

House Bill 911 (COMMITTEE SUBSTITUTE) (AM)

By: Representatives Duncan of the 26<sup>th</sup>, Watson of the 172<sup>nd</sup>, Harrell of the 106<sup>th</sup>, Buckner of the 137<sup>th</sup>, Powell of the 171<sup>st</sup>, 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 sales and use tax, so as to provide for cooperation by the Department of Revenue  
3 and the Department of Agriculture in the administration and enforcement of the state sales  
4 tax exemption for agricultural machinery and equipment; to provide for a change to the  
5 qualifying amounts for the agricultural exemption; to provide for the separation of qualifying  
6 items at the point of sale; 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 sales  
11 and use tax, is amended by revising paragraph (5) of subsection (a) and subsections (c)  
12 through (f) of Code Section 48-8-3.3, relating to the sales and use tax exemption for  
13 agricultural machinery and equipment, as follows:

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

16 (A) The person or entity is the owner or lessee of agricultural land or other real  
17 property from which ~~\$2,500.00~~ \$7,500.00 or more of agricultural products in  
18 aggregate were produced and sold during the year, including payments from  
19 government sources;

20 (B) The person or entity is in the business of performing agricultural operations and  
21 has provided ~~\$2,500.00~~ \$7,500.00 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~~ \$7,500.00 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~~ \$7,500.00 in 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 (d)(1) Qualified agricultural producers that meet the criteria provided for in paragraph  
 43 (5) of subsection (a) of this Code section must apply to the Commissioner of Agriculture  
 44 to request an agricultural sales and use tax exemption certificate that contains an  
 45 exemption number. Upon request, the qualified agricultural producer shall also produce  
 46 the form or forms requested by the Commissioner of Agriculture under subsection (c) of  
 47 this Code section to the commissioner.

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

52 (3) Any agricultural sales and use tax exemption certificate issued or renewed on or after  
 53 July 1, 2016, shall be valid for three years. In order to have staggered renewal dates for  
 54 such three-year certificates, the Commissioner of Agriculture shall, by rules and  
 55 regulations, establish a schedule for the orderly renewal of existing certificates and shall  
 56 prorate the application or renewal fee specified in paragraph (3) of subsection (e) of this  
 57 Code section for the initial period, if less than three years, so renewed.

58 (4) To facilitate the use of the exemption certificate, a wallet-sized card containing ~~that~~  
 59 ~~same~~ the information required by paragraphs (1) and (2) of this subsection shall ~~also~~ be  
 60 issued by the Commissioner of Agriculture.

61 (e)(1) The Commissioner of Agriculture ~~is~~ and the commissioner are authorized to  
 62 ~~promulgate~~ cooperate in the promulgation of rules and regulations governing the issuance  
 63 of agricultural exemption certificates and the administration and enforcement of this

64 Code section. The rules and regulations shall contain a provision requiring the seller of  
 65 products to separately identify on an invoice, receipt, or other proof of purchase those  
 66 items exempt from taxation under this Code section from those items subject to taxation.  
 67 At the time of the sale of items for which an exemption is claimed, the seller shall record  
 68 the purchaser's tax exemption certificate number and his or her name, and such  
 69 information shall be retained with the details of the sale.

70 (2) The seller shall, on the Department of Agriculture's website, verify the continuing  
 71 validity of the qualified agricultural producer's tax exemption certificate number the first  
 72 time it is used in a calendar year. If the seller does not have Internet access, he or she  
 73 shall verify the validity of the tax exemption certificate number using a toll-free  
 74 telephone number established by the Commissioner of Agriculture for such purpose. If  
 75 an attempt is made to use an invalid tax exemption certificate, the seller shall notify the  
 76 Commissioner of Agriculture who, after verifying that the tax exemption certificate is  
 77 invalid and subject to notice and a hearing in accordance with Chapter 13 of Title 50,  
 78 shall revoke the certificate. Any agricultural producer who has had his or her certificate  
 79 revoked pursuant to this paragraph shall not be issued a new certificate until the  
 80 expiration of three years from the date of such revocation.

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

86 (f)(1) The commissioner is authorized to promulgate rules and regulations as necessary  
 87 to facilitate compliance with and the administration of the provisions of this Code section.  
 88 The department, in conjunction with the Department of Agriculture, is authorized to  
 89 conduct audits, as necessary, to monitor compliance with the provisions of this Code  
 90 section.

91 (2) The department and the Department of Agriculture shall, and are hereby authorized  
 92 to, share information that is necessary to efficiently administer and enforce the provisions  
 93 of this Code section. Any information shared for these purposes shall be considered  
 94 confidential and privileged information, and furnishing information as permitted by this  
 95 Code section shall not be deemed to change the confidential character of the information  
 96 furnished. Any person who divulges any confidential information obtained under this  
 97 Code section shall be subject to the same civil and criminal penalties as provided for  
 98 divulgence of confidential information by members of the department."

99 **SECTION 2.**

100 This Act shall become effective on January 1, 2017.

101 **SECTION 3.**

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