

Pecan Growers Tax Issues: Disaster Loss and Sales Tax

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Personal/Non-Business Loss

- The amount of damage to your property is the lesser of either:
- The property's adjusted basis immediately before the loss, or
- The property's decline in fair market value due to casualty

Casualty

- Casualty loss is defined as the damage or loss of property resulting from an identifiable event that is sudden, unexpected and unusual.
- Cannot be gradual or progressive deterioration, an event that is anticipated or intended to occur

Personal /Non-Business Loss

- Reduced by insurance (claimed or not)
- Allowed as a deduction if the taxpayer is in a Federally Declared Disaster Area
 - E.g. Hurricane Florence or Tropical Storm Michael (2018)

Post TCJA-Casualty Losses

- Non-Business
 - Suspended for tax years 2018 – 2025 under TCJA unless in a Federally Declared Disaster area
- Business
 - Subject to limitations

Personal/Non-Business Loss

- Limit On Deduction after Insurance reimbursement.
 - \$500 reduction per loss event, and
 - Use Form 4684, Part A, and itemize on Schedule A Form 1040

Business Losses

- For business property losses (property held for producing income), the casualty loss is calculated the same way with important exceptions.
 - No deduction limits
 - No \$100 (500) or 10% rules
 - Loss is not reported as an itemized deduction
 - Report on form 4684, Part B

Business Losses

- The entire business casualty loss, after insurance reimbursement, is deductible subject to the basis rules of the previous slide.
- In addition, clean up expenses, minor repairs and temporary rentals are deductible as ordinary business expenses.
- Use Form 4684, part B and deduct on the appropriate business form.

Example

- Personal loss
 - \$25,000 - \$20,000 = \$5,000 tentative loss.
 - \$5,000 - \$500 = \$4,500
 - The taxpayer must itemize to gain a tax benefit (deduction) of \$4,500

Federal Disaster Area Designation

- No change in rules.
- Taxpayer may elect to amend the previous year's return or claim the loss on the current year's return.
- The taxpayer has two years to replace lost property in order to postpone gain.

Example Personal Property

- You paid \$35,000 for new car, no depreciation for personal vehicles.
- Fair Market Value (FMV) before casualty as estimated by auto dealer was \$12,000 and salvage value of \$1,000. What car dealer was willing to pay after casualty.
- Decline in FMV was \$11,000 (\$12,000 - \$1,000)
- Receive insurance reimbursement of \$12,000, cost of repairs \$9,000.
- Since personal property no taxable gain

Federal Disaster Area Designation

- The two-year replacement period is extended to four years for the replacement of the taxpayer's principal residence.
- IRS will abate interest on income tax for the length of any extension granted for filing tax returns and paying income tax.

Example: Business Loss

- Hurricane Florence damaged property.
- *Lesser of FMV and Adjusted bases + Insurance*
 - Reduced FMV by \$25,000
 - Adjusted basis is \$85,000
 - Insurance company pays \$20,000

Reduction of Basis

- When a casualty loss is deducted, the taxpayer must reduce basis in the property by the same amount,
 - This is true for partial losses where property still exists
 - For total losses, this is a moot point.

Example 2: Pecan Orchard Damage

- Bill suffered the loss of 40% of his pecan orchard
- The decrease in FMV was estimated to be \$75,000
- Bill's adjusted tax basis in his orchard is \$0 because he has depreciated the orchard completely.

- Therefore, while suffering an economic loss, Bill does not have a deductible tax loss because his basis is lower than his decrease in FMV.

- **Paying Sales Tax**
- **Collecting Sales tax**

Tax Deferral of Gain

- IF a net gain does occur, taxpayers have two years to make a "like-kind" replacement investment of the lost property and may defer taxation of gain.
 - Net gains occur when insurance proceeds exceed the taxpayer's basis in the damaged/destroyed property. However, taxpayer can elect to reinvest and defer the gain.

TAX Law Change July 1, 2014

- Must have \$10,000 or more of gross farm income in previous calendar year, or
- Must have \$10,000 or more of gross farm income as an average of the previous 3 calendar years, (HB 1050) or
- Beginning farmers can receive conditional exemption certificates for three years (HB 1050)

New Farmers: Conditional Exemption Certificate

- Apply using **Form E-595CF**
- Valid for year of issuance plus 2 more years.
- NOT RENEWABLE
- Must Provide NCDOR federal and state tax return forms 90 days after the close of tax year.

A Producer Is?

- Sales and Use Tax Bulletin Section 9-1 E.1. defines a producer as persons "selling primarily as producers when the total dollar sales volume of their produced farm products in the original state regularly exceeds 50% of total dollar sales volume of their purchased products and their produced products."

Sales and Use Tax Exempted Items

- Pesticides
- Baby chicks and poults
- Commercially built facility and Building materials for raising or feeding of animals
- Bulk tobacco barns, racks or accessories to cure or dry tobacco
- Fuel and Electricity (separate meters)
- Fertilizer, plastic mulch, seeds, lime, land plaster
- Farm machinery, repair parts and lubricants
- Containers
- Grain, feed, soybean storage facility and parts

I'm Selling at a Farmer's Market ... DO I Register?

- If you are selling only your produce or production, then no registration is required for sales tax collection.
- BUT, "a person that only sells products of the farm produced by the person must provide a written statement attesting that the items were produced by the person....to the operator of the specialty market" ...

As a Farmer, Do I Collect Sales Tax? Well It Depends...

- If you are a producer, selling your products in their original and unmanufactured state, then these sales are exempt from sales and use tax.
 - You are selling in the "capacity of a PRODUCER"

A Retailer is?

- From the same Technical Bulletin Section 9-1E.2. is a person "selling primarily in their capacity as *retail merchants* when their total dollar sales volume of **purchased products** regularly exceeds 50% of the total dollar sales volume of their purchased and produced products."

Records, Records, and Records

- Must maintain separate records of own production from that which is purchased for resale.
- This is done to determine the gross receipts test and percentage allocation to meet classification of producer versus retailer.

Sales of Fruits and Vegetables

- Raw vegetables sold by a **producer** are exempt [G.S.105-164.13(4b)]
- Raw veggies that are cut up and placed in bags to be sold by producer are exempt.
- If the producer **adds anything to the vegetables such as seasoning**, no longer exempt, subject to 2% tax on food.
- Shelled butter beans or corn sold in plastic bags by producer are exempt.
- Veggies or fruit sold by retailer, subject to 2% tax rate on food
- Fruits and veggies that qualify as a prepared food item are subject to 4.75% plus any local sales tax.

Registration is Require When

- A farmer purchases ***any products for resale*** that are not produced by the farmer in the capacity of a producer.
- Obtain a Certificate of Registration and issue to the Vendor a Certificate of Exemption...the farmer will collect and remit sales tax on these purchases when resold.

Quick Example: Sweet Potato

- Sold by farmer with dirt on: EXEMPT
- Sold by neighbor at farmer's market: 2% food sales tax
- Made into a pie: 4.75% plus local sales tax
- Sold as a piece of pie, on a plate, with a fork and napkin: 4.75% plus local sales tax



Sales Tax and MEAT

- Live animals: exempt from tax when sold by producer [G.S. 105-164.13(4b)]
- Cuts of meat (uncooked): subject to 2% rate on food sold by producer or retailer.
- Processed meat: (e.g. uncooked sausage) subject to 2% rate on food sold by producer or retailer.
- Cooked/smoked meat: subject to 4.75% State and applicable local sales tax.

Registering to Remit Sales and Use Tax

- Online Registration (Generally Quickest)
- <http://www.dor.state.nc.us/electronic/registration/index.html>
- Complete and Submit Form NC-BR
 - http://www.dor.state.nc.us/downloads/forms_fillin_ncbr.php?url=fillin/NCBR_webfill.pdf

Once Registered.....

- NCDOR issues Certificate of Registration
– Account Identification Number
- Coupon Booklet/Blank Forms E-500:
Sales and Use Tax Return Mailed
- Form E505AC, Newly Registered
Taxpayers Mailed.

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