



## Court of Appeals Clarifies Agricultural Exemption To The Use Tax

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The Michigan Use Tax Act has several notable exemptions, one of which is the agricultural exemption. The agricultural use tax exemption covers "[p]roperty sold to a person engaged in a business enterprise and using and consuming the property... in the breeding, raising, or caring for livestock, poultry, or horticultural products." MCL § 205.94(1)(f).

This establishes two requirements for the use tax exemption:

1. the entity must be a business enterprise, and
2. the property must be used or consumed "in the breeding, raising, or caring for livestock, poultry, or horticultural products."

In order to qualify for the use tax exemption, an entity claiming the exemption must satisfy both requirements. Therefore, the business entity must be the same entity that is using or consuming the property, in order to claim the exemption.

The Court of Appeals clarified this exemption in the recent case of *Sietsema Farms Feeds, LLC v Department of Treasury*, 296 Mich App 232, -- NW2d --, 2012 WL 639339 (Mich App 2012). Sietsema Farms operated a feed mill, which sold its feed to hog and turkey farms. The Court held that because Sietsema Farms was not using and consuming the property in the breeding, raising, or caring for livestock and poultry, it failed the second requirement of the agricultural use exemption.

To qualify for the exemption, Sietsema Farms must have been the entity doing the using or consuming. The producer cannot claim the agricultural use tax exemption vicariously because the purchaser of its products is using or consuming the products in a way that satisfies the use exemption. If Sietsema Farms was feeding the livestock, it would have satisfied the second requirement, but selling the property alone is not enough to qualify for the exemption.

If you have a use or sales tax issue, contact a Foster Swift attorney.

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