

House Bill 983

By: Representatives McCall of the 33rd, Roberts of the 155th, England of the 116th, and Burns of the 159th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated,
2 relating to general provisions relative to the state sales and use tax, so as to clarify eligible
3 exemptions; to amend Code Section 2-1-5 of the Office Code of Georgia Annotated, relating
4 to annual license fees for qualified agriculture producers, so as to correct a cross-reference;
5 to provide for an effective date and applicability; to repeal conflicting laws; and for other
6 purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 1 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to
10 general provisions relative to the state sales and use tax, is amended by revising Code Section
11 48-8-3.3, relating to certain agricultural exemptions, as follows:

12 "48-8-3.3.

13 (a) As used in this Code section, the term:

14 (1)(A) 'Agricultural machinery and equipment' means machinery and equipment used
15 in the production of agricultural products, including, but not limited to, machinery and
16 equipment used in the production of poultry and eggs for sale, including, but not limited
17 to, equipment used in the cleaning or maintenance of poultry houses and the
18 surrounding premises; in hatching and breeding of poultry and the breeding of livestock
19 and equine; in production, processing, and storage of fluid milk for sale; in drying,
20 ripening, cooking, further processing, or storage of agricultural products, including, but
21 not limited to, orchard crops; in production of livestock and equine for sale; by a
22 producer of poultry, eggs, fluid milk, equine, or livestock for sale; for the purpose of
23 harvesting agricultural products to be used on the farm by that producer as feed for
24 poultry, equine, or livestock; directly in tilling the soil or in animal husbandry when the
25 machinery is incorporated for the first time or as additional machinery for the first time
26 into a new or an existing farm unit engaged in tilling the soil or in animal husbandry in

27 this state; directly in tilling the soil or in animal husbandry when the machinery is
 28 bought to replace machinery in an existing farm unit already engaged in tilling the soil
 29 or in animal husbandry in this state; machinery and equipment used exclusively for
 30 irrigation of agricultural products, including, but not limited to, fruit, vegetable, and nut
 31 crops; and machinery and equipment used to cool agricultural products in storage
 32 facilities.

33 (B) 'Agricultural machinery and equipment' also means farm tractors and attachments
 34 to the tractors; off-road vehicles used ~~primarily~~ solely in the production of nursery and
 35 horticultural crops; self-propelled fertilizer or chemical application equipment sold to
 36 persons engaged primarily in producing agricultural products for sale and which are
 37 used exclusively in tilling, planting, cultivating, and harvesting agricultural products,
 38 including, ~~but not limited to,~~ growing, harvesting, or processing onions, peaches,
 39 blackberries, blueberries, or other orchard crops, nursery, and other horticultural crops;
 40 devices and containers used in the transport and shipment of agricultural products;
 41 aircraft exclusively used for spraying agricultural crops; pecan sprayers, pecan shakers,
 42 and other equipment used in harvesting pecans sold to persons engaged in the growing,
 43 harvesting, and production of pecans; and off-road equipment and related attachments
 44 which are sold to or used by persons engaged ~~primarily~~ solely in the growing or
 45 harvesting of timber and which are used exclusively in site preparation, planting,
 46 cultivating, or harvesting timber. Equipment used in harvesting shall include all
 47 off-road equipment and related attachments used in every forestry procedure starting
 48 with the severing of a tree from the ground until and including the point at which the
 49 tree or its parts in any form has been loaded in the field in or on a truck or other vehicle
 50 for transport to the place of use. Such off-road equipment shall include, but not be
 51 limited to, skidders, feller bunchers, debarkers, delimiters, chip harvesters, tub-grinders,
 52 woods cutters, chippers of all types, loaders of all types, dozers, mid-motor graders, and
 53 the related attachments; grain bins and attachments to grain bins; any repair,
 54 replacement, or component parts installed on agricultural machinery and equipment;
 55 trailers used to transport agricultural products; all-terrain vehicles and multipassenger
 56 rough-terrain vehicles; and any other off-road vehicles used ~~directly and principally~~
 57 solely in the production of agricultural or horticultural products.

58 (2) 'Agricultural operations' or ~~'agricultural products'~~ means raising, growing, harvesting,
 59 or storing of crops; feeding, breeding, or managing livestock, equine, or poultry;
 60 producing or storing feed for use in the production of livestock, including, but not limited
 61 to, cattle, calves, swine, hogs, goats, sheep, equine, and rabbits, or for use in the
 62 production of poultry, including, but not limited to, chickens, hens, ratites, and turkeys;
 63 producing plants, trees, Christmas trees, fowl, equine, or animals; or the production of

64 aquacultural, horticultural, viticultural, silvicultural, grass sod, dairy, livestock, poultry,
65 egg, and apiarian products.

66 (2.1) 'Agricultural products' means items produced by agricultural operations for sale or
67 processing. Agricultural products are considered grown in this state if such products are
68 grown, produced, or processed in this state, whether or not such products are composed
69 of constituent products grown or produced outside this state.

70 (3) 'Agricultural production inputs' means seed; seedlings; plants grown from seed,
71 cuttings, or liners; fertilizers; insecticides; livestock and poultry feeds, drugs, and
72 instruments used for the administration of such drugs; fencing products and materials
73 used to produce agricultural products; fungicides; rodenticides; herbicides; defoliant;
74 soil fumigants; plant growth regulating chemicals; desiccants, including, but not limited
75 to, shavings and sawdust from wood, peanut hulls, fuller's earth, straw, and hay; feed for
76 animals, including, but not limited to, livestock, fish, equine, hogs, or poultry; sugar used
77 as food for honeybees kept for the commercial production of honey, beeswax, and
78 honeybees; cattle, hogs, sheep, equine, poultry, or bees when sold for breeding purposes;
79 ice or other refrigerants, including, but not limited to, nitrogen, carbon dioxide, ammonia,
80 and propylene glycol used in the processing for market or the chilling of agricultural
81 products in storage facilities, rooms, compartments, or delivery trucks; materials,
82 containers, crates, boxes, labels, sacks, bags, or bottles used for packaging agricultural
83 products when the product is either sold in the containers, sacks, bags, or bottles directly
84 to the consumer or when such use is incidental to the sale of the product for resale; and
85 containers, plastic, canvas, and other fabrics used in the care and raising of agricultural
86 products or canvas used in covering feed bins, silos, greenhouses, and other similar
87 storage structures.

88 (3.1) 'Animal' means any living organism kept or raised by a qualified agricultural
89 producer for food, fiber, work, or profit, including livestock, poultry, fish, and insects.
90 Such term shall not include a domestic pet or companion animal kept for physical or
91 emotional benefit.

92 (4) 'Energy used in agriculture' means fuels used for agricultural purposes, other than
93 fuels subject to prepaid state tax as defined in Code Section 48-8-2. The term includes,
94 but is not limited to, off-road diesel, propane, butane, electricity, natural gas, wood, wood
95 products, or wood by-products; liquefied petroleum gas or other fuel used in structures
96 in which broilers, pullets, or other poultry are raised, in which swine are raised, in which
97 dairy animals are raised or milked or where dairy products are stored on a farm, in which
98 agricultural products are stored, and in which plants, seedlings, nursery stock, or floral
99 products are raised primarily for the purposes of making sales of such plants, seedlings,
100 nursery stock, or floral products for resale; electricity or other fuel for the operation of

101 an irrigation system which is used on a farm exclusively for the irrigation of agricultural
 102 products; and electricity or other fuel used in the drying, cooking, or further processing
 103 of raw agricultural products, including, but not limited to, food processing of raw
 104 agricultural products.

105 (5) 'Qualified ~~agriculture~~ agricultural producer' includes producers of agricultural
 106 products who meet one of the following criteria:

107 (A) The person or entity is the owner or lessee of agricultural land or other real
 108 property from which \$2,500.00 or more of agricultural products were produced and
 109 sold during the year, including payments from government sources;

110 (B) The person or entity is in the business of providing for-hire custom agricultural
 111 services, including, ~~but not limited to,~~ plowing, planting, harvesting, growing, animal
 112 husbandry or the maintenance of livestock, raising or substantially modifying
 113 agricultural products, or the maintenance of agricultural land from which \$2,500.00 or
 114 more of such services were provided during the year. Such term shall not include real
 115 property contractors, fencing or irrigation contractors, or domestic pet boarders or
 116 kennels;

117 ~~(C) The person or entity is the owner of land that qualifies for taxation under the~~
 118 ~~qualifications of bona fide conservation use property as defined in Code Section~~
 119 ~~48-5-7.4 or qualifies for taxation under the provisions of the Georgia Forest Land~~
 120 ~~Protection Act as defined in Code Section 48-5-7.7;~~

121 ~~(D)~~(C) The person or entity is in the business of producing long-term agricultural
 122 products from which there might not be annual income, including, but not limited to,
 123 timber, pulpwood, orchard crops, pecans, and horticultural or other multiyear
 124 agricultural or farm products. Applicants must demonstrate that sufficient volumes of
 125 such long-term agricultural products will be produced which have the capacity to
 126 generate at least \$2,500.00 in sales annually in the future; or

127 ~~(E)~~(D) The person or entity must establish, to the satisfaction of the Commissioner of
 128 Agriculture, that the person or entity is actively engaged in the production of
 129 agricultural products and has or will have created sufficient volumes to generate at least
 130 \$2,500.00 in sales annually.

131 (b) The sales and use taxes levied or imposed by this article shall not apply to sales to, or
 132 use by, a qualified ~~agriculture~~ agricultural producer of agricultural production inputs,
 133 energy used in agriculture, and agricultural machinery and equipment.

134 (c) The Commissioner of Agriculture, ~~at his or her discretion, may~~ shall use at least one
 135 ~~or both~~ of the following criteria as a tool to determine eligibility under this Code section:

136 (1) Business activity on IRS schedule F (Profit or Loss from Farming); or

137 (2) Farm rental activity on IRS form 4835 (Farm Rental Income and Expenses) or
 138 schedule E (Supplemental Income and Loss).

139 (d) Qualified agricultural producers that meet the criteria provided for in paragraph (5) of
 140 subsection (a) of this Code section must apply to the Commissioner of Agriculture to
 141 request an agricultural sales and use tax exemption certificate that contains an exemption
 142 number. To facilitate the use of the exemption certificate, a wallet-sized card containing
 143 that same information shall also be issued by the Commissioner of Agriculture. The
 144 Commissioner of Agriculture shall issue such card only in the name of the qualified
 145 agricultural producer. No person other than the qualified agricultural producer whose name
 146 is listed on such card shall be permitted to purchase tax-exempt property under this Code
 147 section.

148 (e) The Commissioner of Agriculture is authorized to promulgate rules and regulations
 149 governing the issuance of agricultural exemption certificates and the administration of this
 150 Code section. The Commissioner of Agriculture is authorized to establish an oversight
 151 board and direct staff and is authorized to charge annual fees of not less than \$15.00 nor
 152 more than \$25.00 per year in accordance with Code Section 2-1-5, but in no event shall the
 153 total amount of the proceeds from such fees exceed the cost of administering this Code
 154 section.

155 (f) A dealer that performs both manufacturing and agricultural operations at a single place
 156 of business may avail itself of the exemptions under either Code Section 48-8-3.2 or this
 157 Code section, but not both, for that place of business in any one calendar year.

158 (g) Notwithstanding subsection (c) of Code Section 48-8-63, contractors shall not incur
 159 any use tax on:

160 (1) Tangible personal property that a qualified agricultural producer purchases
 161 tax-exempt under this Code section and furnishes to such contractor for use in the
 162 performance of an agricultural operation, so long as such property retains the character
 163 of tangible personal property and is returned to the qualified agricultural producer upon
 164 the completion of the contract; or

165 (2) Grain bins, irrigation equipment, and fencing or the repair, replacement, or
 166 component parts to grain bins, irrigation equipment, or fencing that a qualified
 167 agricultural producer purchases tax-exempt under this Code section for use in an
 168 agricultural operation and furnishes to such contractor for installation into real property."

169 **SECTION 2.**

170 Code Section 2-1-5 of the Office Code of Georgia Annotated, relating to annual license fees
 171 for qualified agriculture producers, is amended in subsection (b) by replacing "qualified
 172 agriculture producer" with "qualified agricultural producer".

173 **SECTION 3.**

174 This Act shall become effective on January 1, 2015, and shall be applicable to all taxable
175 years beginning on or after January 1, 2015.

176 **SECTION 4.**

177 All laws and parts of laws in conflict with this Act are repealed.