

**RULES
OF
DEPARTMENT OF REVENUE
COMPLIANCE DIVISION**

**CHAPTER 560-6-1
ADMINISTRATIVE RULES AND REGULATIONS**

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560-6-1-.01 Public Auction of Seized Personal Property

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- (1) **Purpose.** O.C.G.A. § 48-2-55 permits the Georgia Department of Revenue to levy and conduct judicial sales in the manner provided by law for sales by sheriffs and constables. The Department uses public auctions, public internet auctions, and sealed bids as a collection mechanism when taxes are not fully paid from a delinquent taxpayer. This regulation sets forth the procedures for conducting these types of judicial sales and related procedures upon the Department's levy and seizure of personal property.
- (2) **Definitions**
 - (a) "Commissioner" means the commissioner of the Georgia Department of Revenue or the commissioner's appointed designee.
 - (b) "Department" means the Georgia Department of Revenue.
 - (c) "Designated agent" is any agent that the Department deems to be qualified and equipped to undertake and facilitate the sale of seized property.
- (3) **Advertisement of Sale**
 - (a) **Notice of Sale.** Ten days before the date of sale, the Department shall post a notice of sale for personal property seized under its levy authority. The notice shall be posted in three public places in a county where the sale will take place and at least one time in a newspaper in which sheriff's sales in any such county are advertised. The notice will include:

1. whether the sale is by public auction, public internet auction, or by sealed bids;
 2. a reasonable description of the property to be sold;
 3. a description of the seizure, including, if applicable, the name of the delinquent taxpayer; and
 4. the date, time and location of the sale.
- (1) For public auctions, the sale shall be held between the hours of 10:00 A.M. and 4:00 P.M. The sale shall be conducted within the county in which the property levied on is situated, unless it appears to the Commissioner that substantially higher bids may be obtained for the property if the sale is held at a place outside such county, at which time, the Commissioner may order that the sale be held in such other place. If the location of the sale is in a county other than the county in which the levy was made, notice of the shall be made in both counties in the manner described above.
- (2) For public internet auctions, the location of the sale shall be the website address of the public internet auction service provider used to conduct such auction.
- (3) For sealed bids, the location of the sale shall be the Department address where bids are submitted.

(b) Special Notice Provisions

1. Any notice of public auction advertising personal property encumbered by a pre-existing lien, security interest, or other encumbrance providing the holder priority over the Department's state tax execution will contain a statement, regardless of the type of auction, that "delinquent taxpayer's interest in auctioned property is being sold subject to an encumbrance."
2. Any notice of public auction advertising jewelry, gold, silver, precious metals, or precious stones, regardless of type of sale, will contain a statement that an appraisal document will be available for inspection at the time of sale.
3. Any notice of public auction of personal property, regardless of type of sale, will state that the buyer agrees to pay for and

remove the seized personal property by the date and time specified in the notice if the bid is accepted.

- (4) **Terms and Conditions of Sale.** The Department's public auction, public internet auction, and sealed bid sales are subject to the following terms and conditions:
- (a) **Acceptance of Terms and Conditions.** By submitting a bid, the bidder agrees that he or she has read, fully understands, and accepts all of the terms and conditions contained within this regulation subsection and agrees to pay for and remove the property by the dates and times specified by the Department if the bid is accepted.
- (b) **Guaranty Waiver.** All property is offered for sale "AS IS – WHERE IS." The Department makes no warranty, guaranty, or representation of any kind, expressed or implied, as to the merchantability or fitness for any purpose of the property offered. The buyer is not entitled to any payment for loss of profit or any other damages, whether they be special, direct, indirect, punitive, or consequential.
- (c) **Flawed Description Acceptance.** The property may contain flaws and/or defects which may not be immediately detectable. Any claim for a flawed description must be made prior to the removal of the property. If the Department confirms that the property does not conform to the description, the Department will keep the property and refund any money paid. The buyer is not entitled to any payment or refund upon failure to make a claim prior to the removal of the property.
- (d) **Inspection.** Most items offered for sale are used and may contain defects not immediately detectable. Bidders are invited and strongly encouraged to physically inspect the offered property prior to bidding. Bidders must adhere to the inspection dates and times indicated in the notice or contact the Department's designated agent listed on the item posting to schedule an inspection if provided.
- (e) **Consideration of Bid.** The Department reserves the right to reject any and all bids and to withdraw from sale any of the items listed.

- (f) **Payment.** A winning bid accepted by the Department shall be considered a final agreement to buy the property by the buyer.
1. Payment in full is required at the time of acceptance of the bid and must be in guaranteed funds, such as cash, certified check, bank check, or money order. No third-party instruments will be accepted. Checks should be made payable to the Georgia Department of Revenue.
 2. For public internet auctions, the highest bidder will provide guaranteed funds in the full amount within one day of notification of acceptance of the bid. The appropriate payment method for public internet auctions shall be listed on the public internet auction website. The Department may permit a State of Georgia entity to accept payment on its behalf through the public internet auction. If such payment has been authorized, buyer must provide guaranteed funds in the full amount payable to the state entity identified on the public internet auction website.
- (g) **Removal.** All items must be removed within five business days of the time and date of auction closing. Purchases will be released to the buyer only upon receipt of payment as specified. Successful bidders are responsible for the loading and removal of any and all property from the location of the property indicated in the auction listing. The buyer will make all arrangements and perform all work necessary, including packing, loading, and transporting the property.
1. If the Department's property or facilities are damaged during the loading and/or removal of items, buyer will be responsible for all damages and will not be permitted to complete removal of purchased items until the Department's property and/or facilities have been repaired. If the buyer does not repair the damaged Department property and facilities, any payment made by the buyer will be applied to the repair of the Department's property before being applied to the purchase price of any items purchased by buyer.
 2. A buyer not removing property at the time of the winning bid must contact the designated agent listed on the auction notice to schedule an appointment for pick-up within five business days of the time and date of auction closing.

3. Property not removed within five business days of the auction closing date will be considered abandoned, the buyer will be declared in default, and ownership shall revert to the Department.
 - (h) **Default.** Default shall include: (1) failure to observe this regulation; (2) failure to make good and timely payment; or (3) failure to remove all items within five business days of auction closing date. A default may result in termination of the agreement between the buyer and the Department and suspension from participation in all future sales until the default has been cured. If the buyer is in default, the Department may choose to negotiate with the next closest bidder or relist the property at a subsequent auction date. The Department may also initiate legal action against a buyer in default and seek remedies as provided by law.
 - (i) **Personal and Property Risk.** Persons attending the exhibition, sale, or removal of goods assume all risk of damage of or loss to person and property and specifically release the Department and the State of Georgia from liability.
 - (j) **Vehicle Title.** If the property for sale is a motor vehicle, the Department will turn over the existing title or certificate upon receipt of payment. It is the buyer's responsibility to apply for a new title. Titles may be subject to any restrictions as indicated in the auction item's description. Open titles cannot be issued.
 - (k) **Multiple Lots.** The Department reserves the right to auction the property in multiple smaller lots if there is a likelihood that the sale of smaller lots will produce more money than the sale of one single lot. If the Designated agent chooses this method, the Designated agent should announce that bids will be taken on all of the property in bulk, then by lots. Whichever method brings in the great amount of money (up to the amount due) will be the chosen method for the sale.
 - (l) **Sales and Use Tax.** Buyers may be subject to the payment of state and local sales tax collected at the point of payment. Buyers with a valid state sales tax exemption certificate must provide a copy of the certificate prior to payment.

- (m) **Cancellation of Sale.** Public auction, public internet auction, and sealed bids may be postponed or cancelled at the discretion of the Department.
- (n) **Rejection of Bids or Bidders.** The Department reserves the right to receive or reject bids or bidders.
- (5) **Note on Public Internet Auctions.** The Department will be conducting its public internet auctions through third-party websites that have been authorized by the Commissioner and approved by the Department of Administrative Services. Public internet auction service providers may have their own requirements and terms and conditions. All potential bidders are expected to have read and understood the terms and conditions contained on the public internet auction service provider's website prior to submitting a bid and/or entering into an agreement with the Department for the purchase of the property. The Department shall not be held responsible for any inconsistencies between the regulations contained herein and the terms and conditions on the public internet auction website.

Authority: O.C.G.A. § 48-2-55.