



Georgia Department of Revenue
Policy Bulletin SUT-2016-01
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Agriculture Sales and Use Tax Exemption

Purpose: This Policy Bulletin provides guidance on Georgia’s agriculture sales and use tax exemption.

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Authority: O.C.G.A. §§ 48-2-7, 48-8-3.3, 48-8-7, 48-8-9, 48-8-10, 48-8-11, 48-8-30, 48-8-38, 48-8-52, and 48-8-66; Ga. Comp. R. & Regs. r. 560-12-2-.03.

Scope: A Policy Bulletin is intended to provide guidance to the public and to Department personnel. It is a written statement issued to apply principles of law to a specific set of facts or a general category of taxpayers, superseding all conflicting documents and oral directives previously issued by the Department. A Policy Bulletin does not have the force or effect of law and is not binding on the public. It is, however, the Department's position and is binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or subsequent Policy Bulletin.

Issues:

1. Who qualifies for the exemption?
2. How do Qualified Agricultural Producers make exempt purchases?
3. What items are exempt?
4. What is “Agricultural Machinery and Equipment” for purposes of the exemption?
5. What is an “Agricultural Operation”?
6. What are “Agricultural Production Inputs” for purposes of the exemption?
7. What are “Animals” as used in the definitions of “Agricultural Operation” and “Agricultural Production Inputs”?
8. What is “Energy Used in Agriculture” for purposes of the exemption?
9. Must energy be separately metered to qualify for exemption?
10. What are a seller’s obligations when making sales to a customer claiming the exemption?
11. What are the penalties for misusing a GATE Card?
12. Are contractors allowed to use the GATE Card to make exempt purchases?

Discussion of Issues:

1. Who qualifies for the exemption?

Only “Qualified Agricultural Producers” (QAP) qualify for the agriculture exemption. O.C.G.A. § 48-8-3.3(a)(5) defines “Qualified Agricultural Producers” as producers of agricultural products who meet one of the following criteria:

- 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;
- The person or entity is in the business of performing Agricultural Operations (see Question 5, below) and has provided \$5,000.00 of such services during the year;
- 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
- 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.

2. How do Qualified Agricultural Producers make exempt purchases?

To make exempt purchases, a QAP must present a valid Georgia Agriculture Tax Exemption (GATE) Card to the seller. A QAP may obtain a GATE Card by application to the Georgia Department of Agriculture. For more information about the GATE Card and who qualifies for a GATE Card, please visit <https://forms.agr.georgia.gov/gate/>.

3. What items are exempt?

The following items, as defined in O.C.G.A. § 48-8-3.3, are exempt when sold to a GATE Card holder:

- “Agricultural Machinery and Equipment”
- “Agricultural Production Inputs”
- “Energy Used in Agriculture”

4. What is “Agricultural Machinery and Equipment” for purposes of the exemption?

“Agricultural Machinery and Equipment” means

- Trailers, devices, and containers used for the transport of agricultural products more than 50% of the total time that the item is in use;
- Self-propelled fertilizer or chemical application equipment used exclusively in tilling, planting, cultivating, and harvesting agricultural products;
- Aircraft exclusively used for spraying agricultural crops;

- Off-road equipment and related attachments used exclusively in site preparation, planting, cultivating, or harvesting timber;
- Machinery or equipment used exclusively for irrigation of agricultural products, even if it becomes incorporated into real property; and
- The following items when used in an Agricultural Operation (see Question 5, below) more than 50% of the total time that the item is in use:
 - Grain bins, even if the grain bin is considered real property;
 - Machinery or equipment used to provide worker safety or to protect the quality of the agricultural product;
 - Repair, replacement, or component parts to machinery or equipment; and
 - Any other machinery or equipment that is not excluded below.

“Agricultural Machinery and Equipment” EXCLUDES the following:

- Motor vehicles;
- Power lines and transformers;
- Real property, other than grain bins, fencing, and irrigation equipment;
- Administrative machinery or equipment;
- Machinery or equipment that is not operated under the control of the QAP's employees or other persons under the QAP's direction and control; and
- Living organisms of any kind.

5. What is an “Agricultural Operation”?

According O.C.G.A. § 48-8-3.3, an “Agricultural Operation” (used synonymously with the term “agricultural purpose”) means

- Raising, growing, harvesting, or storing of crops, soil preparation, and crop production services, such as plowing, fertilizing, seed bed preparation, planting, cultivating, and crop protecting services;
- Feeding, breeding, or managing livestock, equine, or poultry;
- Producing or storing feed for use in the production of livestock;
- Producing plants, trees, fowl, equine, or other Animals (see Question 7, below);
- Producing aquacultural, horticultural, viticultural, silvicultural, grass sod, dairy, livestock, poultry, egg, and apiarian products;
- Processing poultry;
- 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;
- Slaughtering poultry and other Animals (see Question 7, below); or
- Manufacturing dairy products.

The following activities are NOT Agricultural Operations:

- Activities occurring after a finished product has been loaded in or on a truck or other vehicle for transport for sale;
- Research and development activities;
- Landscaping activities for recreation or beautification, such as the maintenance of lawns or golf courses;
- The operation of a sales facility;
- Subsistence farming, hobby farming, and activities that will generate less than \$5,000.00 in sales annually;
- Administrative activities, including but not limited to sales promotion, general office work, credit and collection, purchasing, and clerical work; and
- Constructing, installing, altering, repairing, dismantling, or demolishing real property structures or fixtures, including but not limited to grain bins, irrigation equipment, and fencing. (However, a QAP may purchase tax exempt grain bins, irrigation equipment, and fencing that will be used in an Agricultural Operation more than 50% of the total time that the item is in use. See Question 12, below.)

6. What are “Agricultural Production Inputs” for purposes of the exemption?

The following items are “Agricultural Production Inputs” when used in an Agricultural Operation:

- Seed, seedlings, and plants grown from seed, cuttings, or liners;
- Fertilizers and insecticides;
- Livestock and poultry feeds, drugs, and instruments used for the administration of such drugs;
- Fencing materials regardless of whether the fencing products or materials become incorporated into real property;
- Fungicides, rodenticides, herbicides, defoliants, soil fumigants, and 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 (see Question 7, below) and 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.

The term “Agricultural Production Inputs” EXCLUDES items not specifically listed above, such as

- Items used for the feeding, breeding or management of domestic pets (e.g. dog food);
- Animals (see Question 7, below) other than cattle, hogs, sheep, equine, poultry, or bees when sold for breeding purposes; and
- Chemicals and detergents used for cleaning.

7. What are “Animals” as used in the definitions of “Agricultural Operation” and “Agricultural Production Inputs”?

The term “Animals” is defined in O.C.G.A. § 48-8-3.3 as

- Living organisms that are commonly regarded as farm animals,
- (Non-human) 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 “Animals” does NOT include living organisms that are commonly regarded as domestic pets or companion animals.

8. What is “Energy Used in Agriculture” for purposes of the exemption?

“Energy Used in Agriculture” mean fuels used in an Agricultural Operation. The following fuels are NOT exempt:

- Energy used for an activity other than an Agricultural Operation;
- Gasoline, clear diesel, and aviation gasoline;
- Liquefied petroleum gas and special fuel (including compressed natural gas) when used to propel a motor vehicle on the public highways;
- Energy used for administrative activities; and
- Energy used in a personal residence.

9. Must metered energy be separately metered to qualify for exemption?

Yes. To purchase metered energy used in agriculture without the payment of tax, the energy must be metered separately from energy used for non-agricultural purposes. If a single meter supplies energy for agricultural purposes and energy for de minimis non-agricultural purposes, a GATE Card holder is permitted to purchase all of the energy supplied from the meter without the payment of tax, so long as that meter does not supply energy for a personal residence. “De minimis use” means use that represents ten (10) percent or less of the total amount of energy supplied by a single meter.

10. What are a seller's obligations when making sales to a customer claiming the exemption?

All sales are subject to sales tax until the contrary is established. The burden of proof that a sale is not subject to the tax is on the seller, unless he or she in good faith takes from the purchaser a valid GATE Card. A seller takes a GATE Card in good faith when

- Upon the first use of a GATE Card each calendar year, the seller verifies that the purchaser's GATE Card is not expired;
- The tax exemption could apply to the item being purchased;
- The tax exemption is not unreasonable for the purchaser's type of business; and
- The seller has not received actual notice of a suspension or revocation of the GATE Card.

Sellers are required to keep for a period of at least three years all books and records necessary to determine the amount of tax due. O.C.G.A. § 48-8-52. A knowing and willful failure to keep records constitutes a misdemeanor of a high and aggravated nature subject to fine or imprisonment or both. O.C.G.A. § 48-8-10.

11. What are the penalties for misusing a GATE Card?

In addition to the penalty of being liable for and paying the tax himself or herself, dealers that knowingly and willfully fail, neglect, or refuse to collect the tax are guilty of a misdemeanor of a high and aggravated nature punishable by a fine of not more than \$5,000.00 or imprisonment for not more than one year, or both. A second or subsequent conviction is a felony punishable by a fine of not more than \$10,000.00 or imprisonment for not more than five years, or both. O.C.G.A. § 48-8-7.

When a purchaser of taxable tangible personal property does not pay the tax to the retailer, "the purchaser shall be a dealer himself or herself and the commissioner, whenever he or she has reason to believe that a purchaser or lessee has not so paid the tax, may assess and collect the tax directly against and from the purchaser . . ." O.C.G.A. § 48-8-30(g). A dealer that knowingly and willfully fails to furnish a return or to pay the tax may be guilty of a misdemeanor. O.C.G.A. §§ 48-8-9, 48-8-11.

"When any dealer fails to make any return or to pay the full amount of the tax required by this article, there shall be imposed, in addition to other penalties provided by law, a penalty to be added to the tax in the amount of 5 percent or \$5.00, whichever is greater, if the failure is for not more than 30 days and an additional 5 percent or \$5.00, whichever is greater, for each additional 30 days or fraction of 30 days during which the failure continues. The penalty for any single violation shall not exceed 25 percent or \$25.00 in the aggregate, whichever is greater. . . . In the case of a false or fraudulent return or of a failure to file a return where willful intent exists to defraud the state of any tax due under this article, a penalty of 50 percent of the tax due shall be assessed." O.C.G.A. § 48-8-66.

In addition to penalties and interest, the unlawful use of a GATE Card may result in its suspension or revocation. O.C.G.A. § 48-8-3.3(e)(3).

12. Are contractors allowed to use the GATE Card to make exempt purchases?

Only QAPs holding GATE Cards are eligible to make tax-exempt purchases under the GATE program. A person acting in the capacity of a real property contractor is not a QAP and cannot make purchases that are eligible for the agriculture exemption.

However, a QAP may purchase exempt property with a GATE Card and furnish the property to a contractor for use in the performance of a contract. Contractors using such property in the performance of an agricultural operation will not incur use tax on the property, so long as such property retains the character of tangible personal property and is returned to the QAP upon the completion of the contract.

In addition, contractors will not incur use tax on grain bins, irrigation equipment, fencing or parts to grain bins, irrigation equipment, or fencing that a QAP purchases tax-exempt with a GATE Card for use in an agricultural operation, even if those items are installed into real property. Contractors installing into real property items *other than* grain bins, irrigation equipment, and fencing will incur tax on all such property for which sales tax has not been paid.

**For more information, please contact the Department at 1-877-423-6711
from 8:00 a.m. to 4:30 p.m. ET, Monday through Friday, excluding holidays.
For forms and other information, visit the Department's website at dor.georgia.gov.**