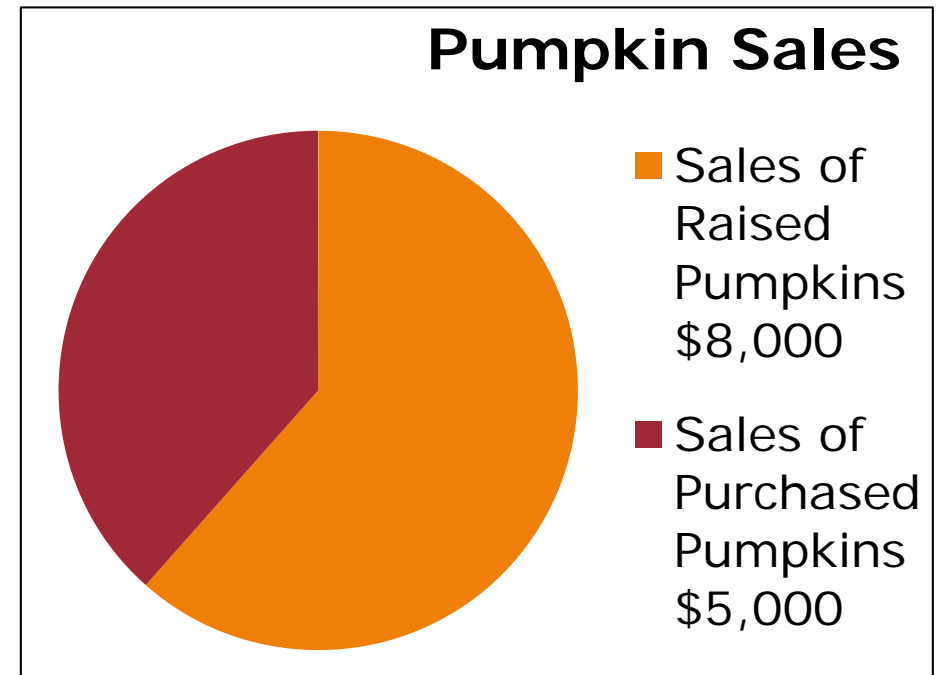
Example 5: Raised Farm Products 50% or more of Total

- Farmer Smith raises pumpkins in a calendar year and sells them for \$8,000, and sells pumpkins to consumers for \$5,000 that were bought for resale from the farmer who raised them in the same calendar year.
- Are any of the pumpkin sales taxable for sales tax?



Example 5: Raised Farm Products 50% or more of Total

- Answer: No, none of the pumpkins are taxable for sales tax. The raised pumpkins are exempt because raised farm products are always exempt from sales tax. The purchased pumpkins are exempt because at least 50 percent of Farmer Brown's pumpkin sales were pumpkins he raised.



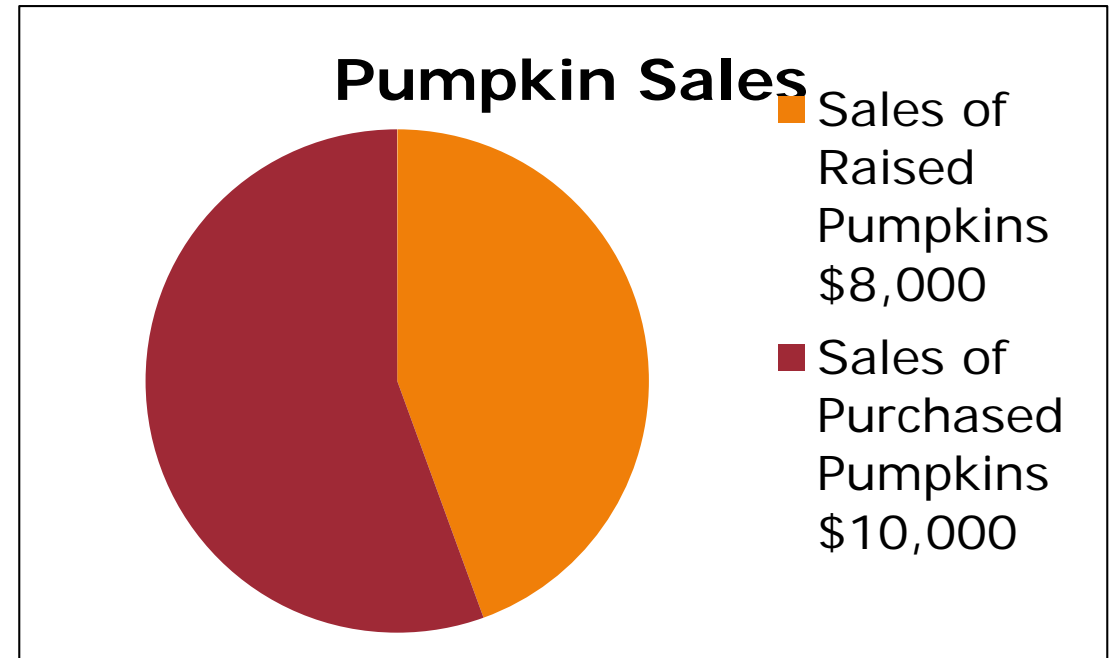
Example 6: Raised Farm Products Less than 50% of Total

- If Farmer Smith's raised pumpkin sales are \$8,000 and the pumpkins purchased from the farmer who raised them are sold to consumers for \$10,000...
- Are any of the pumpkin sales taxable?



Example 6: Raised Farm Products Less than 50% of Total

- Answer: The raised sales of \$8,000 are exempt.
- **The sale of the purchased pumpkins (\$10,000) are taxable for sales tax.**



Example 7: Farm Products Purchased from Someone Other than the Farmer Who Raised Them

- If Farmer Smith's raised pumpkin sales are \$8,000 and pumpkins are purchased from a broker and resold to consumers for \$7,000...
- Are any of the pumpkin sales taxable for sales tax?

Example 7: Farm Products Purchased from Someone Other Than the Farmer Who Raised Them

- Answer:
- **The sales of the purchased pumpkins (\$7,000) are taxable for sales tax because the pumpkins were not purchased from the farmer who raised them.**
- Farmer Smith must pay sales tax on the **sale** of the purchased pumpkins.

Agritourism Activities

- In general, sales tax is due on admission charges for agritourism activities such as hay rides, horse rides and corn mazes.
- Exception: If an admission is charged for a farm activity that is solely educational in nature (e.g., demonstrations of how a working farm operates) and void of amusement, recreation and entertainment, then the admission charge is not subject to sales tax.

Agritourism

- The sale of a farm product by the farmer who raised it is exempt from sales tax.
- However, if a tax exempt product (i.e., raised pumpkin) is bundled with a taxable product (corn maze), the entire sale is subject to sales tax.

Example 8: Agritourism

- Farmer Smith starts a pumpkin patch agritourism operation and offers a hayride to the pumpkin patch for customers to select a raised pumpkin. If an admission charge of \$10 is charged for each person to take the hay ride and select one pumpkin, then the entire \$10 charge is subject to sales tax because the sale of the pumpkin (exempt product) is combined with a hay ride (taxable recreational activity).

Example 9: Agritourism

- If Farmer Smith charges \$8 per pumpkin and \$2 for the hayride, then sales tax would be charged only on the hayride. The sale of Farmer Smith's raised pumpkin (\$8) would be exempt from sales tax.
- An alternative would be to charge \$10 for the pumpkin and offer free hayrides. But you could end up with customers who think your pumpkins are overpriced and you could end up giving lots of free hayrides.

Registering with Tennessee Department of Revenue for Sales Tax

Farmer Smith should complete an Application for Registration with Tennessee Department of Revenue.

Application for Registration may be completed and submitted online at <http://www.tn.gov/revenue/forms/sales/index.shtml>



TENNESSEE DEPARTMENT OF REVENUE
APPLICATION FOR REGISTRATION

ANSWER ALL QUESTIONS COMPLETELY. INCOMPLETE AND UNSIGNED APPLICATIONS WILL DELAY PROCESSING. FOR ASSISTANCE YOU MAY CONTACT ANY OF THE TAXPAYER AND VEHICLE SERVICES OFFICES LISTED ON THE BACK.

1. CHECK ANY OF THE FOLLOWING TAX, PERMIT, OR FEE REQUIREMENTS FOR WHICH YOUR BUSINESS IS LIABLE:

<p>*ALCOHOLIC BEVERAGE TAXES:</p> <p><input type="checkbox"/> Beer Barrelage</p> <p><input type="checkbox"/> Brand Registration</p> <p><input type="checkbox"/> Liquor By The Drink</p> <p><input type="checkbox"/> Wholesale Beer</p> <p><input type="checkbox"/> Wholesale Gallonage</p> <p><input type="checkbox"/> Winery Tax</p>	<p>**BUSINESS TAX</p> <p><input type="checkbox"/> Classification 1</p> <p><input type="checkbox"/> Classification 2</p> <p><input type="checkbox"/> Classification 3</p> <p><input type="checkbox"/> Classification 4</p> <p><input type="checkbox"/> Classification 5</p> <p>GROSS RECEIPTS TAXES:</p> <p><input type="checkbox"/> Bottlers</p> <p><input type="checkbox"/> Mixing Bar</p> <p><input type="checkbox"/> Gas, Water, Electric Power & Light</p>	<p><input type="checkbox"/> FRANCHISE AND EXCISE TAXES</p> <p>PRIVILEGE TAXES:</p> <p><input type="checkbox"/> Auto Rental Surcharge</p> <p><input type="checkbox"/> Bail Bondsmen</p> <p><input type="checkbox"/> Litigation Tax</p> <p><input type="checkbox"/> Professional Privilege Tax</p> <p><input type="checkbox"/> *PETROLEUM TAXES</p> <p><input type="checkbox"/> SALES AND USE TAX</p>	<p>SEVERANCE TAXES:</p> <p><input type="checkbox"/> Coal</p> <p><input type="checkbox"/> Crude Oil/Natural Gas</p> <p><input type="checkbox"/> Mineral</p> <p>SOLID WASTE TAXES:</p> <p><input type="checkbox"/> Tire</p> <p><input type="checkbox"/> Used Oil</p> <p><input type="checkbox"/> TOBACCO TAX</p> <p><input type="checkbox"/> WINE DIRECT SHIPPER</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

*Requires Bond. TYPE OF BOND: 1. SURETY 2. CASH 3. CERTIFICATE OF DEPOSIT

**The local county clerk and designated municipal business tax official in your area also have business tax registration forms.

<p>2. REASON FOR APPLYING:</p> <p><input type="checkbox"/> 1. New business</p> <p><input type="checkbox"/> 2. Additional location</p> <p><input type="checkbox"/> 3. Purchase of existing business</p>	<p>3. WILL YOUR GROSS SALES EXCEED \$4,800 PER YEAR? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>WILL YOUR TAXABLE SERVICES EXCEED \$1,200 PER YEAR? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>DO YOU HAVE SUPPLIERS (IN-STATE OR OUT-OF-STATE) WHO DO NOT COLLECT TN. SALES TAX? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>IF ALL THREE OF THE ABOVE ARE "NO", YOU DO NOT NEED A SALES TAX #.</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>4a. DATE BUSINESS BEGAN IN TENNESSEE AT THIS LOCATION</p> <p>_____ / _____ / _____</p>	<p>5. WILL YOU BE COLLECTING OVER \$200 PER MONTH IN SALES TAX?</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO</p>	<p>6. HOW MANY MONTHS OF THE YEAR WILL YOU HAVE SALES AND/OR USE TAX TO REPORT?</p> <p>_____</p>
--------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------

<p>7. BUSINESS NAME AND EXACT LOCATION</p> <p>BUSINESS NAME (ATTACH LIST IF NECESSARY FOR ADDITIONAL LOCATIONS)</p> <p>STREET, HIGHWAY (DO NOT USE P.O. BOX NUMBER OR RURAL ROUTE NUMBER)</p> <p>CITY STATE ZIP CODE COUNTY</p>	<p>8. BUSINESS MAILING ADDRESS</p> <p>NAME (ENTER CORPORATION NAME, IF APPLICABLE)</p> <p>P.O. BOX, STREET, ROUTE, OR HIGHWAY</p> <p>CITY STATE ZIP CODE</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>9. IS THIS BUSINESS LOCATED INSIDE ANY TENNESSEE CITY LIMITS? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>IF YES, WHAT CITY? _____</p>	<p>10. RECORD STORAGE ADDRESS:</p> <p>STREET, HIGHWAY (DO NOT USE P.O. BOX NUMBER)</p> <p>CITY STATE ZIP CODE</p>	<p>11. BUSINESS TELEPHONE:</p> <p>() _____</p> <p>AREA CODE _____</p> <p>FAX # _____</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------

12. ENTER YOUR FEDERAL EMPLOYER'S IDENTIFICATION # APPLIED FOR NOT REQUIRED

13a. BUSINESS CONTACT PERSON: _____ **13b. E-MAIL ADDRESS:** _____

<p>14. TYPE OF OWNERSHIP:</p> <p><input type="checkbox"/> PROPRIETORSHIP <input type="checkbox"/> HUSBAND/WIFE OWNERSHIP <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> LIMITED PARTNERSHIP</p> <p><input type="checkbox"/> LIMITED LIABILITY COMPANY <input type="checkbox"/> PROFESSIONAL LIMITED LIABILITY COMPANY</p> <p><input type="checkbox"/> CORPORATION <input type="checkbox"/> S CORPORATION <input type="checkbox"/> PROFESSIONAL CORPORATION <input type="checkbox"/> OTHER</p> <p>NAME OF CORPORATION _____ SEC. OF STATE # _____</p>	<p>15. CURRENT OR PRIOR TAX NUMBER (SALES TAX, ETC.)</p> <p>_____ / _____</p> <p>TAX TYPE _____ ACCOUNT NO. _____</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------

16. DESCRIBE THE BUSINESS ACTIVITY AT THIS LOCATION, STATING THE MAJOR PRODUCTS AND/OR SERVICES SOLD.

<p>A. Are your sales 100% (Note: If you ever...)</p> <p>B. If not 100% over-the-merchandise to in a...</p>	<p>3. WILL YOUR GROSS SALES EXCEED \$4,800 PER YEAR? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>WILL YOUR TAXABLE SERVICES EXCEED \$1,200 PER YEAR? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>DO YOU HAVE SUPPLIERS (IN-STATE OR OUT-OF-STATE) WHO DO NOT COLLECT TN. SALES TAX? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>IF ALL THREE OF THE ABOVE ARE "NO", YOU DO NOT NEED A SALES TAX #.</p>	
------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

Remitting Sales Taxes

- When the Application for Registration is completed, the business is given the option of filing online or on paper.
- File State and Local Sales & Use Tax Return—SLS 450—to report to Tennessee Department of Revenue by the 20th of the month following the period for which tax is due.

Documents Business Will Receive

- Upon registering, a business will receive
 - **Certificate of Registration**
 - **Blanket Certificate of Resale** (if qualified to make purchases for resale)

Thresholds IF Sales Tax Has Been Paid on the Items Previously

- Thresholds when sales taxes become due:
 - **Taxable product sales are more than \$4,800/year**
 - **Taxable services are more than \$1,200/year**
 - If no sales tax was paid on the item previously, these thresholds do not apply.

Sales Tax Rates

- State rate 7.00%
 - Food (fruits and vegetables) taxed at lower rate of **5.25%**
 - Candy & prepared food taxed at 7.00%
- Local rate varies from 1.00% to 2.75%
- Maximum combined tax rate 9.75% (food 8.00%)

Take Home Messages

- A farmer's sales of raised farm products ("products of the farm sold by the farmer who raised them") are exempt from sales tax.
- The same business entity must raise and sell the farm products if the sale is to be exempt from sales tax.

Take Home Messages

- Farmers may sell farm products tax exempt that were purchased from the farmer who raised them if raised farm product sales are at least 50% of total farm product sales.
- Generally, sales tax is due on admission charges for agritourism activities.
- Farmers with any taxable sales of products or services on which sales tax was not paid previously should complete Application for Registration and remit sales tax.

Resources that may be helpful...

- Sales Tax in Tennessee on the Purchase and Sale of Farm Products PB 1806 (to be updated soon)

- Agricultural Tax Guide

<http://www.state.tn.us/revenue/taxguides/agricultural.pdf>

- Sales and Use Tax Guide

<http://state.tn.us/revenue/taxguides/salesanduse.pdf>

Dealing with Definitions

- Planning and Zoning?
 - Definitions of agriculture and agritourism
- Building permits
 - Typically not required for agricultural buildings
 - May be required by some cities/counties depending upon the project
 - Sometimes definition of agriculture covers/can help local officials determine if permit needed

Tennessee Code 43-1-113

Definition of "Agriculture"

- The definition of agriculture as set forth in subsection (b) shall be applicable to the term wherever it appears in the code, unless a different definition is specifically made applicable to the part, chapter, or section in which the term appears.
- **(b) (1)** "Agriculture" means:
- **(A)** The land, buildings and machinery used in the commercial production of farm products and nursery stock;
- **(B)** The activity carried on in connection with the commercial production of farm products and nursery stock; and
- **(C)** Recreational and educational activities on land used for the commercial production of farm products and nursery stock.
- **(2)** As used in this definition of agriculture, the term "farm products" means forage and sod crops; grains and feed crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing; fruits; vegetables; flowers; seeds; grasses; forestry products; fish and other aquatic animals used for food; bees; equine; and all other plants and animals that produce food, feed, fiber or fur.
- **(3)** As used in this definition of agriculture, the term "nursery stock" means all trees, shrubs, or other plants, or parts of trees, shrubs or other plants, grown or kept for, or capable of, propagation, distribution or sale on a commercial basis.

Tennessee Code 43-39-101

Definition of "Agritourism Activity"

- [A]ny activity carried out on a farm or ranch, eligible for greenbelt classification...that allows members of the general public, **for recreational, entertainment, or educational purposes, to view or enjoy rural activities**, including farming, ranching, historic, cultural, or harvest-your-own activities, or natural activities and attractions.
- An activity is an agritourism activity whether or not a participant provides compensation in money or other valuable compensation to participate in the activity.
- Agritourism activity includes an activity involving any animal exhibition at an agricultural fair, regardless of the location of the fair.

Personal Property Taxes

- Personal property used in agriculture is exempt from personal property tax. (Tennessee Annotated Code sections 67-5-501 (1) and 67-5-901 (a)(3)(A).)
- Personal property used in agritourism operations for education and entertainment (i.e., cowtrain, playground equipment) is subject to personal property tax.
- Personal property schedules are mailed by February 1 by the county assessor to each business operating in the county. The schedules are to be completed and returned by the business owner or the business owner's representative by March 1 to the county assessor.

Taxes on Agritourism Employees

- Social Security and Medicare (7.65% of gross pay withholding plus 7.65% employer share)
- Federal income tax withholding (use Form W-4 to figure)
- Federal and state unemployment tax

Taxes on Agritourism Employees

- Federal unemployment tax (FUTA)
- Employees who are not farmworkers
 - Employer is subject to FUTA if:
 - A. Paid cash wages of \$1,500 or more in any calendar quarter
 - B. Employed 1 or more employees during some part of a day during any 20 or more different weeks
- FUTA is due on the first \$7,000 in taxable wages for each employee. The rate is 0.6%.

Taxes on Agritourism Employees

- State unemployment tax (SUTA)
- Employees who are not farmworkers
 - Employer is subject to SUTA if:
 - A. Paid cash wages of \$1,500 or more in any calendar quarter
 - B. Employed 1 or more employees during some part of a day during any 20 or more different weeks
- SUTA is due on the first \$9,000 in taxable wages for each employee. The employer's premium rate is related to benefit charges and taxable wages.

Employee or Independent Contractor?

- Who is an employee?
 - Generally, a worker who performs services for you is your employee if you have the right to control what will be done and how it will be done. This is so even when you give the employee freedom of action. What matters is that you have the right to control the details of how the services are performed.
- Who is an independent contractor?
 - The general rule is that an individual is an independent contractor if you, the person for whom the services are performed, have the right to control or direct only the result of the work and not the means and methods of accomplishing the result.

Employee or Independent Contractor?

- Anyone who performs a service to you under your direction or supervision is viewed as an employee; this means that you control what they do and how they should execute the task. This will be carried over to the setting of their work hours, training and you as employer having immediate power to hire and fire them.

- Note: If you incorrectly classify an employee as an independent contractor and you have no reasonable basis for doing so, you may be held liable for employment taxes and additional penalties or it potentially could expose you to otherwise avoidable legal action.

Resources that may be helpful...

- IRS Publication 15 (Circular E), Employer's Tax Guide
<http://www.irs.gov/pub/irs-pdf/p15.pdf>
- IRS Publication 225 (Farmer's Tax Guide)
<http://www.irs.gov/publications/p225/ar01.html>
- IRS Publication 15-A (Employer's Supplemental Tax Guide)
<http://www.irs.gov/pub/irs-pdf/p15a.pdf>
- Insurance and liability issues for agritourism operators article
http://www.agmrc.org/commodities_products/agritourism/insurance-and-liability-issues-for-agritourism-operators-article/

State Fire Codes

- State Fire Marshal or local government (if has exemption) administers
- An exempt jurisdiction may be more strict than the State Fire Marshal
- When does a building fall under these rules?
 - If inside exempt jurisdiction, contact the building codes enforcement office of the local jurisdiction.
 - If outside exempt jurisdiction, any assembly occupancy of 300 or more (15 sq ft per person) falls under these rules. Note that a building with fewer than 300 occupancy in the main assembly area may fall under this rule if it shares egress (common corridor) with other rooms (i.e., classrooms).
 - This applies to new buildings, additions to existing buildings & building renovations.

State Fire Codes

- Documentation of rules/requirements are available at www.tn.gov/fire/fpcesect.shtml
 - Go to Codes Enforcement Section, select Section Programs and click on Plans Review. Then click on When Plans Submittal Required. Rule Numbers are cited.
 - If have questions about building layout, call (615) 741-7190 and you may email floor plan to plans examiner.
 - Contact Leon Hunt at Leon.E.Hunt@tn.gov or (615) 532-5836.

Food Service

- Inspection and permitting required for concessions or food service other than pre-packaged goods
- Requirements for construction
 - http://health.state.tn.us/Downloads/Construction_Requirements.pdf
- First step if interested in offering concessions = contact local health department
- Department of Health Food Service Establishment Rules <https://www.tn.gov/sos/rules/1200/1200-23/1200-23-01.pdf>

Animal Exhibitor License

- Required for exhibiting animals (other than in typical farm setting), petting areas, etc.
- Fee based on number of animals - \$30 to \$300
- Requires
 - strict standards for animal care
 - inspection by USDA-APHIS vet
 - animal health records
- Learn more at http://www.aphis.usda.gov/animal_welfare/downloads/aawlicreg.pdf

Amusement Devices

- Ziplines, dark houses, climbing walls, dry slides.
- <http://www.tn.gov/labor-wfd/regscmpl/amusement.shtml>
- When does a slide become an amusement that needs licensing and inspection? Any dry slide over 20 feet in height.
- What building specifications are there? Must follow local building codes. Ride must follow tech standards established by ASTM Int'l Committee F24 on Amusement Rides & Devices.



Amusement Devices

- What costs and actions are required for licensing and permitting?
 - Annual Permit for Amusement Devices Owner: \$150
 - Annual Permit for Hand Powered Amusement Devices: \$25
- Does this apply to hayrides? No, hayrides are specifically excluded.

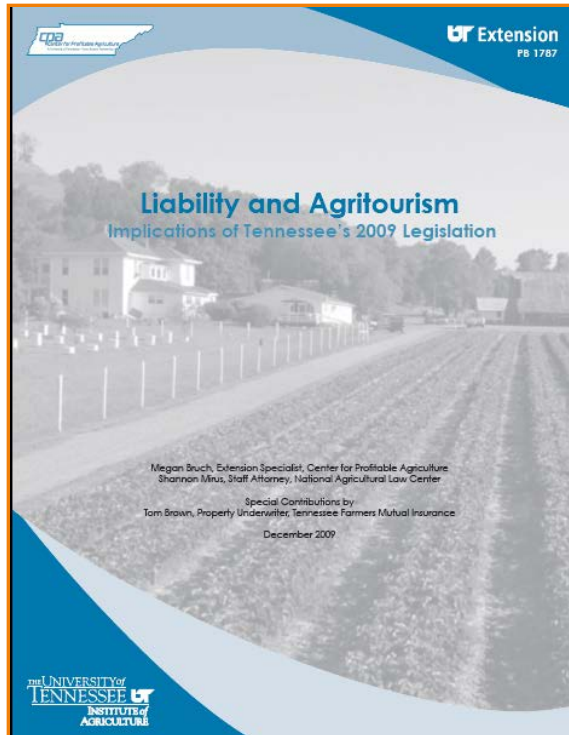
Amusement Devices

- Does this apply to barrel trains, etc.? Yes, cost of Annual Permit depends on passenger height.
 - If ride designed for passengers 42" or less (kiddie rides), Annual Permit is \$50.
 - If designed for passengers 42" or more in height & manufacturer's recommended assembly time is < 40 work hours (carousel or portable roller coaster), Annual Permit is \$100.
 - If designed for passengers 48" or more in height & takes > 40 work hours to assemble (i.e., Dollywood), Annual Permit is \$200.
- For more info or to schedule inspection, contact Lee Bentley, Amusement Device Inspection Manager, (865) 307-2415 or Lee.Bentley@tn.gov

Other Attraction/Product Specific

- Nursery Licensing
- Fee-Fishing Regulations
- Winery Licensing
- Fire Codes for Special Amusement Buildings/Haunted Houses
 - <http://www.tn.gov/fire/documents/hauntedhousememo9.18.12.pdf>

Tennessee Agritourism Liability Law

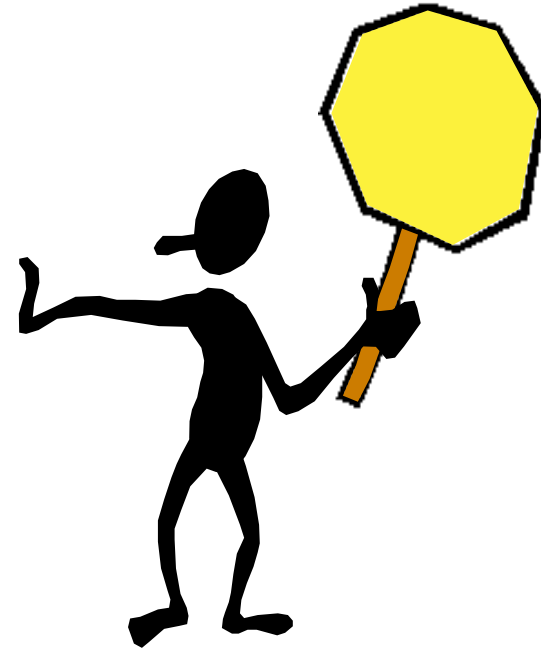


- Enacted July 1, 2009
- Publication
 - Includes law text
 - Discusses implications for agritourism operators

<http://utextension.tennessee.edu/publications/Documents/PB1787.pdf>

Liability Protection

- Language that limits the liability of agritourism professionals for injuries to participants caused by inherent risks
 - Those dangers, conditions or hazards that are an integral part of an agritourism activity
 - Beyond the control of the agritourism professional



To whom does the statute apply?

- Agritourism professionals providing agritourism activities as defined in the law
- Farms or ranches eligible for greenbelt certification
- Animal exhibitions at agricultural fairs
 - Unique to Tennessee



What are the requirements of the law?



1. Be an agritourism professional providing an agritourism activity
2. Post and maintain warning signs in clearly visible location at entrance and every agritourism activity
 - Signs must be printed in black letters at least 1 inch tall
3. Include warning in contracts

Need agritourism liability warning signs?

- Contact Vera Ann Myers at (423) 235-4796 or veraannm@Comcast.net
- \$13 each

Take Home Messages

- Familiarize yourself with definitions of agriculture and agritourism activities
- Take care in properly classifying employees and independent contractors
- Determine whether any building addition or renovation or new building is subject to the state fire codes. If subject to codes, submit floor plan to appropriate office
 - Exempt jurisdiction: building codes enforcement office
 - Others: plans examiner in state fire marshal's office

Take Home Messages

- Contact local health department if offering concessions
- Animal exhibitor license required if exhibiting animals in other than typical farm setting
- Amusement devices require annual permit for amusement device owner and annual permit for amusement device. Hayrides are excluded.
- Become familiar with Tennessee Agritourism Liability Law
- Post and maintain Agritourism Liability Warning Signs



- Hal Pepper
- Financial Analysis Specialist
- <https://ag.tennessee.edu/cpa>
- hal.pepper@utk.edu
- (931) 486-2777