

The House Committee on Ways and Means offers the following substitute to HB 983:

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 regardless of whether the irrigation machinery or equipment becomes  
 32 incorporated into real property; and machinery and equipment used to cool agricultural  
 33 products in storage facilities.

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

60 (2)(A) 'Agricultural operations' or ~~'agricultural products'~~ is used synonymously with  
 61 the term 'agricultural purposes' and means the following activities:

- 62 (i) raising Raising, growing, harvesting, or storing of crops, including, but not limited  
 63 to, soil preparation and crop production services such as plowing, fertilizing, seed bed  
 64 preparation, planting, cultivating, and crop protecting services;  
 65 (ii) feeding Feeding, breeding, or managing livestock, equine, or poultry;  
 66 (iii) producing Producing or storing feed for use in the production of livestock,  
 67 including, but not limited to, cattle, calves, swine, hogs, goats, sheep, equine, and  
 68 rabbits, or for use in the production of poultry, including, but not limited to, chickens,  
 69 hens, ratites, and turkeys;  
 70 (iv) producing Producing plants, trees, Christmas trees, fowl, equine, or other  
 71 animals; or  
 72 (v) the production of Producing aquacultural, horticultural, viticultural, silvicultural,  
 73 grass sod, dairy, livestock, poultry, egg, and apiarian products;  
 74 (vi) Processing poultry;  
 75 (vii) Post-harvest services on crops with the intent of preparing them for market or  
 76 further processing, including but not limited to crop cleaning, drying, shelling,  
 77 fumigating, curing, sorting, grading, packing, ginning, canning, pickling, and cooling;  
 78 (viii) Slaughtering poultry and other animals; and  
 79 (ix) Manufacturing dairy products.
- 80 (B) 'Agricultural operations' excludes constructing, installing, altering, repairing,  
 81 dismantling, or demolishing real property structures or fixtures, including, but not  
 82 limited to, grain bins, irrigation equipment, and fencing.
- 83 (2.1) 'Agricultural products' means items produced by agricultural operations.  
 84 Agricultural products are considered grown in this state if such products are grown,  
 85 produced, or processed in this state, whether or not such products are composed of  
 86 constituent products grown or produced outside this state.
- 87 (3) 'Agricultural production inputs' means seed; seedlings; plants grown from seed,  
 88 cuttings, or liners; fertilizers; insecticides; livestock and poultry feeds, drugs, and  
 89 instruments used for the administration of such drugs; fencing products and materials  
 90 used to produce agricultural products regardless of whether the fencing products or  
 91 materials become incorporated into real property; fungicides; rodenticides; herbicides;  
 92 defoliants; soil fumigants; plant growth regulating chemicals; desiccants, including, but  
 93 not limited to, shavings and sawdust from wood, peanut hulls, fuller's earth, straw, and  
 94 hay; feed for animals, including, but not limited to, livestock, fish, equine, hogs, or  
 95 poultry; sugar used as food for honeybees kept for the commercial production of honey,  
 96 beeswax, and honeybees; cattle, hogs, sheep, equine, poultry, or bees when sold for  
 97 breeding purposes; ice or other refrigerants, including, but not limited to, nitrogen, carbon  
 98 dioxide, ammonia, and propylene glycol used in the processing for market or the chilling

99 of agricultural products in storage facilities, rooms, compartments, or delivery trucks;  
 100 materials, containers, crates, boxes, labels, sacks, bags, or bottles used for packaging  
 101 agricultural products when the product is either sold in the containers, sacks, bags, or  
 102 bottles directly to the consumer or when such use is incidental to the sale of the product  
 103 for resale; and containers, plastic, canvas, and other fabrics used in the care and raising  
 104 of agricultural products or canvas used in covering feed bins, silos, greenhouses, and  
 105 other similar storage structures.

106 (3.1) 'Animal' shall be synonymous with livestock and means living organisms that are  
 107 commonly regarded as farm animals, organisms that produce tangible personal property  
 108 for sale, or organisms that are processed, manufactured, or converted into articles of  
 109 tangible personal property for sale. The term does not include living organisms that are  
 110 commonly regarded as domestic pets or companion animals.

111 (4) 'Energy used in agriculture' means fuels used for agricultural purposes, other than  
 112 fuels subject to prepaid state tax as defined in Code Section 48-8-2. The term includes,  
 113 but is not limited to, off-road diesel, propane, butane, electricity, natural gas, wood, wood  
 114 products, or wood by-products; liquefied petroleum gas or other fuel used in structures  
 115 in which broilers, pullets, or other poultry are raised, in which swine are raised, in which  
 116 dairy animals are raised or milked or where dairy products are stored on a farm, in which  
 117 agricultural products are stored, and in which plants, seedlings, nursery stock, or floral  
 118 products are raised primarily for the purposes of making sales of such plants, seedlings,  
 119 nursery stock, or floral products for resale; electricity or other fuel for the operation of  
 120 an irrigation system which is used on a farm exclusively for the irrigation of agricultural  
 121 products; and electricity or other fuel used in the drying, cooking, or further processing  
 122 of raw agricultural products, including, but not limited to, food processing of raw  
 123 agricultural products.

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

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

129 (B) The person or entity is in the business of ~~providing for-hire custom agricultural~~  
 130 ~~services, including, but not limited to, plowing, planting, harvesting, growing, animal~~  
 131 ~~husbandry or the maintenance of livestock, raising or substantially modifying~~  
 132 ~~agricultural products, or the maintenance of agricultural land from which \$2,500.00 or~~  
 133 ~~more of such services were provided during the year~~ performing agricultural operations  
 134 and has provided \$2,500.00 of such services during the year;

135 ~~(C) The person or entity is the owner of land that qualifies for taxation under the~~  
 136 ~~qualifications of bona fide conservation use property as defined in Code Section~~  
 137 ~~48-5-7.4 or qualifies for taxation under the provisions of the Georgia Forest Land~~  
 138 ~~Protection Act as defined in Code Section 48-5-7.7;~~

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

145 ~~(E)~~(D) The person or entity must establish, to the satisfaction of the Commissioner of  
 146 Agriculture, that the person or entity is actively engaged in the production of  
 147 agricultural products and has or will have created sufficient volumes to generate at least  
 148 \$2,500.00 in sales annually.

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

152 (c) The Commissioner of Agriculture, ~~at his or her discretion, may use one or both of the~~  
 153 ~~following criteria as a tool~~ shall require applicants to acknowledge and produce, upon  
 154 request, at least one of the following forms to determine eligibility under this Code section:

- 155 (1) Business activity on IRS schedule F (Profit or Loss from Farming); or  
 156 (2) Farm rental activity on IRS form 4835 (Farm Rental Income and Expenses) or  
 157 schedule E (Supplemental Income and Loss);  
 158 (3) IRS Form 4797;  
 159 (4) IRS Form 1065; or  
 160 (5) IRS Form 1120 or 1120(s).

161 (d) Qualified agricultural producers that meet the criteria provided for in paragraph (5) of  
 162 subsection (a) of this Code section must apply to the Commissioner of Agriculture to  
 163 request an agricultural sales and use tax exemption certificate that contains an exemption  
 164 number. Upon request, the qualified agricultural producer shall produce the form requested  
 165 by the Commissioner of Agriculture under subsection (c) of this Code section to the  
 166 commissioner. To facilitate the use of the exemption certificate, a wallet-sized card  
 167 containing that same information shall also be issued by the Commissioner of Agriculture.

168 (e) The Commissioner of Agriculture is authorized to promulgate rules and regulations  
 169 governing the issuance of agricultural exemption certificates and the administration of this  
 170 Code section. The Commissioner of Agriculture is authorized to establish an oversight  
 171 board and direct staff and is authorized to charge annual fees of not less than \$15.00 nor

172 more than \$25.00 per year in accordance with Code Section 2-1-5, but in no event shall the  
 173 total amount of the proceeds from such fees exceed the cost of administering this Code  
 174 section.

175 (f) In conjunction with the Commissioner of Agriculture, the commissioner shall  
 176 promulgate a list of items which are exempt under this Code section. Such list shall be  
 177 posted on the Department of Agriculture's website no later than January 1, 2015.

178 (g) The commissioner is authorized to promulgate rules and regulations as necessary to  
 179 facilitate compliance with and the administration of the provisions of this Code section.  
 180 The department, in conjunction with the Department of Agriculture, is authorized to  
 181 conduct audits, as necessary, to monitor compliance with the provisions of this Code  
 182 section.

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

186 (i) Notwithstanding subsection (c) of Code Section 48-8-63, contractors shall not incur any  
 187 use tax on:

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

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

197 **SECTION 2.**

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

201 **SECTION 3.**

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

204 **SECTION 4.**

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