

## **Is HONEY, sold by a Producer, subject to North Carolina Sales Tax?**

Is honey a farm product? And if so, are honey sales exempt from the collection and remittance of NC sales tax? The answer lies in how the North Carolina Department of Revenue (NC DOR) treats honey. The General Statute that provides broad legal basis to sales and use tax is North Carolina General Statute 105-164. This General Statute is silent regarding a definition for what a farm product is. [NC G.S. 105-164.3]

The author contacted the NC DOR for clarification regarding honey sales and received this response via email September 12, 2014 from Trevor Johnson, Director of Public Affairs/PIO, NC Department of Revenue.

*“Honey sold by the person that owns the bees in its original state (although bottled, etc.) is not subject to tax.”* --direct quote from email dated September 12, 2014.

This answer follows the guidance as found in the following references; and, is consistent in logic with the allowance of vegetable farmers marketing raw vegetables in plastic bags as discussed below.

### **North Carolina General Statute 105-164.13(4b)**

*(4b) Products of a farm sold in their original state by the producer of the products if the producer is not primarily a retail merchant and ice used to preserve agriculture, aquaculture and commercial fishery products until the products are sold at retail.*

### **North Carolina Administrative Code 7B.2801 Florists: nurserymen: greenhouse operators and farmers.**

*N.C.A.C. 7B.2801(d) Nurserymen, greenhouse operators and other types of farmers that make retail sales of farm products that they have produced which are in their original state are not liable for collecting and remitting sales tax on these sales unless they are selling primarily in their capacity as retail merchants. Such vendors are selling primarily as producers when the total dollar sales volume of their produced farm products in the original state regularly exceeds fifty percent of the total dollar sales volume of their purchased products and their produced products. Such vendors are selling primarily in their capacity as retail merchants when their total dollar sales volume of purchased products regularly exceeds fifty percent of the total dollar sales volume of their purchased and produced products. Such classification shall remain in effect until either category of sales on a regular basis has changed to another principal type. If such producer vendors operate more than one location, the preceding is applicable to the total dollar sales volume of each location separately. The total dollar sales volume to be used in determining the classification of "producer" or "retail merchant" shall include all sales of tangible personal property without regard to any items or sales that might otherwise be exempt from tax by the Sales and Use Tax Statutes.*

Guidance from NC DOR provides that raw vegetables, placed into a plastic bag for retail sale by the producer is exempt from collection and remittance of sales tax. Likewise, shelled beans or

raw corn in plastic bags are sold, in the original state, are exempt from sales tax collection and remittance. (See Understanding Sales Taxes on Agricultural Products below) Therefore, a producer selling honey, in the **original state**, in a jar or bottle for market purposes, may sell honey exempt from collection and remittance of sales tax.

However, if the producer were to add spices, such as cinnamon, to the honey then state sales tax of 4.75 percent and any local sales tax would need to be collected. Another example of value-added is to create whipped honey butter. The honey is not in the original state, therefore sales tax is to be collected and remitted to NC DOR.

Further, a person acting as a retailer (more than 50% of gross sales is from items purchased to resell) all sales are subject to state plus local sales tax collection and remittance to NC DOR. Similarly, if a person buys honey for resale purposes, sales tax must be collected and remitted on the resold honey.

### **Other Guidance from NC Dept. of Revenue Website**

Understanding Sales Taxes on Agricultural Products (July 10, 2009)  
[http://www.dorn.com/aboutus/education/agricultural\\_products.html](http://www.dorn.com/aboutus/education/agricultural_products.html)

Guidance for Specialty Market Operators, Operators of Event, and Farmers that only Sell Farm Products Updated (February 28, 2014)  
<http://www.dorn.com/press/2014/specialty.html>

Sales and Use Tax Technical Bulletins – Section 9 (Referenced February 28, 2014, excludes 2009-2014 changes)  
<http://www.dorn.com/practitioner/sales/bulletins/section9.pdf>

Sales and Use Tax Technical Bulletins – Section 8 (Excludes 2009-2014 changes)  
<http://www.dorn.com/practitioner/sales/bulletins/section8.pdf#8-1>

### North Carolina Court Cases or Attorney General Opinions

Selling a farm product as a “convenience to ...*related* (emphasis added) business” loses the sales tax exemption statutes because the related business is the not a farming business.  
Attorney General Opinions 09/27/1977

*Henderson v. Gill*, (1948) 229 NC 313, 49 S.E. 2<sup>nd</sup> 754