

## Direct Marketers and the Virginia Sales Tax

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Historically, farmers have not paid sales tax on many purchases used in agricultural production, nor have they been concerned with collecting sales tax because they have sold a commodity product to a wholesaler or middleman. Now, however, many Virginia farmers have entered into the realm of “Direct Marketing” by face-to-face or Web-based sales directly to the customer via roadside stands, their websites, farmers’ markets, U-pick sales, and community supported agriculture (CSA). The items sold may include produce, meats, further processed foods (for example, jams, jelly, and jerky), hay, farm crafts, and other products.

This is in contrast to traditional wholesale sales of farm products, such as live cattle at an auction market and/or grain sales to a local elevator. These items are then further processed or combined with other commodities for final sale to the “end-user” or the person consuming the good.

When farmers sell retail or to the end-user, they must collect sales tax on the gross sales price of all retail sales. For the purpose of sales tax rules, farmers making direct sales are treated like all retail merchants and are obligated to collect and remit the sales tax on all retail sales to each customer. Retail sales can be thought of as the sale to the end user as opposed to a wholesaler. There are no/limited exceptions or special circumstances allowed for farmers selling their own production except for occasional sales.<sup>1</sup> The tax must be separately stated and added to the sales price or charge. For clarification, consider this example, a farmer direct marketing vegetables cannot sell summer squash for \$1.00/lb includ-

ing the sales tax. By law, farmers must charge \$0.975/lb for the squash plus \$0.025 in sales tax. The Virginia Department of Taxation is the state agency responsible for ensuring that this occurs. See Figure 1, a flowchart defining of when farmers must collect sales tax.

Individuals, partnerships, corporations, etc. must file for a Certificate of Registration if starting a business in Virginia or desiring to conduct business as a dealer by selling directly to the consumer. The farmer must register with the state by filing State Form R1, Combined Registration Application Form ([www.tax.virginia.gov/taxforms/Business/Registration/R-1.pdf](http://www.tax.virginia.gov/taxforms/Business/Registration/R-1.pdf)), and must collect and pay the tax due on retail sales. Once registered, the farmer will be assigned a Virginia tax identification number that will be used when conducting business with the state.

If your application indicates that you will be collecting sales tax, the department will send you a Virginia Certificate of Registration for sales tax. This certificate permits sales tax collection, and allows the farmer to issue and receive exemp-

tion certificates. For example, if Fred Farmer sells hay to Frank Farmer to feed Frank’s Friesians, then Fred Farmer’s sale to Frank Farmer is exempt from sales tax (apologies to Dr. Seuss). However, if Fred Farmer sells the next load of hay to Paul Pleasure Pony owner then Fred Farmer must collect and remit the state sales tax. The Virginia Certificate of Registration must be displayed at your place of business. The farmer should also



<sup>1</sup>Occasional Sales: Defined as three or fewer transactions in a year. Sales at flea markets, fairs, etc. often involve multiple transactions and are generally not considered occasional.

apply for a Federal Tax Identification Number (FEIN) by going directly to the IRS ([www.irs.gov/businesses/small/article/0,,id=98350,00.html](http://www.irs.gov/businesses/small/article/0,,id=98350,00.html)).

Any business subject to collecting sales tax must submit a monthly report to the Virginia Department of Taxation along with any collected sales tax. The report must be submitted by the 20th of the following month whether or not any taxable sales actually occurred for that month. The report and the appropriate taxes are submitted using Form ST-9. Form ST-9 and instructions can be found at: [www.tax.virginia.gov/taxforms/Business/Sales%20and%20Use%20Tax/ST-9,%20ST-9A.pdf](http://www.tax.virginia.gov/taxforms/Business/Sales%20and%20Use%20Tax/ST-9,%20ST-9A.pdf). Once a business is registered, the Department of Taxation will send a booklet of Form ST-9s for the business's convenience. A direct marketer must calculate sales of both food and non-food items and determine the appropriate tax to remit. The Department of Taxation realizes that collecting, accounting for, and remitting sales tax requires substantial effort and expense by businesses. Any business remitting sales tax is eligible for compensation for the necessary accounting and paying of the collected sales tax provided that the ST-9 is filed in a timely manner. The compensation is in the form of a decreasing sliding rate based on the amount of taxable sales during the month. The Form ST-9 worksheet walks you through the sales tax on food, the general sales tax, and the discount or compensation you are allowed to keep.

As of 2008, sales-tax rates fall into two basic categories that farmers selling retail need to be aware of. These are food and nonfood categories. The basic sales tax for nonfood items is 5 percent of gross sales and is comprised of 4 percent for the state and 1 percent for the locality. Food sales are taxed at a total rate of 2.5 percent of gross sales, which is comprised of 1.5 percent for the state and 1 percent for the locality. Department of Taxation Bulletin 5-78<sup>2</sup> discusses the sale of eligible food items subject to the reduced state tax rate of 1.5 percent as are deemed eligible under the federal food

stamp definition. *Please note:* Sales taxes are not levied on food stamps and Women, Infants, and Children (WIC) drafts purchases of eligible items<sup>2</sup> (Virginia Tax Administrative Code: 23VAC10-210-6070).

Many direct marketers also have the opportunity to sell to a wholesaler or further-processor in addition to their retail customers. The only way a farmer does not have to collect sales tax from someone purchasing product for resale is if that person provides Form ST-10 (Sales and Use Tax Certificate of Exemption). Form ST-10 and all Virginia tax forms can be ordered or printed from the Virginia Business Tax Forms and Instructions website at: [www.tax.virginia.gov/site.cfm?alias=businessformorders](http://www.tax.virginia.gov/site.cfm?alias=businessformorders). Form ST-10 can be printed directly by going to [www.tax.virginia.gov/taxforms/Business/Sales%20and%20Use%20Tax/ST-10.pdf](http://www.tax.virginia.gov/taxforms/Business/Sales%20and%20Use%20Tax/ST-10.pdf).

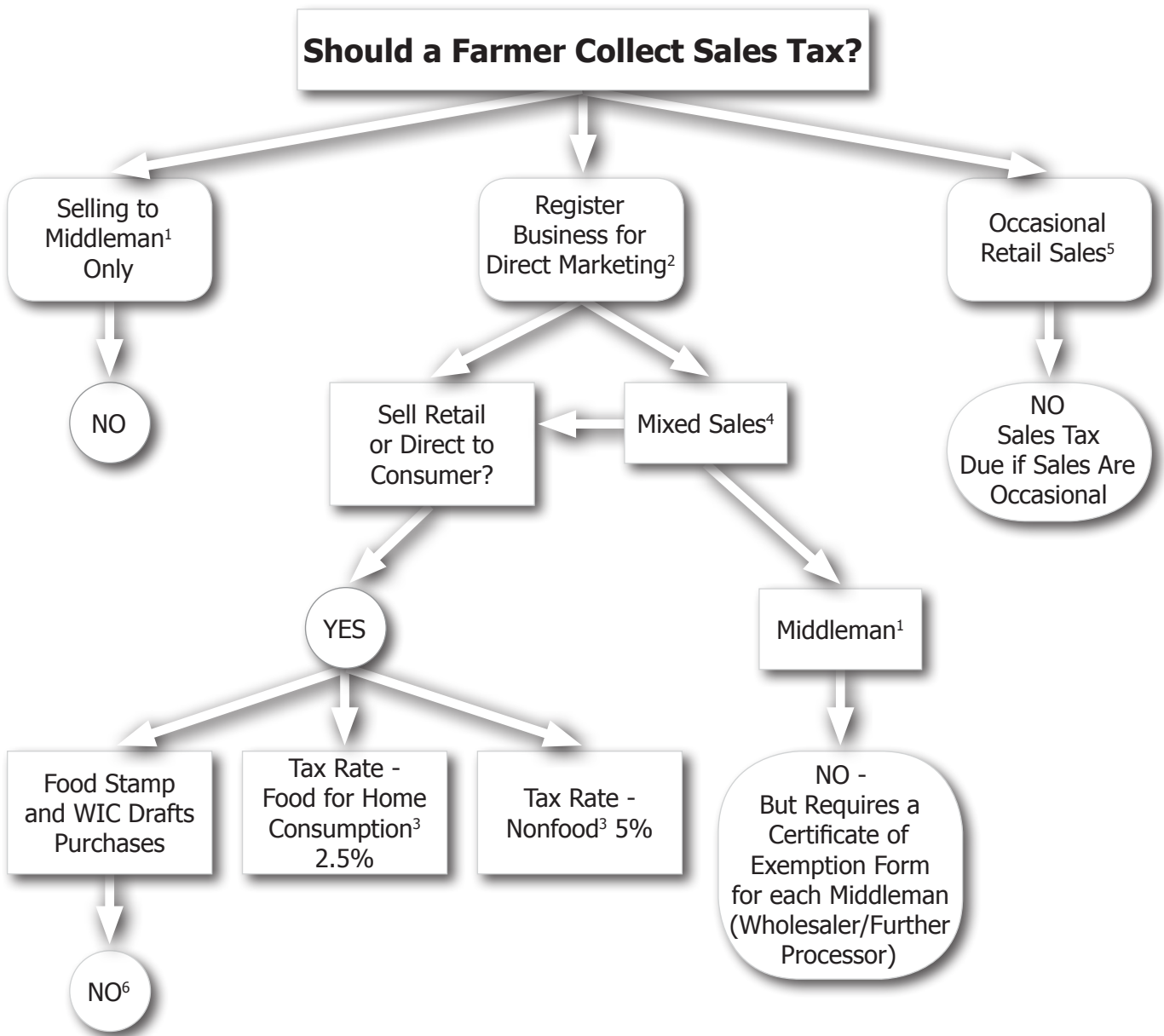
The sales tax applies to regular or recurring sales of farm products by farmers or peddlers at public markets, roadside stands, farms, etc. There is a provision for the occasional sale where you do not collect sales tax, but this is intended for the truly occasional sale, defined as three or fewer separate transactions within one calendar year, providing the activity does not require a Certificate of Registration. Because sales at fairs, flea markets, etc. generally involve multiple individual sales they are not considered occasional sales.

The laws governing Sales and Use Tax are generally straightforward, i.e. "If you are selling retail, then you must collect sales tax." However, an individual farmer often has unique questions specific to his operation. To address specific questions, the Department of Taxation suggests that you review the public documents on the Department's Tax Policy Library ([www.policylibrary.tax.virginia.gov/OTP/Policy.nsf](http://www.policylibrary.tax.virginia.gov/OTP/Policy.nsf)) or write the Tax Commissioner for a ruling.

Complete information on Virginia Sales and Use Tax can be obtained at the Virginia Department of Taxation website: [www.tax.virginia.gov/](http://www.tax.virginia.gov/) Use the Business Link to reach the Sales and Use Tax.

<sup>2</sup>The Virginia Department of Taxation defines food based on the federal food stamp definition of "food for home consumption" in order to determine foods that will qualify for the reduced sales tax rate ([www.tax.virginia.gov/mobiletax/businessFAQ3.cfm#food](http://www.tax.virginia.gov/mobiletax/businessFAQ3.cfm#food)). See the partial list from the Virginia Department of Social Services. Items that **can** be purchased with food stamps are: food or food products meant to be eaten by people; vegetable seeds and food producing plants, roots, and trees for family consumption; baby formula, diabetic, and diet foods; edible items used in preparing or preserving food such as spices and herbs, pectin, and shortening; water and ice labeled for human consumption; and snack foods. Items that **cannot** be purchased with food stamps are: prepared hot foods in grocery stores; any prepared food (hot or cold) sold and meant to be eaten at the store; alcoholic beverages and tobacco; cleaning products, paper products, toiletries, and cooking utensils; pet foods; items for food preservation such as canning jars and lids, freezer containers, or food wrapping paper; medicines, vitamins, or minerals; and items for gardening such as fertilizer and peat moss ([www.dss.state.va.us/benefit/foodstamp.html#buying](http://www.dss.state.va.us/benefit/foodstamp.html#buying)).

**Figure 1: Sales tax decision tree**



<sup>1</sup>Middleman = wholesaler, reseller, stockyard, food processor, grain elevator, hay broker, neighbor buying tomatoes to turn into salsa for sale.

<sup>2</sup>Register Businesses: State Form RI, Federal EIN.

<sup>3</sup>Tax Rate: Food purchased for home consumption = 2.5% (1.5% goes to the State + 1% goes to the Locality). Food Items are defined by the Food Stamp Act of 1978. Nonfood = 5% (4% goes to the state + 1% goes to the locality).

<sup>4</sup>Mixed sale such as a gift basket containing food and non-food items – intent and the predominance of one item can help make the determination, e.g., a gift basket with ceramic figurines with a jar of jam is probably considered nonfood while a gift basket with food stuffs (processed or unprocessed) with a ceramic figurine as decoration is probably considered food.

<sup>5</sup>Occasional Sales: Defined as three or fewer transactions in a year. Sales at flea markets, fairs, etc. often involve multiple transactions and are generally not considered occasional.

<sup>6</sup>Food stamps and Women, Infants, and Children (WIC) drafts: Effective October 1, 1986, the tax does not apply to tangible personal property purchased by individuals with food coupons (“food stamps”) issued by the U.S. Department of Agriculture under the Food Stamp Program or drafts (WIC drafts) issued through the Virginia Special Supplemental Food Program for Women, Infants, and Children. (Virginia Tax Administrative Code: 23VAC10-210-6070).