

House Bill 983 (COMMITTEE SUBSTITUTE)

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 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.