

The Senate Committee on Finance offered the following substitute to HB 911:

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 sales and use tax, so as to provide for cooperation by the Department of Revenue
3 and the Department of Agriculture in the administration and enforcement of the state sales
4 tax exemption for agricultural machinery and equipment; to provide for a change to the
5 qualifying amounts for the agricultural exemption; to provide for the separation of qualifying
6 items at the point of sale; to amend Chapter 7 of Title 48 of the Official Code of Georgia
7 Annotated, relating to income taxes, so as to provide for a new income tax credit for certain
8 agricultural producers; to provide for related matters; to provide for an effective date and
9 automatic repeal; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 SECTION 1.

12 Article 1 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales
13 and use tax, is amended by revising paragraph (5) of subsection (a) and subsections (c)
14 through (f) of Code Section 48-8-3.3, relating to the sales and use tax exemption for
15 agricultural machinery and equipment, as follows:

16 "(5) 'Qualified agricultural producer' includes producers of agricultural products who
17 meet one of the following criteria:

18 (A) The person or entity is the owner or lessee of agricultural land or other real
19 property from which ~~\$2,500.00~~ \$5,000.00 or more of agricultural products in aggregate
20 were produced and sold during the year, including payments from government sources;

21 (B) The person or entity is in the business of performing agricultural operations and
22 has provided ~~\$2,500.00~~ \$5,000.00 of such services during the year;

23 (C) The person or entity is in the business of producing long-term agricultural products
24 from which there might not be annual income, including, but not limited to, timber,
25 pulpwood, orchard crops, pecans, livestock, and horticultural or other multiyear
26 agricultural or farm products. Applicants must demonstrate that sufficient volumes of

27 such long-term agricultural products will be produced which have the capacity to
 28 generate in aggregate at least ~~\$2,500.00~~ \$5,000.00 in annualized sales ~~annually~~ in the
 29 future; or

30 (D) The person or entity must establish, to the satisfaction of the Commissioner of
 31 Agriculture, that the person or entity is actively engaged in the production of
 32 agricultural products and has or will have created sufficient volumes to generate in
 33 aggregate at least ~~\$2,500.00~~ \$5,000.00 in sales annually."

34 "(c) The Commissioner of Agriculture shall require applicants to acknowledge and
 35 produce, upon request, at least one of the following forms to determine eligibility under
 36 this Code section:

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

38 (2) Farm rental activity on IRS form 4835 (Farm Rental Income and Expenses) or
 39 schedule E (Supplemental Income and Loss);

40 (3) IRS Form 4797;

41 (4) IRS Form 1065; or

42 (5) IRS Form 1120 or 1120(s).

43 (d)(1) Qualified agricultural producers that meet the criteria provided for in paragraph
 44 (5) of subsection (a) of this Code section must apply to the Commissioner of Agriculture
 45 to request an agricultural sales and use tax exemption certificate that contains an
 46 exemption number. Upon request, the qualified agricultural producer shall also produce
 47 the form or forms requested by the Commissioner of Agriculture under subsection (c) of
 48 this Code section to the commissioner.

49 (2) The Commissioner of Agriculture shall not issue or renew an agricultural sales and
 50 use tax exemption until the agricultural producer requesting such certificate has provided
 51 the Commissioner of Agriculture with a valid state taxpayer identification number
 52 obtained through the Department of Revenue's Georgia Tax Center.

53 (3) Any agricultural sales and use tax exemption certificate issued or renewed on or after
 54 July 1, 2016, shall be valid for three years. In order to have staggered renewal dates for
 55 such three-year certificates, the Commissioner of Agriculture shall, by rules and
 56 regulations, establish a schedule for the orderly renewal of existing certificates and shall
 57 prorate the application or renewal fee specified in paragraph (3) of subsection (e) of this
 58 Code section for the initial period, if less than three years, so renewed.

59 (4) To facilitate the use of the exemption certificate, a wallet-sized card containing ~~that~~
 60 ~~same~~ the information required by paragraph (1) of this subsection shall ~~also~~ be issued by
 61 the Commissioner of Agriculture.

62 (e)(1) The Commissioner of Agriculture ~~is~~ and the commissioner are authorized to
 63 ~~promulgate~~ cooperate in the promulgation of rules and regulations governing the issuance

64 of agricultural exemption certificates and the administration and enforcement of this
 65 Code section. The rules and regulations shall contain a provision requiring the seller to
 66 record the purchaser's tax exemption certificate number and his or her name, and such
 67 information shall be retained along with the details of the sale, including the exempt and
 68 taxable items purchased.

69 (2) A seller shall electronically notify the Department of Agriculture upon the first use
 70 of a new or renewed tax exemption certificate of the certificate number and the name of
 71 the user. The Department of Agriculture shall store such information and notify the seller
 72 if such tax exemption certificate is suspended or revoked. If the seller fails to register the
 73 tax exemption certificate electronically, the requirements of paragraph (3) of this
 74 subsection shall apply to such seller.

75 (3) Except as provided in paragraph (2) of this subsection, the seller shall, on the
 76 Department of Agriculture's website, verify the validity of the qualified agricultural
 77 producer's tax exemption certificate number the first time it is used at his or her place of
 78 business in a calendar year. If the seller does not have Internet access, he or she shall
 79 verify the validity of the tax exemption certificate number using a toll-free telephone
 80 number established by the Commissioner of Agriculture for such purpose. The
 81 Department of Agriculture shall record the tax exemption certificate number and the
 82 name of the user when such information is received by telephone.

83 (4) If an attempt is made to use a tax exemption certificate unlawfully, the seller shall
 84 notify the Commissioner of Agriculture who, after verifying the unlawful use of the tax
 85 exemption certificate, and subject to notice and a hearing in accordance with Chapter 13
 86 of Title 50, shall revoke the certificate. Any agricultural producer who has had his or her
 87 certificate revoked pursuant to this paragraph shall not be issued a new tax exemption
 88 certificate until three years from the date of such revocation.

89 (5) The Commissioner of Agriculture is authorized to establish an oversight board and
 90 direct staff and is authorized to charge annual fees a fee of not less than \$15.00 nor more
 91 than \$25.00 \$105.00 per year in accordance with Code Section 2-1-5, but in no event
 92 shall the total amount of the proceeds from such fees exceed the cost of administering this
 93 Code section three-year issuance or renewal.

94 (f)(1) The commissioner is authorized to promulgate rules and regulations as necessary
 95 to facilitate compliance with and the administration of the provisions of this Code section.
 96 The department, in conjunction with the Department of Agriculture, is authorized to
 97 conduct audits, as necessary, to monitor compliance with the provisions of this Code
 98 section.

99 (2) The department and the Department of Agriculture shall, and are hereby authorized
 100 to, share information that is necessary to efficiently administer and enforce the provisions

101 of this Code section. Any information shared for these purposes shall be considered
 102 confidential and privileged information, and furnishing information as permitted by this
 103 Code section shall not be deemed to change the confidential character of the information
 104 furnished. Any person who divulges any confidential information obtained under this
 105 Code section shall be subject to the same civil and criminal penalties as provided for
 106 divulgence of confidential information by members of the department.

107 (3) Upon issuance of a new or renewed tax exemption certificate, the Department of
 108 Agriculture shall provide the applicant with informational material detailing the lawful
 109 use of the tax exemption certificate. Any seller of tax exempt products under this Code
 110 section shall also be provided with such informational material. Any unlawful use of
 111 such certificate shall, in addition to revocation of such certificate, subject the unlawful
 112 user to any civil or criminal penalties authorized by law."

113 **SECTION 2.**

114 Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to income taxes,
 115 is amended by adding a new Code section to read as follows:

116 "48-7-40.31.

117 (a) A tax credit against the tax imposed under this article shall be granted to any qualified
 118 agricultural producer, as defined in Code Section 48-8-3.3, who produces qualified
 119 agricultural products, as defined in Code Section 48-8-3.3, which in the aggregate sell for
 120 less than \$5,000.00 in any taxable year. The amount of the tax credit shall be equal to the
 121 amount of state sales tax paid in the taxable year on agricultural production inputs, as
 122 defined in Code Section 48-8-3.3.

123 (b) The tax credit provided under this Code section shall be allowed for the taxable year
 124 in which the taxpayer produces the qualified agricultural products. Any credit which is not
 125 used in the year in which the qualified agricultural products are produced shall not be
 126 carried forward to any future year. In no event shall the amount of the tax credit granted
 127 by this Code section exceed the amount of the taxpayer's liability under this article for the
 128 taxable year.

129 (c) For every year for which the taxpayer claims the credit authorized by this Code section,
 130 the taxpayer shall attach a schedule to the taxpayer's Georgia income tax return that sets
 131 forth the following information:

132 (1) A description of the qualified agricultural products produced;

133 (2) Receipts showing the sales of such qualified agricultural products; and

134 (3) Receipts showing the cost of the agricultural production inputs purchased in the
 135 taxable year and the amount paid in state sales tax.

136 (d) The Department of Agriculture shall prepare an annual report for the chairpersons of
137 the House Committee on Ways and Means and the Senate Finance Committee detailing the
138 activity in administering and enforcing the provisions of this Code section. The report shall
139 include, but not be limited to:

140 (1) The number of new tax exemption certificates issued;

141 (2) The number of renewed tax exemption certificates;

142 (3) The number of online validations of tax exemption certificates by sellers;

143 (4) The number of sellers registering for electronic notification of changes in the validity
144 of a tax exemption certificate; and

145 (5) The number of tax exemption certificates revoked due to unlawful activity.

146 (e) The commissioner shall promulgate any rules and regulations necessary to implement
147 and administer this Code section."

148 **SECTION 3.**

149 (a) This Act shall become effective on January 1, 2017.

150 (b) Section 2 of this Act shall stand automatically repealed on January 1, 2020.

151 **SECTION 4.**

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