

O.C.G.A. § 48-8-3.3

Current through the 2022 Regular Session of the General Assembly.

Official Code of Georgia Annotated > TITLE 48 Revenue and Taxation (Chs. 1 — 18) > CHAPTER 8 Sales and Use Taxes (Arts. 1 — 6) > Article 1 State Sales and Use Tax (Pts. 1 — 2) > PART 1 General Provisions (§§ 48-8-1 — 48-8-19)

48-8-3.3. Exemptions for agricultural operations; establishment of Georgia Agricultural Trust Fund; audits; annual report.

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

(1)

(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; 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; in tilling the soil or in animal husbandry; 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” 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 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, delimiters, 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

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vehicles; and any other off-road vehicles used in the production of agricultural or horticultural products.

(2)

(A) “Agricultural operations” is used synonymously with the term “agricultural purposes” and means the following activities:

- (i)** 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, breeding, or managing livestock, equine, or poultry;
- (iii)** 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, ratites, and turkeys;
- (iv)** Producing plants, trees, fowl, equine, or other animals;
- (v)** 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

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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 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 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 \$5,000.00 or more of agricultural products in aggregate were produced and sold during the year, including payments from government sources;

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

(C) 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, livestock, 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 in aggregate at least \$5,000.00 in annualized sales in the future; or

(D) 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 in aggregate at least \$5,000.00 in annualized sales.

(b) 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.

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

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

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

(3) IRS Form 4797;

(4) IRS Form 1065; or

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

If an applicant does not file any of the forms provided for in this subsection but claims eligibility for the exemption certificate pursuant to the criteria specified in paragraph (5) of subsection (a) of this Code section, the applicant shall provide to the Commissioner of Agriculture any documentation, tax returns, forms, or sales receipts required by the Commissioner of Agriculture and the commissioner, in his or her discretion, shall determine if the applicant has met such eligibility requirements in determining whether to issue or deny the issuance of the certificate.

(d)

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(1) 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 also produce the form or forms requested by the Commissioner of Agriculture under subsection (c) of this Code section to the commissioner. Such application shall be in a form prescribed by the Commissioner of Agriculture and shall contain, among other information, a warning to the agricultural producer of the consequences for providing false information on the application or for unauthorized use or misuse of the exemption applied for, an acknowledgment by the agricultural producer that the Commissioner of Agriculture is authorized, by the submission of the application, to share the information contained therein with the department, and an acknowledgment by the agricultural producer that records of purchases of qualified agricultural products exempt from sales and use tax shall be maintained and shall, upon request, be furnished to the Commissioner of Agriculture and the commissioner.

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

(3) Any agricultural sales and use tax exemption certificate issued or renewed on or after January 1, 2019, shall be valid for three years. In order to have staggered renewal dates for such three-year certificates, the Commissioner of Agriculture shall, by rules and regulations, establish a schedule for the orderly renewal of existing certificates and shall prorate the application or renewal fee specified in paragraph (4) of subsection (e) of this Code section for the initial period, if less than three years, so renewed.

(4) To facilitate the use of the exemption certificate, a wallet sized card containing the producer's name, address, exemption number, and expiration date shall be issued by the Commissioner of Agriculture. Notwithstanding that exemption certificates are renewed for three-year periods, the Commissioner of Agriculture shall, upon renewal, issue a card each year that such certificate is in effect.

(e)

(1) The Commissioner of Agriculture and the commissioner are authorized to cooperate in the promulgation of rules and regulations governing the issuance of agricultural exemption certificates and the administration and enforcement of this Code section.

(2) A seller shall, upon the first use of a new or renewed tax exemption certificate during any calendar year, verify that such certificate is valid by reviewing the producer's certificate. A seller shall be authorized to continue to honor the tax exemption certificate unless the seller receives actual notice of a suspension or revocation. A seller is prohibited from allowing the sales tax exemption if the producer cannot provide a valid tax exemption certificate.

(3) If an agricultural producer knowingly uses a tax exemption certificate unlawfully, the Commissioner of Agriculture, after verifying the unlawful use of the tax exemption certificate, and subject to notice and a hearing in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," shall suspend the certificate for up to one year. If a subsequent unlawful use is knowingly made within five years following the end of the suspension, the Commissioner of Agriculture, after notice and hearing, shall determine if the certificate should be revoked. Any agricultural producer who has had his or her certificate revoked pursuant to this paragraph shall not be eligible for the issuance of a new tax exemption certificate until three years from the date of such revocation.

(4) The Commissioner of Agriculture is authorized to establish an oversight board and direct staff and is authorized to charge a fee of \$150.00 per three-year issuance or renewal.

(5)

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- (A)** There shall be established a Georgia Agricultural Trust Fund as a separate fund in the state treasury. The Commissioner of Agriculture shall be the trustee of the fund.
- (B)** The state treasurer shall invest the money held in the Georgia Agricultural Trust Fund in the same manner in which state funds are invested as authorized by the State Depository Board pursuant to Article 3 of Chapter 17 of Title 50. Interest earned by the money held in the trust fund shall be accounted for separately and shall be credited to the trust fund to be disbursed as other moneys in the trust fund. The fund is authorized to accept donations from private individuals and entities.
- (C)** Under the authority granted and subject to the conditions imposed by Article III, Section IX, Paragraph VI(r) of the Constitution of Georgia, for the period beginning on July 1, 2022, and ending on June 30, 2032, all of the money collected pursuant to paragraph (4) of this subsection shall be annually appropriated to the Georgia Agricultural Trust Fund established by subparagraph (A) of this paragraph and such funds shall not lapse as otherwise required by Article III, Section IX, Paragraph IV(c) of the Constitution of Georgia. Each annual appropriation shall be made through the General Appropriations Act and shall include all of the money collected from such source during the most recently completed fiscal year.
- (D)** All of the money appropriated to the Georgia Agricultural Trust Fund pursuant to subparagraph (C) of this paragraph shall be dedicated for use and expended by the Commissioner of Agriculture for the purposes of marketing and promotion activities conducted by the Department of Agriculture in support of Georgia agricultural products and supporting the maintenance and operations of state farmers' markets.
- (E)** The Commissioner of Agriculture shall prepare an accounting of the funds expended pursuant to this paragraph during the most recently completed fiscal year to be provided to the Office of Planning and Budget, the House Budget and Research Office, and the Senate Budget and Evaluation Office by January 1 of each year.
- (f)**
- (1)** 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.
- (2)** The department and the Department of Agriculture shall, and are hereby authorized to, share information that is necessary to efficiently administer and enforce the provisions of this Code section. Any information shared for these purposes, if confidential, shall retain its character as confidential and privileged information. The furnishing of information as permitted by this Code section shall not be deemed to change the confidential character of the information furnished. Any person who divulges any confidential information obtained under this Code section shall be subject to the same civil and criminal penalties as provided for divulgence of confidential information by employees of the department.
- (3)** Upon issuance of a new or renewed tax exemption certificate, the Department of Agriculture shall provide the applicant with informational material detailing the lawful use of the tax exemption certificate. Any seller of tax exempt products under this Code section shall also be provided with such informational material. Any person who knowingly uses such certificate unlawfully shall be subject to any civil or criminal penalties authorized by law in addition to the suspension or revocation of such certificate.
- (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,

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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.

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

- (1)** Number of new tax exemption certificates issued;
- (2)** Number of renewed tax exemption certificates issued; and
- (3)** Number of tax exemption certificates revoked or suspended due to knowingly unlawful activity.

History

Code 1981, § 48-8-3.3, enacted by Ga. L. 2012, p. 257, § 5-3/HB 386; Ga. L. 2013, p. 7, § 5/HB 266; Ga. L. 2014, p. 288, § 1/HB 983; Ga. L. 2016, p. 429, § 1/HB 822; Ga. L. 2018, p. 338, § 1/HB 886; Ga. L. 2021, p. 761, § 16/HB 511; Ga. L. 2022, p. 352, § 48/HB 1428.

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