House Bill 983 (AS PASSED HOUSE AND SENATE)
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

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

"48-8-3.3. (a) As used in this Code section, the term:

(A) 'Agricultural machinery and equipment' means machinery and equipment used in the production of agricultural products, including, but not limited to, machinery and equipment used in the production of poultry and eggs for sale, including, but not limited to, equipment used in the cleaning or maintenance of poultry houses and the surrounding premises; in hatching and breeding of poultry and the breeding of livestock and equine; in production, processing, and storage of fluid milk for sale; in drying, ripening, cooking, further processing, or storage of agricultural products, including, but not limited to, orchard crops; in production of livestock and equine for sale; by a producer of poultry, eggs, fluid milk, equine, or livestock for sale; for the purpose of harvesting agricultural products to be used on the farm by that producer as feed for poultry, equine, or livestock; directly in tilling the soil or in animal husbandry when the machinery is incorporated for the first time or as additional machinery for the first time into a new or an existing farm unit engaged in tilling the soil or in animal husbandry in
this state; directly in tilling the soil or in animal husbandry when the machinery is
bought to replace machinery in an existing farm unit already engaged in tilling the soil
or in animal husbandry in this state; machinery and equipment used exclusively for
irrigation of agricultural products, including, but not limited to, fruit, vegetable, and nut
crops regardless of whether the irrigation machinery or equipment becomes
incorporated into real property; and machinery and equipment used to cool agricultural
products in storage facilities.
(B) 'Agricultural machinery and equipment' also means shall mean farm tractors and
attachments to the tractors; off-road vehicles used primarily in the production of
nursery and horticultural crops; self-propelled fertilizer or chemical application
equipment sold to persons engaged primarily in producing agricultural products for sale
and which are used exclusively in tilling, planting, cultivating, and harvesting
agricultural products, including, but not limited to, growing, harvesting, or processing
onions, peaches, blackberries, blueberries, or other orchard crops, nursery, and other
horticultural crops; devices and containers used in the transport and shipment of
agricultural products; aircraft exclusively used for spraying agricultural crops; pecan
sprayers, pecan shakers, and other equipment used in harvesting pecans sold to persons
engaged in the growing, harvesting, and production of pecans; and off-road equipment
and related attachments which are sold to or used by persons engaged primarily in the
growing or harvesting of timber and which are used exclusively in site preparation,
planting, cultivating, or harvesting timber. Equipment used in harvesting shall include
all off-road equipment and related attachments used in every forestry procedure starting
with the severing of a tree from the ground until and including the point at which the
tree or its parts in any form has been loaded in the field in or on a truck or other vehicle
for transport to the place of use. Such off-road equipment shall include, but not be
limited to, skidders, feller bunchers, debarkers, delimbers, chip harvesters, tub-grinders,
woods cutters, chippers of all types, loaders of all types, dozers, mid-motor graders, and
the related attachments; grain bins and attachments to grain bins regardless of whether
such grain bins or attachments are incorporated into real property; any repair,
replacement, or component parts installed on agricultural machinery and equipment;
trailers used to transport agricultural products; all-terrain vehicles and multipassenger
rough-terrain vehicles; and any other off-road vehicles used directly and principally in
the production of agricultural or horticultural products.
(2)(A) 'Agricultural operations' or 'agricultural products' is used synonymously with
the term 'agricultural purposes' and means the following activities:
(i) raising Raising, growing, harvesting, or storing of crops, including, but not limited
to, soil preparation and crop production services such as plowing, fertilizing, seed bed
preparation, planting, cultivating, and crop protecting services;
(ii) feeding Feeding, breeding, or managing livestock, equine, or poultry;
(iii) producing Producing or storing feed for use in the production of livestock,
including, but not limited to, cattle, calves, swine, hogs, goats, sheep, equine, and
rabbits, or for use in the production of poultry, including, but not limited to, chickens,
hens, rats, and turkeys;
(iv) producing Producing plants, trees, Christmas trees, fowl, equine, or other
animals; or
(v) the production of Producing aquacultural, horticultural, viticultural, silvicultural,
grass sod, dairy, livestock, poultry, egg, and apiarian products;
(vi) Processing poultry;
(vii) Post-harvest services on crops with the intent of preparing them for market or
further processing, including but not limited to crop cleaning, drying, shelling,
fumigating, curing, sorting, grading, packing, ginning, canning, pickling, and cooling;
(viii) Slaughtering poultry and other animals; and
(ix) Manufacturing dairy products.

(B) 'Agricultural operations' excludes constructing, installing, altering, repairing,
dismantling, or demolishing real property structures or fixtures, including, but not
limited to, grain bins, irrigation equipment, and fencing.

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

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

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

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

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

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

(B) The person or entity is in the business of providing for hire custom agricultural services, including, but not limited to, plowing, planting, harvesting, growing, animal husbandry or the maintenance of livestock, raising or substantially modifying agricultural products, or the maintenance of agricultural land from which $2,500.00 or more of such services were provided during the year performing agricultural operations and has provided $2,500.00 of such services during the year;
The person or entity is the owner of land that qualifies for taxation under the qualifications of bona fide conservation use property as defined in Code Section 48-5-7.4 or qualifies for taxation under the provisions of the Georgia Forest Land Protection Act as defined in Code Section 48-5-7.7; The person or entity is in the business of producing long-term agricultural products from which there might not be annual income, including, but not limited to, timber, pulpwood, orchard crops, pecans, and horticultural or other multiyear agricultural or farm products. Applicants must demonstrate that sufficient volumes of such long-term agricultural products will be produced which have the capacity to generate at least $2,500.00 in sales annually in the future; or The person or entity must establish, to the satisfaction of the Commissioner of Agriculture, that the person or entity is actively engaged in the production of agricultural products and has or will have created sufficient volumes to generate at least $2,500.00 in sales annually. The sales and use taxes levied or imposed by this article shall not apply to sales to, or use by, a qualified agricultural producer of agricultural production inputs, energy used in agriculture, and agricultural machinery and equipment. The Commissioner of Agriculture, at his or her discretion, may use one or both of the following criteria as a tool shall require applicants to acknowledge and produce, upon request, at least one of the following forms to determine eligibility under this Code section: Business activity on IRS schedule F (Profit or Loss from Farming); or Farm rental activity on IRS form 4835 (Farm Rental Income and Expenses) or schedule E (Supplemental Income and Loss); IRS Form 4797; IRS Form 1065; or IRS Form 1120 or 1120(s). Qualified agricultural producers that meet the criteria provided for in paragraph (5) of subsection (a) of this Code section must apply to the Commissioner of Agriculture to request an agricultural sales and use tax exemption certificate that contains an exemption number. Upon request, the qualified agricultural producer shall produce the form requested by the Commissioner of Agriculture under subsection (c) of this Code section to the commissioner. To facilitate the use of the exemption certificate, a wallet-sized card containing that same information shall also be issued by the Commissioner of Agriculture. The Commissioner of Agriculture is authorized to promulgate rules and regulations governing the issuance of agricultural exemption certificates and the administration of this Code section. The Commissioner of Agriculture is authorized to establish an oversight board and direct staff and is authorized to charge annual fees of not less than $15.00 nor
more than $25.00 per year in accordance with Code Section 2-1-5, but in no event shall the total amount of the proceeds from such fees exceed the cost of administering this Code section.

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

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

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

1. Tangible personal property that a qualified agricultural producer purchases tax-exempt under this Code section and furnishes to such contractor for use in the performance of an agricultural operation, so long as such property retains the character of tangible personal property and is returned to the qualified agricultural producer upon the completion of the contract; or
2. Grain bins, irrigation equipment, and fencing or the repair, replacement, or component parts to grain bins, irrigation equipment, or fencing that a qualified agricultural producer purchases tax-exempt under this Code section for use in an agricultural operation and furnishes to such contractor for installation into real property."

SECTION 2.

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

SECTION 3.

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

SECTION 4.

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