

House Bill 886 (AS PASSED HOUSE AND SENATE)

By: Representatives Watson of the 172nd, Powell of the 171st, McCall of the 33rd, Dickey of the 140th, Pirkle of the 155th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated,
2 relating to state sales and use taxes, so as to provide for the cooperation of the Department
3 of Revenue and the Department of Agriculture in the administration and enforcement of the
4 state sales and use tax exemption for agricultural machinery and equipment; to provide for
5 a change to the qualifying amounts for the agricultural exemption; to provide for penalties;
6 to provide for reporting; to provide for related matters; to provide for an effective date; to
7 repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Article 1 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to state
11 sales and use taxes, is amended in Code Section 48-8-3.3, relating to the sales and use tax
12 exemption for agricultural machinery and equipment, by revising paragraph (5) of
13 subsection (a) and subsections (c) through (f) and by adding a new subsection to read as
14 follows:

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

17 (A) The person or entity is the owner or lessee of agricultural land or other real
18 property from which ~~\$2,500.00~~ \$5,000.00 or more of agricultural products in aggregate
19 were produced and sold during the year, including payments from government sources;

20 (B) The person or entity is in the business of performing agricultural operations and
21 has provided ~~\$2,500.00~~ \$5,000.00 of such services during the year;

22 (C) The person or entity is in the business of producing long-term agricultural products
23 from which there might not be annual income, including, but not limited to, timber,
24 pulpwood, orchard crops, pecans, livestock, and horticultural or other multiyear
25 agricultural or farm products. Applicants must demonstrate that sufficient volumes of

26 such long-term agricultural products will be produced which have the capacity to
 27 generate in aggregate at least ~~\$2,500.00~~ \$5,000.00 in annualized sales ~~annually~~ in the
 28 future; or

29 (D) The person or entity must establish, to the satisfaction of the Commissioner of
 30 Agriculture, that the person or entity is actively engaged in the production of
 31 agricultural products and has or will have created sufficient volumes to generate in
 32 aggregate at least ~~\$2,500.00~~ \$5,000.00 in annualized sales ~~annually~~."

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

- 36 (1) Business activity on IRS schedule F (Profit or Loss from Farming);
- 37 (2) Farm rental activity on IRS form 4835 (Farm Rental Income and Expenses) or
 38 schedule E (Supplemental Income and Loss);
- 39 (3) IRS Form 4797;
- 40 (4) IRS Form 1065; or
- 41 (5) IRS Form 1120 or 1120(s).

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

49 (d)(1) Qualified agricultural producers that meet the criteria provided for in
 50 paragraph (5) of subsection (a) of this Code section must apply to the Commissioner of
 51 Agriculture to request an agricultural sales and use tax exemption certificate that contains
 52 an exemption number. Upon request, the qualified agricultural producer shall also
 53 produce the form or forms requested by the Commissioner of Agriculture under
 54 subsection (c) of this Code section to the commissioner. Such application shall be in a
 55 form prescribed by the Commissioner of Agriculture and shall contain, among other
 56 information, a warning to the agricultural producer of the consequences for providing
 57 false information on the application or for unauthorized use or misuse of the exemption
 58 applied for, an acknowledgment by the agricultural producer that the Commissioner of
 59 Agriculture is authorized, by the submission of the application, to share the information
 60 contained therein with the department, and an acknowledgment by the agricultural
 61 producer that records of purchases of qualified agricultural products exempt from sales

62 and use tax shall be maintained and shall, upon request, be furnished to the Commissioner
 63 of Agriculture and the commissioner.

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

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

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

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

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

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

97 issuance of a new tax exemption certificate until three years from the date of such
 98 revocation.

99 (4) The Commissioner of Agriculture is authorized to establish an oversight board and
 100 direct staff and is authorized to charge annual fees a fee of not less than \$15.00 nor more
 101 than \$25.00 \$150.00 per year in accordance with Code Section 2-1-5, but in no event
 102 shall the total amount of the proceeds from such fees exceed the cost of administering this
 103 Code section three-year issuance or renewal.

104 (f)(1) The commissioner is authorized to promulgate rules and regulations as necessary
 105 to facilitate compliance with and the administration of the provisions of this Code section.
 106 The department, in conjunction with the Department of Agriculture, is authorized to
 107 conduct audits, as necessary, to monitor compliance with the provisions of this Code
 108 section.

109 (2) The department and the Department of Agriculture shall, and are hereby authorized
 110 to, share information that is necessary to efficiently administer and enforce the provisions
 111 of this Code section. Any information shared for these purposes, if confidential, shall
 112 retain its character as confidential and privileged information. The furnishing of
 113 information as permitted by this Code section shall not be deemed to change the
 114 confidential character of the information furnished. Any person who divulges any
 115 confidential information obtained under this Code section shall be subject to the same
 116 civil and criminal penalties as provided for divulgence of confidential information by
 117 employees of the department.

118 (3) Upon issuance of a new or renewed tax exemption certificate, the Department of
 119 Agriculture shall provide the applicant with informational material detailing the lawful
 120 use of the tax exemption certificate. Any seller of tax exempt products under this Code
 121 section shall also be provided with such informational material. Any person who
 122 knowingly uses such certificate unlawfully shall be subject to any civil or criminal
 123 penalties authorized by law in addition to the suspension or revocation of such
 124 certificate."

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

129 (1) Number of new tax exemption certificates issued;

130 (2) Number of renewed tax exemption certificates issued; and

131 (3) Number of tax exemption certificates revoked or suspended due to knowingly
 132 unlawful activity."

133 **SECTION 2.**

134 This Act shall become effective upon its approval by the Governor or upon its becoming law
135 without such approval.

136 **SECTION 3.**

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