I cannot believe that July is almost halfway over! The rains we received last week were worth millions to our local crops. We were getting really dry and these timely rains were exactly what the Ag Doctor ordered. Now would it be greedy to ask for a little more? Our summer is zipping by which means the Ashtabula County fair is not too far away. In fact, Saturday July 16 is one of our biggest 4-H days as it is “Super Saturday.” During this day, hundreds of our 4-Hers travel to the fairgrounds to take part in our project and Skill-a-thon judging. It is always great to see the outstanding work being done by our youngsters. Congratulations to all of them for their exceptional accomplishments. I hope each of you have a great week!

David Marrison, Ashtabula County Ag & NR Educator

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Ohio Creates New "Farm Winery" Liquor Permit
By Peggy Kirk Hall, OSU Extension

Governor Kasich has signed legislation to create a new “Ohio Farm Winery Liquor Permit.” While wine makers in Ohio may currently obtain a general liquor permit to make and sell wine on a farm, the general permit does not distinguish the source of the wine. The new Ohio Farm Winery Permit legally designates the wine as being made from grapes grown on the wine maker’s farm. Sponsors and supporters of the legislation claim that the special designation will help consumers know a wine’s localized nature, bring recognition to Ohio’s wine growing regions, keep Ohio competitive with other states that designate farm-produced wines, and ensure that farm wineries continue to receive property tax treatment as agricultural operations. Wineries that qualify for the new permit would “be able to present themselves as true farming operations,” according to sponsor Ron Young (R-Leroy Township).

Ohio’s Division of Liquor Control may issue an Ohio Farm Winery Permit only to wine makers who meet two requirements: the manufacturer produces wine from grapes, fruit or other agricultural products grown on the manufacturer’s property, and the property qualifies as “land devoted exclusively to agricultural use” under Ohio’s Current Agricultural Use Valuation (CAUV) program, which requires that the land be used for commercial agricultural production and be at least 10 acres in size or, if less than 10 acres, generates a minimum average of $2500 in gross income.
Under the new law, an Ohio Farm Winery Permit holder may sell its wine products for consumption on the premises where manufactured, for consumption off the premises in sealed containers, or to a wholesale permit holder. An Ohio Farm Winery Permit holder may also manufacture, purchase and import brandy for fortifying wine and may import and purchase wine for blending purposes, but the total amount of wine used for blending cannot exceed 40% of all wine manufactured by the wine maker.

H.B. 342, which will be effective in late September, is available at: https://www.legislature.ohio.gov/legislation/legislation-status?id=GA131-HB-342

**New Law Increases Access to Ohio Small Claims Court**
By Peggy Kirk Hall, OSU Extension

The Ohio General Assembly has enacted a law that raises the monetary limit for cases handled through Ohio's small claims court system. The new maximum amount of $6,000 for a small claims case will replace the current limit of $3,000 when House Bill 387 becomes effective in late September. Under the new law, a defendant in the case may also file a counterclaim for up to $6,000. Governor Kasich signed the bill on June 28, 2016.

Ohio law requires every county and municipal court in Ohio to establish a small claims division to handle minor disputes involving only the recovery of money. A small claims court cannot hear cases for slander, libel, malicious prosecution, abuse of process, return of personal property, punitive damages or other cases seeking remedies other than money. A person may file a small claims complaint and present the case in court without the assistance of an attorney, but may have legal representation if desired. The court may appoint a magistrate, who must be an attorney, to oversee the case and render a decision. The court also has the authority to enforce a monetary judgment against a party. Because small claims cases tend to be simple, they are resolved in less time and with less expense than cases heard by other courts.

The increased monetary limit for small claims cases will allow farmers and agribusinesses to address more disputes quickly and without the expense of an attorney. Operators and landowners owed money for products or services in excess of the current $3,000 small claims maximum often express frustration that it could be too costly and time consuming to address the matter through municipal or county courts. The new higher limit of $6,000 should capture many of these cases and offer an opportunity to recover such losses through the small claims process. According to the bill's sponsor, Rep. Lou Terhar (R-Cincinnati), the change will "bring Ohio in line with surrounding states and make Ohio a better place to do business and generate jobs."

**Insect Pests we’re Watching Now**
By Kelley Tilmon & Andy Michel

**Spider mites**

With continued dry weather, spider mites are one of the main pests to remain vigilant about in field crops. They will often show up in field borders first as they move in from other habitats, for example if nearby ditches have been mowed. Spider mites are difficult to see. Look for injury signs -- yellow spotting or stippling on the upper side of leaves. In soybean, this damage usually begins in the lower canopy and progresses upward as the mite population increases. Heavily infested leaves may also have light webbing similar to spider webs.

There are no number-based thresholds available for mites, in part because counting them is not practical in a scouting context. During drought populations can increase rapidly so scouting every 4 to 5 days in recommended during drought conditions. Walk a broad pattern in the field and examine at least two plants in each of 20 locations. Use the following scale developed by the University of Minnesota to evaluate spider mite damage in soybean, with treatment recommended at level 3. There are relatively few products available for the treatment of
two-spotted spider mites and some pyrethroid insecticides may actually “flare” spider mite populations, making them worse.

0. No spider mites of injury observed
1. Minor stippling on lower leaves, no premature yellowing observed
2. Stippling common on lower leaves, small areas on scattered plants with yellowing
3. Heavy stippling on lower leaves with some stippling progressing into middle canopy. Mites present in middle canopy with scattered colonies in upper canopy. Lower leaf yellowing common and some lower leaf loss. (Spray Threshold)
4. Lower leaf yellowing readily apparent. Leaf drop common. Stippling, webbing and mites common in middle canopy. Mites and minor stippling present in upper canopy. (Economic Loss)
5. Lower leaf loss common, yellowing or browning moving up plant into middle canopy, stippling and distortion of upper leaves common. Mites present in high levels in middle and lower canopy

Common choices for spider mite control in soybeans are products containing chlorpyrifos, dimethoate, bifenthrin though other miticides exist. A product newly available for twospotted spider mite control is Agri-Mek (Syngenta), whose label was recently expanded to include soybean and sweet corn. We have not evaluated the efficacy of this product.

Grasshoppers, Japanese Beetles and other Soybean Defoliators
Dry weather encourages grasshoppers. As with spider mites, infestations often begin along field borders. Grasshoppers are much easier to kill when they are small, so timely treatment is helpful. A general defoliation threshold can be used for all leaf-feeding insects in soybean regardless of species. These insects include Japanese beetles, grasshoppers, green cloverworms, and various other caterpillars. If soybeans are in pre-bloom they can tolerate up to 40% defoliation before treatment is advised, and 15% defoliation from bloom to pod-fill. These percentages refer to whole-plant defoliation, not just a few leaves.

A word to the wise about treating for defoliators: A good reason to avoid pulling the trigger on a spray too soon, apart from simple economics, is that many pyrethroid products will actually make spider mite problems worse. We often see the most intense spider mite flare-ups in fields that have been treated with a broad-spectrum pyrethroid, particularly when environmental conditions favor them anyway.

Western Bean Cutworm
We have had a fair number of trap catches over the past week, which suggests that we are entering a period of intense flight. With the heat expected to turn up this week, we would predict that peak flight should occur by late next week. Over the next few weeks, corn should be inspected every 4-5 days for the presence of egg masses, especially corn that has not yet tasseled. Check 10 corn plants in 10 different locations—if greater than 8% of those have egg masses, treatment may be necessary. Controlling western bean cutworm is more difficult after the larvae enter the ear, so good egg scouting is critical to prevent ear damage.
Harmful algal blooms are expected to be lower this year in Lake Erie than in 2015. The U.S. National Oceanic and Atmospheric Administration and its research partners predict that western Lake Erie will experience a less severe bloom than the record-setting one experienced last year during the harmful algal bloom season, the agency said July 7.

The outlook reflects less discharge from the Maumee River and a return to an average nutrient runoff into the lake, NOAA said. This year’s bloom is expected to first appear in late July and increase in August in the far western basin of Lake Erie. The location and effects will depend on prevailing winds. “The need to reduce phosphorus and other nutrients from fertilizer, manure and sewage remains,” said Chris Winslow, interim director of the Ohio Sea Grant College Program.

Farmers are already working toward that goal, said Jay Martin, ecological engineer in The Ohio State University’s College of Food, Agricultural, and Environmental Sciences. According to a recent study co-authored by Martin, if farmers apply agricultural best management practices (BMPs) on half the cropland in the Maumee River watershed, the amount of total phosphorus and dissolved reactive phosphorus leaving the watershed would drop by 40 percent in an average rainfall year, which is the amount agreed to in the 2012 Great Lakes Water Quality Agreement between the U.S. and Canada.

Those BMPs include subsurface application of phosphorus; using cereal rye cover crops in the winters without wheat; and including medium-quality buffers on 50 percent of high-phosphorus-loss cropland, Martin said. “These pathways show that it is possible to maintain agriculture productivity and improve water quality,” Martin said, stressing that, “It is important that we do both at the same time. We need to make sure that we have solutions that support food production and water quality.”

To that end, Martin is leading a new, two-year project funded by the Ohio Department of Education’s Harmful Algal Bloom Research Initiative. The effort seeks to continue to analyze management plans with improved watershed models and project the impact of climate change. Project partners include the University of Toledo and Ohio’s Central State University in Wilberforce.

This year’s bloom forecast included a Maumee River flow forecast model that increases NOAA’s confidence in the seasonal outlook and may allow the agency to produce a specific harmful algal bloom forecast even earlier in the season, said Russell Callender, assistant administrator for NOAA’s National Ocean Service.

The 2016 bloom is expected to measure 5.5 on the severity index but could range anywhere between 3.0 and 7.0. The forecast is similar to conditions last seen from 2008 to 2010, although the bloom may be as small as that seen in the relatively mild year of 2004. The seasonal outlook uses models that translate spring nutrient loading into predicted algal blooms. After three years with wet springs, this spring has had more typical rainfall, leading to more normal discharge from the Maumee River. As a result, there is less phosphorus entering Lake Erie and fewer nutrients to fuel a bloom.

“With a return to average spring discharge, and much lower river flow in June than in recent years, the western basin should look better. However, the phosphorus inputs to the lake are still high enough to support bloom development,” said Richard Stumpf, NOAA’s National Centers for Coastal Ocean Science’s lead for the Lake Erie bloom forecast.
A Warm July with Highly Variable Rainfall
By: Jim Noel
Source: http://agcrops.osu.edu/newsletter/corn-newsletter/warm-july-highly-variable-rainfall

The outlook for July calls for above normal temperatures to persist. Maximum temperatures will generally be in the 80s and lowers 90s but a few day could top out as high as 95 especially in western and southern areas of the state. Overnight lows will range form the 50s to 70s but more days will be in the 65-75 degree range than higher or lower. More of the above normal temperatures in July will come from higher night-time lows versus daytime highs.

Rainfall will be highly variable. There will be a ring of fire across the region which is a battle between the hot and humid weather south and cooler and drier air north. This will lead to complexes of storms from time to time. There will be a round of these storms from July 6-8 then again at some point in the week of July 11-15. The preferred area seems to be the southwest half of the state over the northeast half. Drought is forecast to expand some over northeast areas of the state.

Overall, rainfall is forecast to be 0.50 inches to 2+ inches in the first half of July. Normal is near or just below 2 inches. In summary, July will be warmer than normal with normal to below normal rainfall overall but rainfall will be highly variably with drier areas likely northeast and wetter areas southwest. August will see more of the same.

Agriculture Secretary Vilsack Proclaims August 7-13 "National Farmers Market Week"
On July 11, 2016 US Agriculture Secretary Tom Vilsack signed a proclamation declaring Aug. 7-13, 2016, as "National Farmers Market Week." This year marks the 17th annual National Farmers Market Week to honor and celebrate the important role that farmers markets play in local economies.

"Farmers markets are an important part of strong local and regional food systems that connect farmers with new customers and grow rural economies. In many areas, they are also expanding access to fresh, healthy food for people of all income levels," said Secretary Vilsack. "National Farmers Market Week recognizes the growth of these markets and their role in supporting both urban and rural communities."

Throughout the week, USDA officials will celebrate at farmers market locations across the country. On Saturday, Aug. 6, Elanor Starmer, the Administrator of USDA's Agricultural Marketing Service (AMS) – which conducts research, provides technical assistance, and awards grants to support local and regional food systems – will kick off the week visiting a farmers market and wrap up the week at USDA's own farmers market in Washington, D.C., on Friday, Aug. 12.

"Farmers markets are a gathering place where you can buy locally produced food, and at the same time, get to know the farmer and story behind the food you purchase," said Administrator Starmer. "These types of markets improve earning potential for farmers and ranchers, building stronger community ties and access to local foods."
To help farmers market managers across the country promote and celebrate National Farmers Market Week, USDA is sharing online free farmers market related graphics that market managers and others can use to customize posters, emails, websites and other promotional materials. The graphics, along with a short demonstration video, can be found at: www.ams.usda.gov/resources/NFMW

Over the course of the Obama Administration, USDA has invested close to $1 billion in 40,000 local food businesses and infrastructure projects. Farmers markets provide consumers with fresh, affordable, convenient, and healthy products from local producers. With support from USDA, more farmers markets offer customers the opportunity to make purchases with the Supplemental Nutrition Assistance Program; the Women, Infants, and Children Nutrition Program; and the Senior Farmers' Market Nutrition Programs.
Supporting farmers markets is a part of the USDA’s Know Your Farmer, Know Your Food (KYF2) Initiative, which coordinates the Department’s work to develop strong local and regional food systems. USDA is committed to helping farmers, ranchers, and businesses access the growing market for local and regional foods, which was valued at $12 billion in 2014 according to industry estimates. You can also find local and regional supply chain resources on the newly-revamped KYF2 website and use the KYF2 Compass to locate USDA investments in your community. More information on how USDA investments are connecting producers with consumers and expanding rural economic opportunities is available in Chapter IV of USDA Results on Medium.

**Cottage Foods & Farmers Markets Workshop to be held on July 15 in Canfield, Ohio**

By Eric Barrett, Extension Educator-Mahoning County

Join OSU Extension in Mahoning County for Cottage Foods & Farmers Workshop for food entrepreneurs, farmers market managers, and farmers market managers on Friday, July 15, 2016 from 11:00 a.m. to 2:00 p.m.

This program will feature Emily Adams, Extension Educator from Coshocton County. Emily has a BS degree in Food Science and serves as an Extension Educator with OSU Extension. Emily’s work includes teaching Good Agricultural Practices for the OSU Produce Safety team and work with the Direct Food & Ag Marketing team on farmers markets and food safety.

This three-hour workshop will focus on cottage foods and home bakery licenses. Learn the food safety reasons behind Ohio law for Cottage Foods, including why certain foods are able to be made in the home without inspection and some are not. This program also helps food producers understand labeling and ways to determine if a recipe is ready for the market.

The registration for this program is $15 per person. Call the Mahoning County Extension office at 330-533-5538 for complete registration Details. Registration details can also be obtained at: [http://go.osu.edu/cottagefoods](http://go.osu.edu/cottagefoods)

**David’s Weekly News Column- Fair Entries and Farm Custom Rates**

By David Marrison, (as published in Jefferson Gazette on July 13 & Star Beacon on July 17)

Hello, Ashtabula County! I cannot believe that July is already half way over! The rains we received last week were worth millions to our local crops. We were getting really dry and these timely rains were exactly what the Ag Doctor ordered. Our summer is zipping by which means the Ashtabula County fair is not too far away. In fact, Saturday July 16 is one of our biggest 4-H days as it is “Super Saturday.” During this day, hundreds of our 4-Hers travel to the fairgrounds to take part in our project and Skill-a-thon judging. It is always great to see the outstanding work being done by our youngsters. Congratulations to all of them for their exceptional accomplishments. Today I would like to remind Ashtabula County residents that the fair office is open and is accepting fair entries. I would also like to share details on how to receive a copy of the newly release 2016 Ohio Farm Custom Rates. Have a great week everyone!

In little less than one month, the Ashtabula County Fair will be in full swing with the fair running from August 9 through the 14th. However, the fair office opened this week and entries for this year’s fair are now being taken. There is an entry for everyone. The entry categories include: dairy cattle, beef cattle, draft horses, goats, hay & silage, agriculture, horticulture, floriculture, culinary, canned goods, needlework, crafts, arts, grange, honey, maple syrup, wine, and photography. Each of these categories has lots of options for entries, so make sure you enter your best of the best. Fair entries will be taken until Wednesday, August 3, 2016 and most items for exhibit must be brought to the fairgrounds on Monday, August 8 between 9 a.m. and 6 p.m. Complete entry details can be found on the Ashtabula County’s fair website at: [www.ashtabulafair.com](http://www.ashtabulafair.com) or be obtained by calling 440-576-7626 or 440-576-0557. See you at the 170th Ashtabula County Fair!
Many farmers do not own equipment for every possible job they may encounter in the course of operating their farm and may, instead of purchasing the equipment needed, seek out someone with the proper tools necessary to complete the job. This farm work completed by others is often referred to as “custom farm work” or more simply “custom work.”

Our Extension office receives quite a few calls during the year about what a fair price would be for custom work operations. To help with these questions, OSU Extension publishes the Ohio Farm Custom Rate Factsheet every two years. I am pleased to announce the 2016 factsheet was released last week.

What I like about this factsheet is that is based on survey data which is obtained from farmers across Ohio. This data can be used as a starting point for negotiation. For instance, a landowner may need to hire someone to bale their hay into small square bales. What is fair for this? The 2016 rates indicate the average charge in Ohio is $0.70 per bale with the range from $0.34 to $1.07 per bale. By having both the range and average price it gives room for negotiation between the parties.

The custom rate chart gives ranges for a whole host of operations such as soil preparation, planting, harvesting, fertilizer and chemical application, silage harvest, manure application, drainage tile installation, and general machinery rental. If it is done on the farm, there is a great chance it is in this report. For farmers wishing to have a copy of the 2016 Ohio Farm Custom Rates, you can call the Ashtabula County Extension office at 440-576-9008 to have a copy mailed or emailed to you. A copy of this report can also be found at: http://aede.osu.edu/about-us/publications/ohio-farm-custom-rates-2016

To end today’s column, I would like to share a quote from Bruce Lee who stated, “Love is like a friendship caught on fire. In the beginning a flame, very pretty, often hot and fierce, but still only light and flickering. As love grows older, our hearts mature and our love becomes as coals, deep-burning and unquenchable.” Have a good and safe day!

**Consider Entering your Flowers at the Fair**
by the Ashtabula County Master Gardeners

Have you ever visited the floral building at our county fair and thought to yourself that you had nicer specimens in your garden than those that won blue ribbons in the competition? If so, it's time to consider entering your own flowers and arrangements!

It's fun, easy and the entry fee is minimal. In fact, if you buy a membership ticket or exhibitor's pass, it's free! All the information you need can be found in the fair booklet, available for download right now at www.ashtabulafair.com or for pickup at the fairground's office.

While the categories for Floriculture Competition are straightforward and clear, there are some rules to follow. If you disregard them, you'll likely be disqualified. The most important tip, then, is Follow the rules! For example, entries will not be accepted after the deadlines for the first and second show. Yes, you can enter in most categories twice, once for the first show (judged Monday night before the fair) and again in the second show later in the week (judged Friday at noon). The three categories that allow only one entry judged on Monday are Houseplants, Hanging Baskets and Artistic Arrangements.

Be sure your entry labels are matched to your entry. Yellow large marigolds won't stand a chance in competition against orange, multi-colored dwarf marigolds. And you'd probably be awfully embarrassed if you accidentally enter a snapdragon in the petunia category. Follow directions for numbers of blooms. In the class of Specimen Cut
Flowers, most entries are limited to one bloom--two blooms will disqualify you. But when three blooms are called for, you must have three blooms--no more, no less.

Measure twice. Two categories in Class Six call for arrangements no bigger than 5” and judges have rulers. You should also be aware that the tallest gladiolus is judged for the longest set of flowers, from the base of the first bloom to its flowering tip--not the length of its entire stem.

Speaking of gladioli, if you enter a spike in this class, please make sure your vase is heavily weighted. Glads and other tall entries topple easily if breezes blow through the floral building. When the wind picks up, Ashtabula County Master Gardener volunteers cringe as they await the sound of breaking glass.

Besides following the rules, you might want to keep in mind some tips that will help your entry be more "prizeworthy." Judges of flower shows take in many criteria when it comes to their consideration of individual bloom entries. For instance, the color of flowers should be bright and attractive and free of blemish. Avoid entering specimens with defects such as sunburn, water spotting, bleaching or fading. Flower form itself must be true to type. For composite flowers like dahlias and zinnias, petals in the same ring should be the same length and shape. Double blooms should be deep.

While larger blooms are desirable, form and substance are more important. Size matters more when an entry is required to have three or more blooms. In that case, judges are looking for uniformity in size, as well as color, shape, condition and substance. Good substance and condition are vital for all entries at judging time. Flowers and foliage should be firm and crisp. Bloom tips and petal margins should show no signs of wilting, fading or browning.

Here are some other tips for entries:

- Make sure your foliage is healthy and characteristic of your entry, especially if the foliage itself is the entry. Start getting rid of those slugs right now if you plan on submitting a hosta leaf or two.
- Pick strong, straight stems for your blooms. You may want to "wedge" some of your entries in their vases so they don't look tipsy.
- Choose appropriate containers that don't distract from your entries. Clear or white vases are recommended, and a good rule of thumb is that flower stems be 1 1/2 to 2 times the height of the container.

While the condition of blooms in floral arrangements is important, other judging criteria carry more weight. Good color harmony should be evident between the container and arrangement, as well as among the flowers themselves. Each entry should have a definite design with stems arranged to create an attractive effect. A balance in the volume and color of the plant material is important. A well-balanced arrangement will appear stable and not seem to tilt. Parts of the arrangement, plant materials and their container should be in proper proportion. Foam, wiring or tape used to hold the materials should not be visible.

Flowers and foliage should appear to belong together naturally. While dried flowers may be effectively combined with fresh (and may, indeed, be required in some categories), never ever include plastic or silk flowers in your entries. Lastly, remember that judges are typically looking for uncommon, out of the ordinary, original arrangements. Let your design be imaginative and unique, without appearing bizarre.

While most of the categories in all classes remain the same this year, all but two of the artistic arrangement classes for adults change every year. The entries that typically appear every year are for fresh and dried arrangements not to exceed 5 inches. New categories in 2016 are A Tisket, A Tasket (basket arrangement), Amazing Greys, Covered Bridges, God Bless the USA, It’s All in the Shoe, Luck of the Irish (green only), Monochrome (flowers all one color), Native Plants, Pandora’s Box, Send in the Clowns, Terrariums, That's Just Ducky, Thyme for Fun (herbs only), Tiny and Tasty (edible flowers) and Wine and Walleye.
New categories in the Boys and Girls entries (for ages 4-9 and 10-15) include Minion Magic and Frozen. The popular categories of Miniatures and Kids Gone Wild will remain the same. With over 80 categories to enter, most of them allowing for two shows, you could make big money at the fair. You heard that right. There are monetary awards for first, second and third place winners, as well as Best of Show! So what are you waiting for? Start giving those cutting flowers some extra TLC and chase away those bad munching bugs. Your blooms are going to the fair, Baby!

The Legal and Practical Aspects of the Agricultural Sales Tax Exemption
by Larry R. Gearhardt, Assistant Professor and Field Specialist in Taxation, OSU Extension

Farmers have enjoyed an exemption from the Ohio and county sales tax for many years. Historically, obtaining the exemption from the sales tax was relatively simple. The farmer merely filled out a post card sized exemption form at his local agricultural retailer, checked the box that he was involved in “agriculture,” and most of his subsequent purchases from that agricultural retailer were exempt. More recent, agricultural retailers seem increasingly reluctant to give farmers the agricultural exemption. Numerous questions have arisen regarding why sales tax is being charged on certain items of tangible personal property that the farmer feels should be exempt.

Much has already been written on the subject of the agricultural exemption from sales tax. For a good overview of the agricultural sales tax exemption, see OCES Bulletin 761, written by Paul L. Wright, Douglas E. Sassen, and Nan M. Still, (November 1987), and Fact Sheet OAM-2-12, written by Chris Bruynis, PhD (2012). Both of these documents remain good resources.

However, to fully understand why sales tax is now being charged on items that once appeared to be exempt, one must delve deeper into the Ohio law and its practical application to purchases. The Ohio Revised Code, the Ohio Administrative Code, legal cases that further interpret those codes, the Ohio Department of Taxation, and the sales tax collection process all have a bearing on the agricultural exemption from sales tax.

**ALL SALES BEGIN AS TAXABLE**
Initially, all sales are taxable. Ohio Revised Code section 5739.02 states: “. . . an excise tax is hereby levied on each retail sale made in this state.” ORC sec. 5739.02(C) expands this requirement by stating: “(C) For the purpose of the proper administration of this chapter, and to prevent the evasion of the tax, it is presumed that all sales made in this state are subject to the tax until the contrary is established.” The effect of this statement is to place the burden of proving that a sale is exempt on the purchaser. As a general legal principle, exemptions from tax are narrowly construed.

**HOW DO SALES BECOME NON-TAXABLE?**
There are two ways that sales become non-taxable. One way is for a sale to be “excepted” from the definition of a sale by statute. The other way is for a sale to be “exempted” from the sales tax requirement.

A sale is non-taxable if it is specifically excepted from the definition of a “sale.” Ohio Revised Code section 5739.01(B) provides the definition of “sale” and the act of “selling.” One can find an extensive list of transactions that are considered to be a “sale” or the act of “selling” in this section. Also contained in this list are specific exceptions for transactions that are not considered to be sales or the act of selling within the legal definition.

However, more important for our discussion, the agricultural sales tax exemption is an “exemption” from sales tax, not an “exception.” Therefore, this paper focuses on Ohio Revised Code section 5739.02 which provides a list of goods and services that are specifically exempted from the Ohio sales tax.
AGRICULTURAL SALES TAX EXEMPTIONS IN THE OHIO REVISED CODE

ORC section 5739.02(B) provides a list of 53 items that are specifically exempted from the Ohio sales tax. Several items apply to agriculture:

(B)(13) building and construction materials sold to construction contractors for incorporation into a horticulture structure or livestock structure for a person engaged in the business of horticulture or producing livestock. This exemption was later expanded by section (B)(36) to include sales to “persons” in addition to contractors.

(B)(30) land tile
(B)(31) portable grain bins

The subsection that applies most often to agriculture is (B)(17). This subsection states:

(B)(17) Sales to persons engaged in farming, agriculture, horticulture, or floriculture, of tangible personal property for use or consumption primarily in the production by farming, agriculture, horticulture, or floriculture of other tangible personal property for use or consumption for sale by farming, agriculture, horticulture, or floriculture; or material and parts for incorporation into any such tangible personal property for use or consumption in production; and of tangible personal property for such use or consumption in the conditioning or holding of products produced by and for such use, consumption, or sale by persons engaged in farming, agriculture, horticulture, or floriculture, except where such property is incorporated into real property.

In an attempt to better understand this subsection, let’s break it down into its requirements.

1. The sale must be made to a person engaged in farming, agriculture, horticulture, or floriculture;
2. It must be an item of tangible personal property;
3. The item of tangible personal property must be used or consumed primarily (more than 50%) in the production of another item of tangible personal property that will eventually be sold;
4. The item can be material or parts incorporated into tangible personal property for use or consumption in farming;
5. The item can be for use or consumption in the conditioning or holding of products produced by a person involved in farming, agriculture, horticulture, or floriculture, for further use, consumption, or sale, EXCEPT where such item is incorporated into real property.

THE OHIO ADMINISTRATIVE CODE PROVIDES FURTHER CLARIFICATION

The Ohio Revised Code contains the laws passed by the Ohio General Assembly. In contrast, the Ohio Administrative Code contains the rules that agencies use to implement those laws. The rules in the Ohio Administrative Code are promulgated by the agency that is responsible to administer the program and those rules are then reviewed and approved by another agency called the Joint Committee on Agency Rule Review.

Ohio Administrative Code (OAC) rules have a more direct impact on the agricultural sales tax exemption because they are promulgated by the Ohio Department of Taxation and serve as the guidelines for collecting the sales tax.

OAC section 5703-9-23 expands the agricultural sales tax exemption provided in the Ohio Revised Code. This section first provides the definitions for “farming”, “agriculture”, “horticulture”, and “floriculture.” “Farming” is defined as the occupation of tilling the soil for the production of crops as a business and shall include the raising of farm livestock, bees, or poultry, where the purpose is to sell such livestock, bees, or poultry, or the products thereof as a business. “Agriculture” is defined as the cultivation of the soil for the purpose of producing vegetables and fruits and includes gardening and horticulture, together with the feeding and raising of cattle or stock for sale as a business. Note that the definitions of “farming” and “agriculture” include tilling the soil and cultivation of the soil. Therefore, taking all of the requirements together, the agricultural sales tax exemption has been allowed only for those items that are used directly and primarily in the tilling or cultivation of the soil, used in the propagation of plants, or the care and raising of livestock. Timber is not included, nor is a utility vehicle or a chain saw if the technical definition is strictly followed.
OAC section 5703-9-23 further expands what “sales” are tax-exempt. Most of those sales are items that are incorporated into, or used or consumed, producing other tangible personal property for sale.

OAC section 5703-9-23 concludes with three very important statements:

1. Exemptions do not apply to any article which is incorporated into real property
2. The tax or non-tax of a sale is determined by the use of the item sold. An article of tangible personal property that appears to be agricultural in nature must also be used for a non-taxable purpose. For example, a pitch fork used in my barn may be tax-exempt, but taxable if primarily used in my garden.
3. Sales of materials such as lumber, nails, glass and similar items to be used in the construction or repair of buildings shall be subject to the tax.

**CASE LAW PROVIDES THE FINAL DETERMINATION**

Even with the foregoing analysis of the laws and rules, it is impossible to list every item of tangible personal property that is exempt from sales tax. Certain items are clearly used in agriculture and are exempt. On the other hand, some items are clearly not exempt. Some items fall somewhere in the middle and are difficult to tell whether they are tax-exempt, either because the item is used for a personal use a majority of the time or the items could be used for a taxable purpose.

Occasionally, courts are asked to determine the taxability of a particular item. This is most often seen where the resulting sales tax is large enough to warrant spending the money to go to court, such as a manufacturer that is going to produce or purchase mass quantities of that item. Individuals rarely can warrant going to court over a sales tax dispute.

**THE PRACTICAL ASPECTS OF THE AGRICULTURAL SALES TAX EXEMPTION**

Armed with the best legal information, a farmer may firmly believe that the item he is purchasing should be tax-exempt. However, the cash register rings up that the sale as taxable. Does he have to pay the sales tax? Yes, from a practical standpoint. There are two ways to look at each situation – the legal way and the practical way. From a practical point of view, the farmer may still have to pay the sales tax at the cash register even though he feels that the item is tax-exempt. However, if the farmer is erroneously required to pay the sales tax, he/she must file an application for a refund (ST-AR form) with the Ohio Department of Taxation.

Let’s take a closer look at the collection process. Both ORC section 5739.02(C) and OAC section 5703-9-03 state that all sales are presumed to be taxable until the contrary is established. Each vendor is required to collect from the consumer, as a trustee of the State, the full and exact amount of the tax payable on each taxable sale. To be tax-exempt, the farmer must provide to the vendor a fully completed exemption certificate. The vendor is required to keep this exemption certificate on file.

In discussions with some local retailers, I discovered that one large agricultural retailer receives a list of taxable and non-taxable items from its corporate office and the local store is required to collect the sales tax according to the list, notwithstanding the identity of the purchaser. Conversely, the local tractor store determines in-house which items are taxable or non-taxable and for items that may go either way, the store gives the exemption if the purchaser has a tax-exempt form on file. For other large retailers without an agricultural base, they do not recognize the agricultural sales tax exemption.

Exemption forms are available on the Ohio Department of Taxation’s website and may be reproduced. The farmer should use form STEC-U for a unit exemption or STEC-B for a blanket exemption if he is going to purchase numerous items from that vendor. If the farmer wants a refund of sales tax that he feels is erroneously paid, he should file form STAR with the Ohio Department of Taxation. Rather than receiving a cash refund of the sales tax erroneously paid, the farmer may apply the refund to any indebtedness that he owes the State, for example, income tax.
EXEMPTION CERTIFICATES
As previously mentioned, exemption forms may be obtained from the Ohio Department of Taxation website. OAC section 5703-9-03(D) states that: “An exemption certificate is fully completed if it contains the following data elements:

1. The purchaser’s name and business address,
2. A tax identification (e.g. vendor’s license or consumer’s use tax account) for the purchaser issued by this state, if any,
3. The purchaser’s type of business or organization,
4. The reason for the claimed exemption, and
5. If the certificate is in hard copy, the signature of the purchaser.

If any of these elements is missing the exemption certificate is invalid.”

There has been some confusion recently caused by some agriculture retailers advising farmers that if they want the sales tax exemption, the farmer needs to go to the county courthouse and obtain a vendor’s license. This is not correct. The retailer is trying to comply with the requirement found in subsection (D)(2) above where it states that the exemption certificate requires a tax identification number. However, the retailer’s advice ignores the last two words of that section – “if any.” Farmers are not required to obtain a vendor’s license because they do not sell at retail. I recommend that the farmer write “none required” or “not applicable” on the exemption form where it requests a tax identification number. Of course, then the farmer is burdened with explaining to the cash register attendee that a vendor’s license number is not required. Good luck with that.

ULTIMATE LIABILITY FOR SALES TAX
Many farmers believe that if they give a tax exemption form to the retailer, the farmer should not be ultimately responsible for the sales tax. However, both the purchaser and the vendor may ultimately be liable for the tax. Initially, the purchaser is responsible to pay the sales tax to the vendor. If the purchaser claims that the sale is non-taxable, he/she must provide an exemption certificate to the vendor specifying the reason that the sale is non-taxable (ORC 5739.03(A)).

A vendor that obtains a fully completed exemption certificate from a purchaser is initially relieved of liability for collecting and remitting tax on any sale covered by that certificate. If it is later determined that the exemption was improperly claimed, ORC section 5739.03(B)(1)(b) makes the purchaser liable for any tax due on that sale. If a vendor improperly fails to collect the sales tax, another section of the ORC makes either the purchaser OR the vendor personally liable for the sales tax. ORC section 5739.13 says that the tax commissioner may make an assessment against either the vendor or the purchaser as the facts require. An assessment against a vendor when the tax has not been collected shall not discharge the purchaser’s liability to reimburse the vendor for the tax. From a practical standpoint, the vendor would have to take steps to collect the unpaid tax from the purchaser.

To put additional pressure on a vendor to collect and remit the sales tax, ORC section 5739.33 states that if any vendor required to file (sales tax) returns for any reason fails to file the return or remit payment, any employee having control or supervision over the filing of returns and making payments, or any officer, member, manager, or trustee who is responsible for the vendor’s fiscal responsibilities shall be personally responsible. The amount due may be assessed against that person.

Because of this liability exposure, from both a corporate and personal standpoint, it is my opinion that the vendor is going to err on the side of collecting the sales tax if it is not clear that the item is non-taxable.

CONCLUSION
Even though it may appear from a legal standpoint that the purchase of an item should be tax-exempt, without a complete list of what items are taxable and non-taxable from the Ohio Department of Taxation, there is still room for confusion. The vendor initially determines whether the item is non-taxable at the cash register. The purchaser needs to provide a tax-exemption certificate to the vendor to receive the sales tax exemption. If the vendor collects sales tax on an item that the farmer feels is tax-exempt, the farmer should file a request for a refund with the Ohio Department of Taxation.

PLEAS SHARE...this newsletter with farmers or others who are interested in agricultural topics in Ashtabula & Trumbull Counties. Past issues can be located at: https://go.osu.edu/ag-news. Please tell your friends and neighbors to sign up for the list. CONTACT: marrison.2@osu.edu

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