

**RULES
OF
DEPARTMENT OF REVENUE
FEES AND EXCISE TAXES DIVISION**

**CHAPTER 560-13-1
FIREWORKS EXCISE TAX**

560-13-1-.01 Fireworks Excise Tax.

(1) Purpose. This Rule addresses the taxation of fireworks under Article 7 of Chapter 13 of Title 48 of the Official Code of Georgia Annotated.

(2) Definitions. For purposes of this Rule only:

(a) “Consumer fireworks” means any small fireworks devices containing restricted amounts of pyrotechnic composition, designed primarily to produce visible or audible effects by combustion, that comply with the construction, chemical composition, and labeling regulations of the United States Consumer Product Safety Commission as provided for in Parts 1500 and 1507 of Title 16 of the Code of Federal Regulations, the United States Department of Transportation as provided for in Part 172 of Title 49 of the Code of Federal Regulations, and the American Pyrotechnics Association as provided for in the 2001 American Pyrotechnics Association Standard 87-1, and additionally means Roman candles;

(b) “Gross receipts” means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise.

1. “Gross receipts” includes

(i) the seller's cost of the property sold;

(ii) the cost of materials used, labor, or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

(iii) charges by the seller for any services necessary to complete the sale; and

(iv) delivery charges.

2. "Gross receipts" does not include

(i) discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(ii) interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; or

(iii) taxes.

(c) "Seller" means the person who is issued a license pursuant to O.C.G.A. § 25-10-5.1.

(3) Rate and base. In addition to all other taxes of every kind imposed by law, on or after July 1, 2015, a fireworks excise tax is imposed at the rate of 5 percent of gross receipts from retail sales of

(a) consumer fireworks;

(b) wire or wood sparklers of 100 grams or less of mixture per item;

(c) other sparkling items which are nonexplosive and nonaerial and contain 75 grams or less of chemical compound per tube or a total of 500 grams or less for multiple tubes;

(d) snake and glow worms;

(e) smoke devices; and

(f) trick noise makers which include paper streamers, party poppers, string poppers, snappers, and drop pops each consisting of 0.25 grains or less of explosive mixture.

(4) Sourcing. Sales subject to the fireworks excise tax are sourced in accordance with the rules set forth in O.C.G.A. §§ 48-8-77(b)(1) and 48-8-77(c).

(5) Imposition upon the seller.

(a) The fireworks excise tax is imposed upon the seller.

(b) If the seller itemizes the fireworks excise tax on the purchaser's invoice, the fireworks excise tax is excluded from the fireworks excise tax base.

(c) If the seller itemizes the fireworks excise tax on the purchaser's invoice, the seller must include the fireworks excise tax in the sales and use tax base pursuant to O.C.G.A. § 48-8-2(34).

(d) Example: A seller sells \$100 of fireworks and itemizes the fireworks excise tax on the purchaser's invoice. The sales tax rate in the county where the purchaser receives the fireworks is 7%. The fireworks excise tax is \$5, and the sales tax is \$7.35 (7% of \$105).

(6) Tax returns. Sellers must report and remit the fireworks excise tax electronically on a separate return on or before the 20th day of the month following the month of sale. Sellers must file a return even for months during which no taxable sales were made.

(7) Penalties and Interest.

(a) When a seller fails to file a return or to pay the full amount of the fireworks excise tax due, in addition to

other penalties provided by law, a penalty will 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. An additional penalty of 5 percent or \$5.00, whichever is greater, will be added for each additional 30 days or fraction of 30 days during which the failure continues. The penalty for any single violation must not exceed 25 percent or \$25.00 in the aggregate, whichever is greater. If the failure is due to reasonable cause shown to the satisfaction of the commissioner in affidavit form attached to the return and remittance is made within ten days of the due date, the return may be accepted exclusive of penalties and interest. 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, a penalty of 50 percent of the tax due will be assessed.

(b) The fireworks excise tax bears interest in accordance with O.C.G.A. § 48-2-40.

(c) In addition to the tax and the penalties and interest due under this paragraph, a seller who knowingly and willfully violates the requirements of this Rule will be assessed a civil penalty of not more than \$10,000.

(8) Vendors' compensation. In reporting and paying the amount of tax due under O.C.G.A. § 48-13-50.3, each seller is allowed the following deduction, but only if the return was timely filed and the amount due was not delinquent at the time of payment:

(a) A deduction of 3 percent of the first \$3,000.00 of the combined total amount reported due on such return for each location; and

(b) A deduction of one-half of 1 percent of that portion exceeding \$3,000.00 of the combined total amount reported due on such return for each location.

(9) Exemptions. The fireworks excise tax is imposed on retail sales as prescribed in this Rule regardless of whether the retail sale is exempt from sales and use tax.

(10) Sales for resale. The burden of proving that a sale of tangible personal property is not a sale at retail is on the seller unless the seller, in good faith, takes a properly completed certificate of exemption from the purchaser who:

(a) Is engaged in the business of selling tangible personal property;

(b) Has a valid sales tax registration number at the time of purchase and has listed his or her sales tax number on the certificate; and

(c) At the time of purchasing the tangible personal property, the seller has no reason to believe that the purchaser does not intend to resell it in his or her regular course of business.

(11) Periods of limitation for assessment of the tax.

(a) Except as otherwise provided in this paragraph, in the case where a return is filed, the tax must be assessed within three years after the return was filed. For purposes of this Rule, a return filed before the last filing day prescribed by law will be considered as filed on the last day. If an extension of time for filing a return is granted and the return is filed on or before the extended date, the return will be considered as filed on the extended due date.

(b) In the case of a false or fraudulent return filed with the intent to evade the tax or a failure to file a return, the tax may be assessed at any time.

(c) Where, before the expiration of the time prescribed in this paragraph for the assessment of the tax, both the commissioner and the person subject to assessment have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the agreed upon period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the previously agreed upon period. The commissioner is authorized in any such agreement to extend similarly the period within which a claim for refund may be filed.

(d) If a claim for refund of taxes paid for any period is filed within the last six months of the period during which the commissioner may assess the amount of taxes, the assessment period is extended for a period of six months beginning on the day the claim for refund is filed.

(e) No action without assessment may be brought for the collection of any tax after the expiration of the period for assessment.

(12) Refunds. Fireworks excise tax erroneously or illegally assessed and collected and interest on the tax will be refunded in accordance with O.C.G.A. § 48-2-35. Refund claims must be filed electronically on the Georgia Tax Center website. When a purchaser files a refund claim, the Claim for Refund must be accompanied by a properly completed Waiver of Vendor's Rights (Form ST-12A) or a Purchaser's Claim for Sales Tax Refund Affidavit (Form ST-12B). When the claimant has remitted tax directly to the Department, the ST-12A and ST-12B are not required.

Authority: O.C.G.A. §§ 48-13-130 through 48-13-133, 48-2-35, 48-2-40.