

Sales Tax Guide for Swine Operations

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This publication is drafted as a means to further clarify the Kansas Department of Revenue's Pub. KS-1550 (Rev. 1-12) as it relates to swine operations operating in Kansas. This document does not constitute tax or legal advice related to a particular situation. An individual should contact a tax or legal professional for legal or tax advice regarding their particular situation. This document can be used as a supplement to Pub. KS-1550 (Rev. 1-12).

General Overview of the Kansas Sales Tax

Kansas sales tax applies to 2 general types of transactions of concern to swine producers. First, the tax applies to the retail sale, rental or lease of tangible personal property. A retail sale is a sale to the final consumer or user. Tangible personal property is personal property that can be seen, weighed, measured, felt or touched, or that is in any other manner perceptible to the senses. Tangible personal property includes electricity, water, gas, steam and prewritten computer software. Second, the tax applies to fees for labor services to install, apply, repair, service, alter or maintain tangible personal property. Labor services that are taxable in Kansas are only those services enumerated in the law.

However, there are several important exemptions available to swine producers in Kansas. Many of these exemptions are discussed below.

Sales Tax Exemptions for Swine Producers

The production of swine is considered as the growing or raising of an agricultural product for the purpose of the sales tax exemptions in Kansas. It should be noted that all purchases of items or services by a swine producer are **not** exempt from sales tax. There are four types of sales tax exemptions specifically for agribusiness such as swine producers. These tax exemptions are for agricultural animals, farm machinery and equipment, propane for agricultural use, and soil erosion prevention. Swine producers may also utilize the ingredient or component part exemption, the resale exemption, and the consumed in production exemption. All seven of these exemptions will be analyzed in more detail below.

Agricultural Animals

Sales of hogs are exempt when used in agriculture, in the production of food for human consumption, in the production of animal products, or in the production of offspring for any of the above purposes. If a person purchases an animal for pleasure or pets that purchase would be taxable.

Farm Machinery and Equipment

The sales tax exemption for farm machinery and equipment has three categories:

- 1.) The purchase, lease, or rental of the equipment;
- 2.) The repair or replacement parts for the equipment; and
- 3.) The labor services to repair and maintain the equipment.

The farm machinery and equipment exemption tends to be one of the exemptions that generates the most questions as to how it applies. Farm machinery and equipment is defined as all machinery and equipment **ordinary** and **necessary** for the growing or raising of agricultural products. There are a multitude of private letter rulings from the Kansas Department of Revenue regarding whether certain items qualify as farm machinery and equipment.

Exclusive Use Test – An item is only considered farm machinery and equipment when it is solely used in farming, ranching or agricultural production. If the item is used for any other purpose, an exemption cannot be claimed for farm machinery and equipment.

Repair and replacement parts for an item that qualifies as farm machinery and equipment are also exempt from the sales tax. Repair and replacement parts mean any part which replaces an existing part necessary to maintain the working condition of a piece of machinery. Generally speaking, items that are listed on the manufacturer's parts list, service parts list, or similar parts are exempt. It should be noted that tools and equipment used to maintain or repair farm machinery and equipment are not exempt from the sales tax. As an example, a CD player and speakers for your tractor is not exempt.

Labor services for farm machinery and equipment are also exempt from sales taxation. However, if the labor service is to install or repair an item that is not exempt, the labor service is also not eligible for the exemption.

Page 6 of Pub. KS-1550 (Rev. 1-12) provides a list of how items are **usually** treated for sales tax purposes. Note that the treatment may depend on the use.

Propane for Ag Use

Propane used for an agricultural purpose is exempt from state and local sales tax. The exempt agricultural uses include, but are not limited to, propane used in barns or sheds to house livestock or farm machinery and equipment, farrowing houses, fire starters, irrigation equipment, and farm machinery and equipment. It is also important to note that propane used for residential purposes is exempt from state sales tax, but it is subject to local sales tax.

A propane storage tank used for non-residential purposes is not considered to be farm machinery and equipment and is subject to sales tax.

Ingredient or Component Part Exemption

Ingredients and component parts are exempt from sales tax in Kansas. An ingredient or component part must be necessary and essential to the finished product or service; used in or on the finished product or service; become a physical part of the finished product or service, and become an ingredient or component part of property or service for retail sale. As it relates to swine operations, feed and seed are the two most obvious examples. Feed to grow swine for food production or breeding purposes is an ingredient or component part. Additionally, seed and fertilizer to produce a crop is an ingredient or component part and is exempt from sales taxation.

It is important to note that ingredient or component parts used for pleasure (e.g. fed to a pet or planted in a home garden or flower bed) are taxable sales.

Consumed in Production Exemption

Kansas law also provides for an exemption for items that are consumed in a production process. A production process is defined as: producing, manufacturing, processing, mining, drilling, refining, or compounding tangible personal property; the treatment of by-products or wastes from any such production process; the providing of taxable services; the irrigation of crops; or the storage and processing of grain.

In order for an item to be exempt as consumed in production, the item must meet all of the following criteria:

1. It must be used in the actual process.
2. It must be essential or necessary to the process.
3. It must be consumed, depleted, or dissipated within one year.
4. Finally, it must not be reusable for such purpose.

Examples of items that may be consumed in production at a swine operation would include insecticides, herbicides, fungicides, pesticides, pharmaceuticals and vitamins. Electricity and gas is also consumed in the production of pork products.

Swine Industry Applications

Animals and Animal Care – If an animal is exempt as an agricultural animal, the feed, , vitamins and chemicals are also exempt whether they are fed, injected, or otherwise used. Artificial insemination is an example where the semen and insemination service is exempt. Additionally, disposable plastic gloves, lubricants, and paper towels are exempt as being consumed in production. Most of the equipment used for artificial insemination is exempt as farm machinery and equipment.

Other items used for animal care are exempt as consumed in production. These items include antibiotics, wormers, hormones, insecticides, and liquid nitrogen.

Finally, animal feed and feed supplements are exempt as an ingredient or component part if the animal is an agricultural animal.

Construction Projects – The general rule for construction projects is that materials used to construct and repair buildings and other structures for a swine operation are taxable sales of tangible personal property. The sale or rental of construction equipment is also taxable. **The labor services to construct a new building or facility (including wells) are exempt (the original construction exemption).** The labor services to repair or maintain a building or facility are taxable unless the labor is to repair damage from a fire, flood, tornado, lightning, explosion, windstorm (straight line winds of at least 80 miles per hour as determined by a recognized meteorological reporting agency or organization), ice loading and attendant winds, terrorism, or an earthquake. Oftentimes, you can work with the service provider to minimize the cost of products while charging more in labor to allow for a greater tax savings.

It is important to remember that residential labor services are exempt from sales tax. In other words, a residential land improvement may be exempt if it is immediately near the residence and principally serves the residence.

The 2014 legislature passed a law that **exempts all sales of tangible personal property or services purchased on or after July 1, 2014, for the purpose of and in conjunction with constructing, reconstructing, enlarging or remodeling of a business** with certain NAICS codes, including 112210 (Hog and Pig Farming). The exemption also extends to the sale and installation of machinery and equipment purchased for installation at any such business. The exemption provided only applies to projects that have actual total costs over \$50,000. To qualify for the exemption, the business entity should obtain from the Kansas Department of Revenue and exemption certificate for the project. Such certificate should be furnished to the contractor(s) to exempt the purchases from the project from sales taxation.

Fertilizer and other applications – Crop dusting, fertilizer applicators and similar services performed are exempt from sales tax. The items applied and the services to apply them are also exempt as consumed in production.

Implements of Husbandry – The following examples of equipment are considered implements of husbandry in K.S.A. 8-126(cc). First, a farm tractor or a self-propelled farm implement is considered an implement of husbandry. Second, fertilizer spreaders, nurse tanks or trucks with permanently mounted spreaders that are used exclusively for dispensing or spreading water, dust or liquid fertilizers or agricultural chemicals are implements of husbandry. Additionally, a truck mounted with a fertilizer spreader used or manufactured principally to spread animal manure is an implement of husbandry. Finally, all equipment used to mix or process the feed of livestock is considered an implement of husbandry.

Grain Storage – Generally, grain storage structures are subject to sales tax. The labor services in the original construction are exempt under the original construction exemption. Labor to repair an existing storage structure is taxable. It is important to note, however, that items such as augers, fans, electric control panels, blowers, etc. are exempt as farm machinery and equipment.

Portable grain bins mounted on wheels that are mobile are exempt from sales tax. Tarps are also exempt.

Utilities – It is important to remember that utilities such as natural gas, electricity, and propane are exempt from state sales tax for agricultural use, but are subject to local sales tax. Water is exempt from both state and local sales tax. **However, natural gas, electricity, and propane are exempt from both state and local sales tax if consumed in production. Thus a producer should claim the exemption as consumed in production, when applicable, to maximize the tax exemption.**

Vehicles and trailers – The statutory definition of farm machinery and equipment excludes passenger vehicles, trucks, truck tractors, trailers, semitrailers, and pole trailers. Only “farm trailers” receive a sales tax exemption. A farm trailer must be designed and used primarily as a farm vehicle to qualify for the exemption. A trailer used to haul commodities, livestock, or other goods for others are not exempt. Trailers and semitrailers that are stock trailers, grain trailers, flatbeds, and dump trailers are designed to allow for farm and ranch use so long as that is actually the exclusive use of the trailer.

All-Terrain Vehicles (ATVs) – ATVs, while often used on farms and ranches, are **taxable**. An ATV is generally considered a 4-wheeler or 3-wheeler with a straddle seat. (This is a decision that is questionable in the opinion of the author, as the Department of Revenues analysis of exclusive use is ignored in this example.)

Work-site Utility Vehicle - A Work-site Utility Vehicle is **exempt** from sales tax. These vehicles have bench seats.

Veterinary Services – Veterinary services (and most other professional services) are exempt from sales tax.

Wells – A well is considered taxable because it is an improvement to real property. The original construction exemption would apply for the labor services of drilling a new well. Additionally, no sales tax is charged for the repair of an existing well that principally serves a residence.

Conclusion

This guide is meant to be supplemental to the Kansas Department of Revenue's Pub. KS-1550 (Rev. 1-12). If further information is needed, refer to KS-1550. Additionally, many situations must be analyzed on the facts of the specific situation. Feel free to call the Kansas Pork Association office at (785) 776-0442 if further advice is needed.