Subject 560-12-2 SUBSTANTIVE RULES AND REGULATIONS

Rule 560-12-2-.01 Admission Charges

(1) The tax applies to sales of tickets, fees, or charges, and voluntary contributions for admissions to places of amusement, entertainment, exhibition, display and athletic contests, and to charges made for participation in games and amusement activities.

(2) Admissions by free pass, which are not subject to the Federal Admission Tax, are exempt from the sales tax. If a service charge, donation, gratuity or any other charge is required or normally expected for the issuance of the free admission pass, such charge, donation or gratuity is subject to the tax.

Rule 560-12-2-.02 Advertising

(1) Advertising Agencies. The tax does not apply to charges for professional services made by an advertising agency for preparing and placing advertising in media such as newspapers, magazines, radio, television, billboards, etc.

(2) The tax applies to purchases by an advertising agency of tangible personal property to be used or consumed in preparing and placing advertising in such media. For example, the tax applies to ink, paper, paint, office supplies, art work purchased from independent artists, engraver's charges for metal plates, electrotyper's charges for electrotypes or matrices, tape recordings, television films and recordings, billboard posters, etc.

(3) When an agency goes beyond the rendition of professional services and sells tangible personal property, it must register as a dealer in order to collect and remit the tax on the sale of such property. Registered dealers may purchase tangible personal property for resale by furnishing the seller with a Certificate of Exemption.

(4) Property purchased for resale must be billed to the person having the right of possession of such property, the tax collected thereon and remitted to the State Revenue Commissioner.

(5) Charges for Advertising. The tax does not apply to charges for advertising in media such as newspapers, magazines, radio, television and billboards. The tax applies to purchases of tangible personal property for use or consumption in preparing, publishing, broadcasting or displaying advertising matter, unless resold and the sales tax thereon remitted to the State Revenue Commissioner.

Rule 560-12-2-.01 Admission Charges

(7) Commercial Advertising. The tax applies to all sales at retail of tangible personal property commonly known as commercial advertising, including but not limited to catalogs, calendars, handbills, novelties, etc.

(8) Premiums and Gifts. The tax applies to purchases of tangible personal property to be given away by persons in advertising -their business or products, or given away as premiums, door prizes, or for any other reasons.

Rule 560-12-2-.03 Agriculture Exemptions

(1) **Purpose.** This Rule addresses the sales and use tax exemptions in O.C.G.A. § 48-8-3.3 for Agricultural Production Inputs, Agricultural Machinery and Equipment, and Energy Used in Agriculture.

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

(a) "Agricultural Machinery and Equipment" means:

1. Machinery and Equipment used in Agricultural Operations, examples of which are provided in paragraph (5); or

2. Machinery or Equipment expressly included in O.C.G.A. § 48-8-3.3(a)(1)(B):

(i) Farm tractors and attachments to the tractors used in Agricultural Operations;

(ii) Any off-road vehicle used in Agricultural Operations;

(iii) Self-propelled fertilizer or chemical application Equipment sold to persons engaged primarily in producing Agricultural Products for sale and that are used exclusively in tilling, planting, cultivating, and harvesting Agricultural Products;

(iv) Devices and containers used in the transport and shipment of Agricultural Products;

(v) Aircraft exclusively used for spraying agricultural crops;

(vi) Pecan sprayers, pecan shakers, and other Equipment used in harvesting pecans sold to persons engaged in the growing, harvesting, and production of pecans;

(vii) Off-road Equipment and related attachments that are sold to or used by persons engaged primarily in the growing or harvesting of timber and that are

incorporated into Real Property;

(ix) Trailers used to transport Agricultural Products;

(x) All-terrain vehicles and multi-passenger rough-terrain vehicles that are used in Agricultural Operations; and

(xi) Any Repair, Replacement, or Component Parts installed on Agricultural Machinery and Equipment.

(b) "Agricultural Operations" is used synonymously with the term "Agricultural Purposes."

1. Except as otherwise provided in this Rule,"Agricultural Operations" means the following activities:

(i) Raising, growing, harvesting, or storing of crops, including but not limited to soil preparation and crop production services, such as plowing, fertilizing, seed bed preparation, planting, cultivating, and crop protecting services;

(ii) Feeding, breeding, or managing Livestock, equine, or poultry;

(iii) Producing or storing feed for use in the production of Livestock, including but not limited to cattle, calves, swine, hogs, goats, sheep, equine, and rabbits, or for use in the production of poultry, including but not limited to chickens, hens, ratites, and turkeys;

(iv) Producing plants, trees, fowl, equine, or other Animals;

(v) Producing aquacultural, horticultural, viticultural, silvicultural, grass sod, dairy, Livestock, poultry, egg, and apiarian products;

(vi) Processing poultry;

(vii) 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.

altering, repairing, dismantling, or demolishing Real Property structures or Fixtures, including but not limited to grain bins, irrigation equipment, and fencing.

(c) "Agricultural Production Inputs" means the following when used for Agricultural Purposes:

1. Seed;
2. Seedlings;
3. Plants grown from seed, cuttings, or liners;
4. Fertilizers;
5. Insecticides;
6. Livestock and poultry feeds, drugs, and instruments used for the administration of such drugs;
7. Fencing products and materials regardless of whether the fencing products or materials become incorporated into Real Property;
8. Fungicides;
9. Rodenticides;
10. Herbicides;
11. Defoliants;
12. Soil fumigants;
13. Plant growth regulating chemicals;
14. Desiccants, including but not limited to shavings and sawdust from wood, peanut hulls, fuller's earth, straw, and hay;
15. Feed for Animals, including but not limited to Livestock, fish, equine, hogs, or poultry;
16. Sugar used as food for honeybees kept for the commercial production of honey, beeswax, and honeybees;

used in the processing for market or the chilling of Agricultural Products in storage facilities, rooms, compartments, or delivery trucks;

19. 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

20. 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.

(d) "Agricultural Products" means items produced by Agricultural Operations.

(e) "Animals" is synonymous with "Livestock" and means living organisms that are commonly regarded as farm animals, 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 does not include living organisms that are commonly regarded as domestic pets or companion animals.

(f) "Aquaculture" means an operation or integrated series of operations in the growing of marine or freshwater organisms for sale. Aquaculture involves the cultivating of aquatic populations under controlled conditions, as contrasted with commercial fishing, where the conditions are not controlled.

(g) "Consumable Supplies" means tangible personal property, other than Machinery, Equipment, Agricultural Production Inputs, and energy, that is readily disposable, or is immediately consumed or expended.

(h) "Energy Used in Agriculture" means fuels used for Agricultural Purposes, other than fuels subject to prepaid tax as defined in O.C.G.A. § 48-8-2.

(i) "Farm" means a parcel or tract of land or contiguous tracts or parcels of land, or, for Aquaculture, an area of lake, river or sea, devoted primarily to growing or raising, and actively maintaining, plants and Animals for Agricultural Purposes.

attached. Fixtures are classified as Real Property. Examples of Fixtures include but are not limited to plumbing, lighting fixtures, slabs, and foundations.

(k) "Local Sales and Use Tax" means any sales or use tax that is levied and imposed in an area consisting of less than the entire state, however authorized.

(l) "Machinery" is used synonymously with "Equipment" and means any device or apparatus other than Real Property, Agricultural Production Inputs, energy, and Consumable Supplies. The terms "Machinery" and "Equipment" include Repair, Replacement, or Component Parts.

(m) "Motor Vehicle" means any self-propelled vehicle designed for operation or required to be licensed for operation upon the public highways.

(n) "Qualified Agricultural Producer" means a person defined as such by the Georgia Department of Agriculture.

(o) "Real Property" means land, buildings, or Fixtures attached to land or buildings.

(p) "Repair Part," "Replacement Part," or "Component Part" means a part for Agricultural Machinery and Equipment. Repair, Replacement, or Component Parts must be used to maintain, repair, restore, install, or upgrade such Agricultural Machinery and Equipment. Examples of Repair, Replacement, or Component Parts may include but are not limited to oils, greases, hydraulic fluids, coolants, lubricants, and other interchangeable tooling.

(3) **Scope of Exemptions: Activities that are not Agricultural Operations.** Except as otherwise provided in this Rule, inputs, machinery, equipment, and energy used in the following activities do not qualify for exemption:

(a) Activities occurring after a finished product has been loaded in or on a truck or other vehicle for transport for sale;

(b) Research and development activities;

(c) Landscaping activities for recreation or beautification, such as the maintenance of lawns or golf courses;

(d) The operation of a sales facility;

and clerical work.

(4) **Exemption for Agricultural Production Inputs.** Sales of Agricultural Production Inputs, as defined in this Rule, to Qualified Agricultural Producers holding a Georgia Agriculture Tax Exemption (GATE) Certificate issued by the Georgia Department of Agriculture are exempt from state sales and use tax and all Local Sales and Use Tax.

(5) **Exemption for Agricultural Machinery and Equipment.** Sales (including leases) of Agricultural Machinery and Equipment, as defined in this Rule, to Qualified Agricultural Producers holding a GATE Certificate are exempt from state sales and use tax and all Local Sales and Use Tax. The exemption includes Machinery and Equipment expressly listed in O.C.G.A. § 48-8-3.3(a)(1)(B) and Machinery and Equipment used in Agricultural Operations.

(a) **Machinery and Equipment used in Agricultural Operations.** Agricultural Operations can differ significantly from one to another. Thus, when determining whether Machinery or Equipment is used in Agricultural Operations, the Department of Revenue may evaluate the facts and circumstances of each case.

1. Examples of Machinery or Equipment that are not used in Agricultural Operations at any time generally include but are not limited to:

(i) Motor Vehicles;

(ii) Power lines or transformers that provide electricity to an agricultural operation;

(iii) Real Property, other than grain bins, fencing, and irrigation equipment used in an Agricultural Operation, including but not limited to concrete slabs and foundations, and structures or Fixtures used for ventilation, heating, cooling, illumination, communications, plumbing, or the personal comfort and convenience of employees;

(iv) Administrative Machinery or Equipment, including computers, related computer peripherals, servers, copiers, telephones, facsimile machines, office furniture, office furnishings, office supplies such as paper and pencils, and educational materials used for non-agricultural functions, including but not limited to sales, marketing, research and development, accounting and payroll, and purchasing;

(vi) Living organisms of any kind, including but not limited to people, Animals, and bacteria utilized in irrigation.

2. Except as otherwise provided in this Rule, Machinery and Equipment used in Agricultural Operations generally include but are not limited to Machinery and Equipment used:

(i) In the production of poultry and eggs for sale, including but not limited to brooder bulbs and Machinery and Equipment used in the cleaning or maintenance of poultry houses;

(ii) In the hatching and breeding of poultry and the breeding of Livestock and equine;

(iii) In the production, processing, and storage of fluid milk for sale;

(iv) In the drying, ripening, cooking, further processing, or storage of Agricultural Products;

(v) In the production of poultry, eggs, fluid milk, equine, or Livestock for sale;

(vi) For the purpose of harvesting Agricultural Products to be used on the Farm by that producer as feed for poultry, equine, or Livestock;

(vii) In tilling the soil or in Animal husbandry;

(viii) Exclusively for irrigation of Agricultural Products, including but not limited to fruit, vegetable, and nut crops regardless of whether the irrigation Machinery or Equipment becomes incorporated into Real Property;

(ix) To cool Agricultural Products in storage facilities;

(x) To produce Aquacultural products;

(xi) To maintain, clean, repair, restore, install, or upgrade Agricultural Machinery and Equipment;

(xii) To provide worker safety or to protect the quality of the Agricultural Product, including but not limited to safety Machinery and Equipment required by federal

(xiii) In harvesting timber, including all off-road Equipment and related attachments used in every forestry procedure starting with the severing of a tree from the ground until and including the point at which the tree or its parts in any form has been loaded in the field in or on a truck or other vehicle for transport to the place of use. Such off-road Equipment includes but is not limited to skidders, feller bunchers, debarkers, delimbers, chip harvesters, tub-grinders, woods cutters, chippers of all types, loaders of all types, dozers, mid-motor graders, and the related attachments.

3. **Primary purpose.** Except as otherwise provided in this Rule, an item of Machinery or Equipment qualifies for exemption only if its primary purpose is for use in an Agricultural Operation. "Primary purpose" means the purpose for which an item of tangible personal property is used more than one-half of the total amount of time that the item is in use. Alternatively, instead of time, the purpose may be measured in terms of other applicable criteria such as the number of items produced. The Department of Revenue may consider any reasonable methodology for measuring the primary purpose of Machinery or Equipment for which the primary purpose is not readily identifiable.

(b) **Parts withdrawn from inventory.** Miscellaneous parts for which the ultimate use is unknown at the time of purchase are eligible for the exemption as Repair, Replacement, or Component Parts. However, use tax must be accrued and remitted if parts are withdrawn from the inventory of parts and used for any purpose other than to maintain, repair, restore, install, or upgrade Agricultural Machinery and Equipment.

(6) **Exemption for Energy Used in Agriculture.** Sales of Energy Used in Agriculture, as defined in this Rule, to Qualified Agricultural Producers holding a GATE Certificate are exempt from state sales and use tax and all Local Sales and Use Tax.

(a) **Metered energy.** In order 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. Qualified Agricultural Producers must present to their energy providers the GATE Certificate and the account numbers and service addresses of meters to which the exemption applies.

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.

(b) **Non-metered energy.** Qualified Agricultural Producers holding the GATE Certificate are permitted to purchase non-metered energy, such as propane and wood, tax exempt. Producers, however, must accrue and remit use tax on any portion of the energy that is not used for Agricultural Purposes.

(c) **Examples of Energy Used in Agriculture.** Energy Used in Agriculture includes but is not limited to:

1. Off-road diesel, propane, butane, electricity, natural gas, wood, wood products, wood by-products and liquefied petroleum gas;

2. Fuel used in structures in which broilers, pullets, or other poultry are raised, in which swine are raised, in which dairy Animals are raised or milked or where dairy products are stored on a Farm, in which Agricultural Products are stored, and in which plants, seedlings, nursery stock, or floral products are raised primarily for the purpose of making sales of such plants, seedlings, nursery stock, or floral products for resale;

3. Fuel for the operation of an irrigation system which is used on a Farm exclusively for the irrigation of Agricultural Products; and

4. Fuel used in the drying, cooking, or further processing of raw Agricultural Products.

(d) **Examples of energy that is not exempt under O.C.G.A. § 48-8-3.3.**

1. Energy not used for Agricultural Purposes;

2. Gasoline, clear diesel, and aviation gasoline;

3. Liquefied petroleum gas and special fuel (including compressed natural gas) when used to propel a Motor Vehicle on the public highways;

4. Energy used for administrative activities; and

on or after January 1, 2013.

(a) **GATE Certificate.** Any person making a sale or lease of Agricultural Production Inputs, Agricultural Machinery and Equipment, or Energy Used in Agriculture must collect sales and use tax unless such person, in good faith, takes from the purchaser or lessee a GATE Certificate.

1. Qualified Agricultural Producers may obtain a GATE Certificate from the Georgia Department of Agriculture.

2. GATE Certificate holders must meet the requirements of this Rule to qualify for the exemptions in O.C.G.A. § 48-8-3.3.

3. Effective May 3, 2018, GATE card applicants are required by O.C.G.A. § 48-8-3.3(d)(2) to provide to the Georgia Department of Agriculture a valid state taxpayer identification number. For out-of-state GATE applicants that are not required to file any Georgia tax returns,"a state taxpayer identification number" means, for purposes of this Rule only, a social security number or a federal employer identification number (FEIN or EIN). For all other applicants,"a state taxpayer identification number" means, for purposes of this Rule only, the applicant's Georgia sales and use tax account number, Georgia individual income tax account number (social security number), or Georgia corporate income tax account number (federal employer identification number).

(b) **Refunds.** When tax is remitted on the purchase or lease of exempt Agricultural Production Inputs, Machinery, Equipment, or Energy Used in Agriculture, Qualified Agricultural Producers holding a GATE Certificate may apply to the Department of Revenue for a refund pursuant to O.C.G.A. § 48-2-35. For purchases occurring on or after January 1, 2013, tax will not be refunded unless the purchaser held a GATE Certificate at the time of purchase.

(8) **Non-transferability.** Exemptions under this Rule are non-transferable.

(9) **Manufacturers.** Every person defined as a "dealer" in O.C.G.A. § 48-8-2 is required to file a sales and use tax registration for each place of business in this state. A dealer that qualifies for manufacturing exemptions under O.C.G.A. § 48-8-3.2 and agricultural exemptions under O.C.G.A. § 48-8-3.3 at a single place of business may avail itself of the exemptions under either O.C.G.A. § 48-8-3.2 or O.C.G.A. § 48-8-3.3, but not both, for that place of business in any one calendar year.

operation, so long as such property retains the character of tangible personal property and is returned to the Qualified Agricultural Producer upon the completion of the contract; or

(b) Grain bins, irrigation equipment, and fencing or the Repair, Replacement, or Component Parts to grain bins, irrigation equipment, or fencing that a Qualified Agricultural Producer purchases tax-exempt under O.C.G.A. § 48-8-3.3 for use in an agricultural operation and furnishes to such contractor for installation into Real Property.

Rule 560-12-2-.04 Aircraft Sales, Rentals and Service

(1) Definitions.

(a) Aircraft Sales and Service Dealers--An aircraft sales and service dealer is engaged in the business of purchasing aircraft and related property solely for resale or rental and not for use in providing any services such as crop dusting. Such dealers should purchase tax free such aircraft, accessories, tires, repair parts, fuels and lubricants for resale under certificates of exemption. Such certificates do not include property not purchased for resale, and such property is taxable at the time of purchase.

(b) Aircraft Service Operations--A person engaged in an aircraft service operation is engaged in the business of using aircraft solely in providing services for their customers. For example, a person employing an aircraft in a crop-dusting service business is engaged in providing services. Similarly, a person purchasing aircraft to be used by him solely in providing transportation services for hire is engaged in an aircraft service operation. Purchases by persons engaged in aircraft service operations are taxable at the time of purchase unless otherwise exempt under the Sales and Use Tax Act.

(c) Dual Operators--Dual operators are persons engaged both in sales or leases of aircraft and in aircraft service operation, and who cannot determine at the time of purchase whether the property is to be resold or is to be used by him in providing services. Such dual operators may, upon approval by the Commissioner, purchase such property tax free under certificates of exemption. At the time such property is allocated to full time personal use or to full time service operations, such as crop dusting or flight training, the dual operator must -remit the tax on the purchase or cost price, as provided in the Act.

are not identically treated under the Act. For purposes of ascertaining tax liability, a "charter" transaction where the aircraft operator is employed and paid directly by the aircraft owner will be presumed to be a transportation service transaction unless the terms of the agreement or the surrounding circumstances indicate a lease. A "charter" transaction where the aircraft operator is employed and paid by the customer of the aircraft owner will be considered a lease transaction, unless the terms of the agreement or the surrounding circumstances indicate a service transaction.

(2) Use by dealers or dual operators pending sales.

(a) The Act provides that if a purchaser who purchases under a certificate of resale makes any use of the property other than retention, demonstration or display while holding it for resale in the regular course of business, the use is taxable. Liability is computed by applying the tax rate to the cost of the property except where the dealer exercises the permitted options listed below under Section (3). Unless the dealer exercises the options permitted, the tax computed on cost price will accrue on the first use but not on any subsequent use. In addition, receipts from such uses and any subsequent retail sale of the aircraft may also be taxable. For example, if an aircraft dealer makes a personal or business use of the aircraft, the dealer becomes liable for the tax on the cost of the aircraft. If the aircraft cost the dealer $10,000, the dealer's liability would be $400. If there is a subsequent use, no liability would accrue on the second use. A subsequent retail sale of the aircraft, however, would be taxable.

(b) A use of the aircraft in providing a service, such as transporting persons or property for hire or in flight instruction, is a use other than retention, demonstration and display.

(c) If a dealer in all cases makes a charge for the demonstration to the prospective customer of the aircraft in flight, such use will not be considered by reason of such charges a use other than demonstration. The charges, however, will be considered taxable to the extent that they represent a lease or transportation of persons for hire transaction, or otherwise represent the sale of tangible personal property.

(3) Options where use is solely rental or transportation service.

(a) If the sole use by a dealer of aircraft held for sale in the regular course of business is the lease or rental of such aircraft or the use

the dealer's cost price, subject to the election described below under Section (3)(b) to compute liability on the lease charges.

2. Transportation of persons for hire. If a dealer uses an aircraft in the transportation of persons for hire while holding the aircraft for sale in the regular course of business, then such use will result in liability computed on the dealer's cost price subject to the option under Section (3)(b) to compute liability on the service charge.

(b) A dealer whose sole use is such transportation services and rental may, after April 1, 1970, elect in computing liability for such use to include in his gross sales charges made for such transportation of persons for hire and such lease or rental and to pay tax thereon rather than on the cost of the aircraft. Under such election, the dealer for each use must include all lease receipts and all charges made for transportation whether or not the dealer must also collect a tax on such charges from his customer. The measure of the tax on the dealer's use is not related to the taxability of the transaction itself. Such an election shall be made within three months after the effective date of this Regulation and shall govern all transactions after April 1, 1970. Such election shall be irrevocable except upon application approved by the Commissioner. The election is not available where the use is the transportation of property for hire.

1. The rules related to the dealer's option in computing liability for rental use apply only while the aircraft is held for sale in the regular course of business and there is no taxable use other than such rental or isolated transportation service. However, if a dealer withdraws an aircraft from sales inventory to use solely in rental operations, then no liability would be incurred subsequently if a taxable use is made of the aircraft while holding it for rental. Liability for use in transportation service while holding the property for rental is computed as set forth above.

2. The rules related to the dealer's liability for use in the transportation of persons for hire and the options in computing liability for such use apply only while the aircraft is held for sale in the regular course of business and there is no taxable use other than such service or rental of the aircraft. Use in providing transportation service must be isolated. If it is found that the dealer has committed an aircraft to use in providing transportation service in competition with persons regularly engaged in such business

Rule 560-12-2-.05 American Red Cross

The American Red Cross is an exempt instrumentality of the Federal Government and its purchases of tangible personal property are not subject to the tax.

Rule 560-12-2-.06 Amusement Devices and Vending Machines

(1) Vending Machines in General. When tangible personal property is sold by means of a vending machine, the person owning the property contained in the machine is the retail seller and is liable for the tax on the total gross receipts there from without any deduction for commissions paid to the person on whose premises the machine is located.

(2) Musical and Amusement Machines in General. When charges are made for the operation of a coin-operated musical or other amusement machine such charges are taxable and the person furnishing and servicing the machine is liable for the tax on the total gross receipts therefrom without any deduction for commissions paid to the person on whose premises the machine is located.

(3) Rented Machines. When a vending, musical or amusement machine is placed in an establishment and the person operating the establishment rents the machine and, in the case of a vending machine, owns the articles sold through it; the operator of the establishment is the retail dealer and is liable for the tax on the total gross receipts therefrom without any deduction for the cost of the articles sold, the rental of the machine, or for services performed by the renter of the machine in connection therewith. Also in such cases the renter of the machine is liable for the tax on the gross rent derived therefrom.

(4) Machines Under Concession. Paragraph (3) does not apply when a vending, musical or amusement machine is placed in an establishment and the person operating the establishment has no right of access into the machine or to the gross receipts therein, and no right to remove such receipts without the consent or presence of the person furnishing, stocking and servicing the machine. In such cases the person furnishing, stocking and servicing the machine is the retail seller or dealer and is liable for the tax on the gross receipts therefrom without any deduction for commissions paid to the person in whose establishment the machine is located.

Rule 560-12-2-.07 Auctioneers, Agents and Factors

Auctioneers, agents, or factors selling tangible personal property are liable for collection and payment of the sales tax. The tax applies to the gross sales price of each single sale without deduction for commissions, service charges or any other expenses.

and sell tangible personal property such as accessories, parts, seatcovers, etc., they are required to register, collect and remit the tax on retail sales of such items.

Rule 560-12-2-.09 Automotive and Other Motor Vehicle Dealers

(1) The tax applies to the retail sale of automobiles, trucks, trailers, tractors, and other motor vehicles. The tax applies to the sales price without any deduction for labor, freight, delivery, manufacturer rebates, and other charges, except:

(a) Allowance for another motor vehicle taken in trade (without deduction for liens).

(b) Finance, insurance and interest charges for deferred payments billed separately.

(c) Cash discounts provided by the selling dealer and taken at the time of sale.

(2) The tax does not apply to:

(a) Sales of motor vehicles to out-of-state residents, provided delivery actually occurs in another state and is supported by a valid *Certificate of Exemption-Out Of State Delivery* (Form ST-6); or,

(b) Sales to nonresident purchasers of motor vehicles, provided such vehicles are immediately transported to and used in another state in which such vehicles are required to be registered and supported by a valid *Nonresident Certificate of Exemption Purchase of Motor Vehicle* (Form ST-8).

(c) The dealer's purchase of motor vehicles, parts, and other resale items sold by a motor vehicle dealer when a properly executed *Certificate of Exemption* (Form ST-5) is provided to the supplier or manufacturer.

(3) Loaner Vehicles.

(a) Any dealer who withdraws a motor vehicle from inventory for use as a loaner vehicle will be subject to use tax based upon the daily lease value for each day the vehicle is loaned for no charge. For purposes of this Rule, a loaner vehicle shall mean a motor vehicle withdrawn from inventory or separately floor planned, for use by any one person for a period of time not to exceed 30 days within a calendar year and for which no charge is made for the use of the motor vehicle. Dealers are required to maintain adequate records of a motor vehicle's use as a loaner vehicle. The following table shall be

(including any dealer **LEASE**

(1) VEHICLE MSRP (including any dealer add-ons and mark-ups)	(2) DAILY **LEASE VALUE**
$0 - 999...	$ 1.64
1,000 - 1,999...	2.33
2,000 - 2,999...	3.01
3,000 - 3,999...	3.70
4,000 - 4,999...	4.38
5,000 - 5,999...	5.07
6,000 - 6,999...	5.75
7,000 - 7,999...	6.44
8,000 - 8,999...	7.12
9,000 - 9,999...	7.81
10,000 - 10,999...	8.49
11,000 - 11,999...	9.18
12,000 - 12,999...	9.86
13,000 - 13,999...	10.55
14,000 - 14,999...	11.23

17,000 - 17,999...	13.29
18,000 - 18,999...	13.97
19,000 - 19,999...	14.66
20,000 - 20,999...	15.34
21,000 - 21,999...	16.03
22,000 - 22,999...	16.71
23,000 - 23,999...	17.40
24,000 - 24,999...	18.08
25,000 - 25,999...	18.77
26,000 - 27,999...	19.86
28,000 - 29,999...	21.23
30,000 - 31,999...	22.60
32,000 - 33,999...	23.97
34,000 - 35,999...	25.34
36,000 - 37,999...	26.71
38,000 - 39,999...	28.08

44,000 - 45,999...	32.19
46,000 - 47,999...	33.56
48,000 - 49,999...	34.93
50,000 - 51,999...	36.30
52,000 - 53,999...	37.67
54,000 - 55,999...	39.04
56,000 - 57,999...	40.41
58,000 - 59,999...	41.78

For motor vehicles with an MSRP of greater than $59,999, including any dealer add-ons and mark-ups, the daily lease value equals [(.25 times the MSRP of the vehicle including any dealer add-ons and mark-ups) + $500] divided by 365.

(b) If any single loaner vehicle is loaned to the same person for more than 30 days within a calendar year, the dealer shall be liable for use tax based on the cost price of the vehicle.

(c) The subsequent sale at retail of such loaner vehicles is taxable based upon the sales price of the loaner vehicle(s).

(4) When a dealer sets aside a motor vehicle for demonstration or display purposes, the tax does not apply unless the motor vehicle is used for more than six months. If used for more than six months, use tax will apply based upon the cost price of the demonstration or display vehicle.

(a) The following is a non-exclusive list of activities that are deemed to be for demonstration or display purposes:

1. The placement of motor vehicles at shopping malls or other consumer marketplaces to promote the sale of vehicles.

4. The assigning of motor vehicles to race tracks for display and use as an official car or pace car, for the purpose of promoting the sale of vehicles.

(b) Motor vehicles used for demonstration or display purposes may be assigned to an employee that is a bona fide full-time employee of the dealer when such person works a minimum of thirty-six (36) hours per week and when such motor vehicle is available for customer test drives during the dealer's hours of operation.

(c) A dealer who withdraws a motor vehicle from inventory for demonstration or display purposes must maintain adequate books and records that reflect the date the motor vehicle was withdrawn from inventory, the vehicle identification information (VIN#, stock#, etc.), the cost price of such vehicle, the name(s) of the person or persons assigned to the vehicle, the employee's position within the organization, the date the demonstration or display vehicle was taken out of service, and the date the vehicle was placed back into inventory.

(d) The subsequent sale at retail of such demonstration or display vehicles is taxable based upon the sales price of the motor vehicle(s).

(5) Motor vehicles withdrawn from inventory by a dealer for use as a shuttle or delivery vehicle, or for personal or company use other than as a loaner vehicle, as provided for under subparagraph (3)(a), or for demonstration or display purposes as provided for under paragraph (4), are subject to use tax based upon the cost price of the motor vehicle at the time the motor vehicle is removed from inventory.

(6) Repairs and Maintenance.

(a) When parts or accessories are installed in a motor vehicle owned by the customer, and the charge for installation or repair labor is itemized on the dealer's invoice separately from the charge(s) for the parts or accessories, the charge(s) for labor are not subject to sales and use tax. If charges for labor and parts or accessories are not itemized on the dealer's invoice, the entire amount charged to the customer is taxable.

(b) Parts used to repair or restore a used motor vehicle to a salable condition are not subject to sales and use tax when purchased by the dealer, since they are purchased for resale. The tax collected at the time the used motor vehicle is sold will include the value of parts installed. However, consumable supplies, such as cleaners and

the manufacturer or retail dealer to correct defects in materials and workmanship during a specified time frame or after such time frame in certain instances, such as safety-related recalls, voluntary recalls, and certain goodwill transactions. When repairs are made under such warranty, no tax is due since a manufacturer's or retail dealer's warranty was part of the sales price of the motor vehicle when originally sold. This is true whether the manufacturer or retail dealer makes the repairs or whether the manufacturer or retail dealer pays someone else to make the repairs.

(d) Extended Warranty or Maintenance Agreement. Generally, an extended warranty or maintenance agreement is a contract to provide repairs or maintenance for a particular item for a stated period of time after a manufacturer's warranty has expired. The sale of an extended warranty or maintenance agreement is not taxable provided the charge for such warranty or maintenance agreement is itemized on the dealer's invoice to the customer. Parts associated with repairs pursuant to such agreements are subject to sales and use tax. The dealer is liable for use tax on the repair parts based on the dealer's cost. However, in the event the dealer charges any third party for the repair, the dealer must charge sales tax to the third party as provided for under subparagraph (5)(a) of this Rule and as would apply to any other retail sale.

(e) Repairs Made Under Customer Loyalty, Marketing, or other Promotional Programs. Except as provided for under subparagraph (5)(c) of this Rule, a dealer shall be liable for use tax at cost price for any part used in a repair, when made at no charge to the customer, under any loyalty, marketing, or other promotional program. Examples of such programs include "free tires for life," "free oil changes for life," and other similar dealer programs.

(f) Tools and Equipment. Tools and equipment used in the repair of a motor vehicle are subject to sales and use tax when purchased by the dealer.

under terms of resale through the issuance of a properly executed *Certificate of Exemption* (Form ST-5). However, in the event a dealer does not separately itemize and charge customers for shop supplies, a dealer must pay tax on the purchase of such supplies or accrue use tax on such items.

(7) The tax does not apply to sales for resale made to out-of-state dealers who properly execute a *Certificate of Exemption-Out Of State Dealer* (Form ST-4).

(8) Effective Date. This rule shall become effective twenty (20) days after the Rule is filed in the office of the Secretary of State.

Rule 560-12-2-.10 Automotive Leases and Rentals

(1) Any person leasing or renting motor vehicles in this State shall register as a dealer, collect and remit the tax on the gross lease or rental charges, including service charges.

(2) Such dealers purchase automobiles, trucks, trailers, repair parts, tires and accessories which become a part of the vehicles to be leased or rented to other persons tax exempt.

(3) Such dealers are required to pay the tax on purchases of gasoline, fuel, oil, grease, soaps, tools and other tangible personal property used in connection with their operations.

(4) When an automobile, truck, trailer and other tangible personal property is sold at retail, the dealer shall collect and remit the tax on the sales price.

(5) Charges for additional insurance which is not required by the dealer are not subject to the tax when billed separately to the lessee.

Rule 560-12-2-.11 Banks, Savings and Loan Associations

(1) Effective December 24, 1969, all national and state banks, and savings and loan associations are subject to the tax. However, sales and use within the State of tangible personal property which is the subject matter of a written contract of purchase entered into prior to September 1, 1969 shall not be subject to the tax.

(2) The gross lease or rental charge for tangible personal property which is the subject matter of a written lease or rental contract entered into prior to September 1, 1969, shall not be subject to the tax for the term of such lease or until January 1, 1972, whichever comes first.

application for Certificate of Registration and regularly file sales and use tax reports.

(4) Taxable purchases and leases include automobiles, checks, checkbooks, silverware, savings or piggy banks, office and maintenance supplies, furniture, equipment, advertising matter, etc., and the services described in the Act.

(5) Retail sales of repossessed and other tangible personal property, leases and rentals of tangible personal property are subject to the tax. When an institution engages in such activities, it must register as a dealer, collect and remit the tax.

(6) When a bank or savings and loan association purchases checks and other items for a customer and pays the tax at the time of purchase, the subsequent sale would not be deemed a taxable transaction.

(7) The rental of safety deposit boxes is not subject to the tax.

Rule 560-12-2-.12 Barber and Beauty Shops

Barber and beauty shop operators are engaged primarily in rendering personal services, and their gross receipts are not subject to sales tax. They are the consumers of the materials used in their business and are required to pay the tax on all their purchases. When barber and beauty shop operators go beyond the rendition of personal services and sell tangible personal property such as wigs, toupees, tonics, etc., they are required to register, collect and remit the tax on such sales.

Rule 560-12-2-.13 Bazaars and School Carnivals

(1) Persons or organizations sponsoring bazaars, school carnivals and other such amusement activities, whether charitable, eleemosynary, fraternal, or not, are liable for the collection and payment of the tax on sales of tickets, fees or charges for admission, and voluntary contributions made in lieu of such admission charges.

(2) Additionally, such persons are liable for the tax on charges for participation in games, amusement activities and sales of tangible personal property, notwithstanding the property sold may have been donated by individuals or business establishments.

(3) Persons or organizations not regularly engaged in sponsoring bazaars or carnivals are required to file Sales Tax Returns immediately following the close of each activity.

Rule 560-12-2-.14 Bookbinders and Paper Cutters

to be trimmed or cut,

(c) Application of stickers to paper envelopes, when the customer provides stickers and the items to which they are to be applied.

Rule 560-12-2-.15 Book Rental Libraries

(1) Sales of books to a rental library for rental to its customers are sales for resale not subject to the tax.

(2) Persons engaged in the business of renting or selling books are required to register as dealers, collect and remit the tax on charges made for such rentals or sales.

Rule 560-12-2-.16 Bowling Alleys

(1) The tax applies to each charge for participation in bowling games and must be collected and remitted by the operator. No deduction for rental charges paid to lessors of pin spotters will be allowed in computing the taxable charge for participation in the games. Bowling balls, shoes, and other equipment purchased for resale may be purchased under Certificates of Resale. The tax applies to sales at retail and rentals of such property and must be collected and remitted by the operator.

(2) Operators of bowling alleys are required to pay the tax on purchases and rentals of equipment and supplies, including automatic pin spotters, used in the operations of the business.

Rule 560-12-2-.17 Broadcasting and Broadcasting Distribution; Cable, Radio, and Television

(1) Radio, Television and Cable Broadcasters or Distributors are primarily engaged in the business of broadcasting or distributing radio or television signals over the free airwaves or by satellite or cable. These activities constitute a service that is not subject to sales and use tax. Such broadcasters and distributors are subject to sales and use tax on all purchases or leases unless otherwise exempt within the Act and this Regulation.

(2) Definitions. For purposes of qualifying for the exemption provided for by O.C.G.A. § 48-8-3(74), and as used in this Regulation, the following definitions and explanation of terms shall apply.

(a) The term "cable distributor" means any entity or enterprise, public or commercial, primarily engaged in providing broadcast programming over a cable system for purchase by subscribers or customers. Such entity delivers visual, aural, and textual programming received from cable networks, federally licensed

the broadcasting of programs on a subscription or fee basis. These companies produce programming in their facilities or acquire programming from other sources that are usually delivered to a third party for cable or satellite transmission to viewers.

(c) The term "digital broadcast equipment" means, equipment purchased, leased, or used for the origination or integration of program materials for broadcast over the airwaves or transmission by cable, satellite, or fiber optic line which uses or produces an electronic signal where the signal carries data generated, stored, and processed as strings of binary data. Data transmitted or stored as digital data consists of strings of positive or nonpositive elements of a transmission expressed in strings of 0's and 1's which a computer or processor can reconstruct as an electronic signal.

(d) The term "diskettes" means any blank recordable digital audio storage media used to record digital signals in the broadcast operations.

(e) The term "federally licensed commercial or public radio or television station" means any entity or enterprise, either commercial or noncommercial, which operates under a license granted by the Federal Communications Commission for the purposes of free distribution of audio and video services when the distribution occurs by means of transmission over the public airwaves.

(3) Purchases. Except as provided for in paragraph (4) the tax applies to all equipment, and other tangible personal property purchased, leased, or rented for use in producing and broadcasting radio, television and cable signals. Such purchases or leases include but are not limited to recordings, costumes, make-up materials, lumber, and other materials used in construction of stage property and scenery, transistors, condensers, transformers, tubes for lighting control, slides, and other non-digital broadcast equipment.

(4) Digital Broadcast Equipment Exemption.

(a) In accordance with O.C.G.A. § 48-8-3(74), transactions occurring on or after July 1, 2001, which involve the purchase or lease of digital broadcasting equipment, not otherwise exempt under Chapter 8 of Title 48 of the Official Code of Georgia Annotated, will be exempt from sales and use tax up to the specific purchase or lease dates as provided for in this Regulation.

(b) Purchases or leases made by a federally licensed commercial or public radio broadcaster on or after July 1, 2001 through the last

July 1, 2001 through the last date of analog transmission or November 1, 2004, whichever occurs first, shall be exempt from the tax upon the issuance of the Certificate of Exemption.

(d) **General Requirements for the Digital Broadcasting Equipment Exemption.** In order to qualify for the digital broadcast equipment exemption provided for in O.C.G.A. § 48-8-3(74) and this Regulation, the following conditions must be met:

1. The qualified purchasers or lessees of such digital broadcast equipment must obtain a Certificate of Exemption from the commissioner as provided in paragraph (4)(e) of this Regulation. The application for such Certificate must contain a schedule of planned purchases or leases of qualified equipment for which the application is filed.

2. The equipment must be purchased or leased exclusively for installation and operational use in this State by a qualified entity or enterprise as designated in O.C.G.A. § 48-8-3(74).

3. The exemption is limited to the original purchase or lease of such eligible digital broadcast equipment and shall not extend to digital equipment purchased or leased to replace equipment previously extended exemption.

(e) **Application and Certificate of Exemption.**

1. Any purchasers or lessees desiring to secure the benefits of the exemption provided by O.C.G.A. § 48-8-3(74) must file an Application for Certificate of Exemption (Form ST-BE1). The application shall include the business name, address, physical location, anticipated dates of purchase or lease, and a schedule of the anticipated digital broadcast equipment to be purchased or leased including sales price, manufacturer, supplier, and a description of the digital equipment's function. In addition thereto, the commissioner may require such other information as deemed necessary for the determination of the claim for exemption. This requirement is also applicable to holders of direct payment permits granted under Regulation 560-12-1-.16.

2. Upon approval of an application, the commissioner will issue a Certificate of Exemption (Form ST-BE2) for presentation by the purchaser or lessee to the equipment suppliers, whereupon the purchaser or lessee shall be relieved from the

may qualify for exemption, the purchaser or lessee may apply for a refund of such tax. The Claim for Refund (Form ST-12) shall be accompanied by an Application for Exemption (Form ST-BE1) and any other documentation deemed necessary by the commissioner.

(f) **Specific Applications; Exemptions and Exceptions Relating Thereto.**

1. For the purposes of federally licensed commercial or public television broadcasters and cable distributors, the term digital broad- cast equipment shall be limited to antennas, transmission lines, towers, digital transmitters, studio to transmitter links, digital routing switches, character generators, Advanced Television Systems Committee video encoders and multiplexers, monitoring facilities, cameras, terminal equipment, tape recorders, and file servers.

2. For the purposes of federally licensed commercial or public radio broadcasters, the term digital broadcast equipment shall be limited to transmitters, digital audio processors and diskettes.

3. For the purposes of cable networks, the exemption will apply to all digital broadcast equipment as defined in paragraph (2)(c) of this Regulation.

4. If, after obtaining the Certificate of Exemption required under paragraph (4)(e) of this Regulation, the actual purchase(s) or lease(s) fails to meet the requirements of this exemption, the purchaser or lessee will be liable for tax and, if applicable, penalty and interest on the purchase(s) or lease(s).

5. In cases where equipment has multiple uses (digital and analog), the taxability or exemption will be determined by the equipment's use. The equipment's use must meet the following requirements in order to be eligible for the exemption:

   (i) The equipment must use a digital signal; and

   (ii) The equipment is used as an essential part of a process to originate or integrate a digital signal for transmission or broadcast.

for the exemption.

II. A piece of equipment that uses a digital signal but that is not used as part of a process that originates or integrates a digital signal for transmission or broadcast would not qualify for the exemption.

III. A piece of equipment that converts a digital signal to analog as part of a process that originates or integrates a digital signal for transmission or broadcast purposes would qualify.

IV. An antenna used to simulcast broadcast digital and analog signals would qualify for the exemption when purchased or leased with the ultimate purpose of exclusively broadcasting digital signals.

6. The exemption provided for under O.C.G.A. § 48-8-3(74) shall only extend to the original purchase or lease of eligible digital broadcast equipment and shall not extend to the replacement of such equipment or to the repair or upgrading of the equipment.

7. For the purposes of determining whether diskettes are original or replacement purchases for radio broadcasters and cable networks, it shall be presumed that diskettes purchased twelve months after the date of the first application for exemption are replacements.

8. The exemption provided for under O.C.G.A. § 48-8-3(74) shall not extend to any person who contracts to furnish tangible personal property and perform services under a real property contract. Contractors are deemed to be the consumer of all tangible personal property used in a real property contract and shall pay the tax at the time of purchase.

9. Examples of items that do not qualify for the exemption include, but are not limited to, real property improvements,

(5) Sales.

(a) Charges for services rendered by radio, television broadcasters and cable network or cable distributors, including advertising, line charges, talent fees or other such charges are not subject to the tax.

(b) The sale or rental of prerecorded video tape or motion picture film by federally licensed radio and television broadcasters or cable network or distributors for broadcast would be subject to the tax unless purchased or leased by a dealer charging admission to view the production.

(c) Video tape or motion picture film recorded onto a radio or television broadcaster's or cable network's or distributor's own tapes, reels, or other storage medium at its own premises for later broadcast shall not be considered the sale or rental of video tape or motion picture film.

(d) A transaction which involves only a charge for a copyright license and does not involve a sale, lease, or rental of video tape or motion picture film would not be considered taxable.

(e) The sale of cable broadcasting through a cable distributor through a subscription or fee basis is not considered a taxable transaction. The lease or rental of a converter box or other tangible personal property to a cable subscriber is considered a taxable transaction.

(f) If a television or radio broadcasting station, cable distributor or cable network makes retail sales of tangible personal property, the tax must be collected and remitted on such sales to the commissioner.

Rule 560-12-2-.18 Camps

Operators of summer camps, including Scout, Y.M.C.A., Church and School camps, are consumers of all tangible personal property used in their operations and their purchases are subject to the tax. Fees charged for attendance are not taxable.

Rule 560-12-2-.19 Carriers

(1) Common carriers purchasing tangible personal property which comes within the exemption authorized by Section 48-8-3(33)(A) of the Act, as amended, must register the file Sales and Use Tax Reports as required under these Regulations.

used principally to cross the borders of the State of Georgia in the service of transporting passengers or cargo by common carriers in interstate or foreign commerce under authority granted by the Federal Government, or to replacement parts installed by such carriers in such aircraft, watercraft, railroad locomotives and rolling stock and motor vehicles which becomes an integral part thereof.

(4) The tax applies to aircraft, watercraft, railroad locomotives and rolling stock, motor vehicles and components of each and replacement parts installed by common carriers in such craft, locomotives, rolling stock and motor vehicles which will not be used principally to cross the borders of the State of Georgia in transporting passengers or cargo in interstate or foreign commerce under authority granted by the Federal Government.

(5) Common carriers operating craft or vehicles, some of which qualify for exemption and some of which are subject to the tax, may purchase major components and replacement parts for inventory under a Certificate of Exemption, Form ST-5. When such components or parts are withdrawn from inventory and first applied to taxable vehicles, the cost price thereof must be included in the carrier's Sales and Use Tax Report.

(6) Contract, private and other carriers must pay the tax on all tangible personal property used or consumed in their operations, irrespective of the fact that its craft or vehicles may cross the borders of the State of Georgia.

(7) Carriers, including common carriers, shall pay the tax on all fuels purchased and delivered in this State and all fuels purchased outside this State and stored in this State irrespective, in either case, of the place of subsequent use.

(8) The tax applies to purchases for use, consumption or storage within this State of tangible personal property used in constructing, repairing or maintaining permanent structures, including, but not limited to garages, repair shops, hangers, railroad bridges, railroad tracks, landing and communication equipment, tools and equipment, handling equipment and other tangible personal property not specifically exempt under paragraph three (3) of this regulation.

(9) The tax applies to charges for the transportation of persons between two points in Georgia. Such tax must be collected and remitted by the carrier. The tax does not apply to charges for transportation of persons between a point in Georgia and a point in another state.

(10) As set out in this section, the tax applies to meals, snacks, and all other food and beverage items which are purchased by a carrier or which are sold, dispensed or otherwise provided, during or in conjunction with a

items which are purchased by or delivered to the carrier in Georgia, regardless of where the meals, snacks, or other food or beverage items are served. Meals, snacks, and other food and beverage items provided to passengers by carriers are considered to be complimentary and are taxable under this paragraph when:

1. No separately stated charge for such items is made to the passenger in addition to the charge for the transportation, or when:

2. It is the carriers' normal business practice not to reduce the price of the transportation for passengers electing not to have food and beverage service.

(b) Carriers that sell meals, snacks, or other food or beverage items to passengers, and the charge for such items is collected with the ticket price for transportation, shall collect and remit the tax on the charge for the meals, snacks, or other food or beverage items, on all sales of such tickets which occur in Georgia and regardless of where the meals, snacks, or other food or beverage items are served.

(c) Carriers that sell meals, snacks, or other food or beverage items to passengers, and the charge for such items is collected from the passenger at the time the food or beverage item is served to the passenger, shall collect and remit the tax on the sales price of all such items sold or served in Georgia, on trips or flights either arriving in or departing from the State of Georgia. When not otherwise reasonably determinable, the portion of such items which are sold or served in Georgia shall be determined by the ratio of miles traveled in Georgia during such trips or flights, to the total number of miles (both within and without the State of Georgia) traveled by the carrier during such trips or flights, multiplied by the carrier's total sales receipts for all such items sold (both within and without the State of Georgia) during such trips or flights.

Rule 560-12-2-.20 Competitive Projects of Regional Significance

(1) **Purpose.** This Rule only addresses sales of tangible personal property used for and in the construction of a competitive project of regional significance. Rule 560-12-2-.64 addresses the exemption for sales to competitive projects of regional significance of energy that is necessary and integral to manufacturing.

(3) **Construction exemption.** To qualify for exemption, property must be:

(a) used exclusively for and in the construction of a Project; and

(b) purchased prior to completion of the construction of the Project.

(4) **Property used exclusively for and in the construction of a Project.**

(a) Property used exclusively for and in the construction of a Project excludes:

1. Property brought onto the construction site, but not used in furtherance of the completion of a Project, such as a wrench used only to repair a worker's personal vehicle or nails that remain in the original store packaging;

2. Property used for administrative activities on the construction site, such as sales promotion, general office work, credit and collection, purchasing, and clerical work;

3. Power lines or transformers that bring electricity into the construction site;

4. Property used for personal comfort or convenience at the construction site, such as portable toilets, food, heaters, and air conditioning units;

5. Hotel accommodations;

6. Motor vehicles; and

7. Property that is owned or possessed by a contractor or a related party after completion of the Project's construction.

(b) Property used exclusively for and in the construction of a Project includes only tangible personal property that:

1. remains tangible personal property at a Project's location after the completion of construction;

2. is incorporated into the real property structures at a Project's location; or

3. is used by contractors for the sole purpose of constructing a Project's real property structures.

(6) **Expiration of letters of authorization.** A letter of authorization expires with respect to a location within a Project when that location commences business operations.

(7) **Contractor purchases.** A Project may authorize contractors to use the letter of authorization to make exempt purchases. By January 31 of each year, a Project must provide to the Department of Revenue a list of all contractors authorized in the previous calendar year and include for each contractor the business name, address, telephone number, and Georgia sales tax number.

(8) **Contractors' use tax liability.** Notwithstanding O.C.G.A. § 48-8-63(b) and (c), contractors will not incur use tax on tangible personal property qualifying for exemption under this Rule that is purchased by or furnished to the contractor, regardless of whether the property retains the character of tangible personal property or becomes incorporated into real property.

Rule 560-12-2-.21 Itemization of Tax

(1) Each retailer must add all applicable sales and use taxes at the appropriate rate to the sales price unless he or she absorbs the tax in compliance with O.C.G.A. § 48-8-36 and paragraph (2) below. The retailer may add the tax to the sales price by either separately itemizing the sales price and the tax or including the tax in the total charge.

(a) Separately itemizing the sales price and the tax.

1. Example: Retailer sells a $200.00 widget to a purchaser. The applicable sales tax rate is 7%. The retailer may separately itemize the $200.00 sales price and $14.00 tax, charging a total amount of $214.00 to the customer and remitting $14.00 in tax to the Department.

(b) Including the tax in the total charge.

1. Retailers desiring to include the sales tax in the total charge to the customer must provide written notification to each customer that the charge includes sales tax. The notice requirement in this subparagraph does not apply to sales made from a vending machine.

2. Example: Retailer sells a $200.00 widget to a purchaser. The applicable sales tax rate is 7%. If the retailer provides written notification to the purchaser, the retailer may include the tax in the total charge of $214.00 and remit $14.00 of tax to the Department.

the payment of all or any part of such taxes, unless

1. the retailer includes in the advertisement that any portion of the tax not paid by the purchaser will be remitted on behalf of the purchaser by the retailer; and

2. the retailer furnishes the purchaser with written notification that the retailer will be liable for and pay any tax the purchaser was relieved from paying under this Rule.

(b) If a retailer advertises that any portion of the tax not paid by the purchaser will be remitted on the purchaser's behalf by the retailer, the retailer will be solely liable for and must pay that portion of the tax.

(c) Examples.

1. Retailer sells a $200.00 widget to a purchaser. The applicable sales tax rate is 7%. If the retailer follows the tax absorption rules set forth in this paragraph (2) and the retailer charges a sales price of $200.00 to the customer, the retailer must absorb the tax and remit $14.00 in tax to the Department. The tax is calculated by multiplying the sales price of $200.00 by the tax rate of .07.

2. Retailer sells a $214.00 widget to a purchaser. The applicable sales tax rate is 7%. If the retailer follows the tax absorption rules set forth in this paragraph (2) and the retailer charges a sales price of $214.00 to the customer, the retailer must absorb the tax and remit $14.98 in tax to the Department. The tax is calculated by multiplying the sales price of $214.00 by the tax rate of .07.

Rule 560-12-2-.22 Churches, Religious, Charitable, Civic and Other Non-Profit Organizations

No exemption is granted to churches, religious, charitable, civic and other non-profit organizations. They are required to pay the tax on all purchases of tangible personal property. Further, when such organizations engage in selling tangible personal property at retail, they are required to comply with provisions of the Act relating to collection and remittance of the tax.

Rule 560-12-2-.23 Colleges and Universities

(1) The tax does not apply to sales of tangible personal property and services to the University System of Georgia and its educational units.

exempt tangible personal property or services with a copy of "Letter of Authorization", (Form STUSC- 1) issued by the Sales and Use Tax Unit.

(3) The following are examples of tangible personal property and services which are exempt when sold to such private colleges and universities for use in their academic and educational facilities:

(a) Books purchased for library.

(b) Books purchased for teachers.

(c) Maintenance supplies.

(d) Instructional supplies.

(e) Athletic equipment and supplies, except when purchased by an independent athletic association.

(f) Electricity and fuel.

(g) Furniture and fixtures.

(h) Office supplies and equipment.

(i) Kitchen equipment.

(j) Laboratory equipment.

(k) Food purchased by the college or university and furnished to its students as a part of a single charge for room, board and tuition.

(4) The following are examples of tangible personal property and services which are not exempt when sold to such colleges and universities:

(a) Motel charges for school conferences when paid for by individual students.

(b) College yearbook when payment is not included in tuition fees and charges.

(c) In event such colleges and universities sell meals to students and others, wherein the meal is paid for by means other than the charge for such meals having been included in room, board and tuition fees and charges, the colleges and universities shall collect the tax from such students and other persons as a retail sale.

Rule 560-12-2-.24 Communication Services

stated on the customer's bill. However, the tax applies to all tangible personal property purchased or used in this State in connection with rendering interstate or intrastate communication (telephone) services.

(2) **Cellular Telephone Services**.

(a) Taxable Charges:

1. The monthly access charge (charge for the right to access the cellular system) in the amount as set forth on each cellular telephone provider's statement or bill to its customer or subscriber. However, should the monthly charge include both access and a stated allowed airtime usage in a combined or bundled amount, tax will be due on the entire combined or bundled amount, unless, on the bill or statement, the amount is broken out as between the various charges. When unbundling the taxable amount, the minimum ascribed to monthly access must be no less than the minimum monthly access charge made by the cellular telephone provider to the general public for access to the cellular system (when no calls are placed by the customer and no airtime is utilized by the customer) that is in effect during the billing period.

2. All vertical services for special features, including, but not limited to, call waiting, call forwarding, speed calling, three-way calling.

3. The daily access portion of the "roaming" charge made by the serving cellular provider serving the area within this State in which the customer call is placed ("serving cellular provider") to the billing cellular provider, for customer access to the serving cellular provider's service area.

(b) Non Taxable Charges:

1. Airtime usage, if listed separately on the customer's bill or statement.

2. Voice mail services.

(c) Situs for Determining Tax Rates. The situs for determining tax rates for taxable cellular telephone services is the customer's garage or billing address. However, if both addresses are outside this State, then the situs is the location of the Serving Cellular Provider's serving switch. For billing roamer access charges, calls are considered to be placed and shall be taxed at the tax rate prevalent

billing address.

(d) Interconnection Services. With respect to and for that portion of taxes otherwise subject to collection from a cellular telephone provider by its local exchange telephone carrier(s), for the provision of access or interconnection services that are resold by any such cellular provider, a cellular provider may either (i) take a credit, equal to the taxes collected by its local exchange telephone carrier(s) on access or interconnection services, against taxes due by the cellular provider to the Department, or (ii) execute a valid Certificate of Exemption (Form ST-5) for exemption from payment of taxes on access or interconnection services that are resold by the cellular provider. No credit may be taken for that portion of taxes collected from any cellular telephone provider by its local exchange telephone carrier(s) for the provision of local telephone measured usage services. (No credit or refund shall be given by the Department to any cellular telephone provider for taxes collected from any cellular telephone provider on the provision of local exchange telephone services to such cellular telephone provider by its local exchange telephone carrier prior to December 1, 1992.)

Rule 560-12-2-.25 Containers and Packaging Materials

(1) **Purpose.** This Rule explains the sales and use tax exemption in O.C.G.A. § 48-8-3(94) for materials used to package tangible personal property for shipment or sale. This Rule does not address the exemptions for packaging supplies used in manufacturing and agriculture.

(2) **Single-use Containers and Packaging Materials.** Sales and use tax does not apply to containers and packaging materials used in a trade or business for packaging tangible personal property for shipment or sale if such items are used solely for packaging and are not purchased for reuse by the seller or shipper of the tangible personal property. Exempt items include but are not limited to cans, boxes, and bottles in which goods are contained; boxes in which goods are delivered to customers; materials used to make containers; wrapping paper, plastic, wire, foam, twine, bottle caps, excelsior insulating material, crates, grocery bags, take-out boxes, shipping labels, packing peanuts, and tape. Invoices, packing slips, labels, tags, and plates are exempt from sales and use tax if affixed to the product or affixed to or inserted into the product packaging.

(3) **Reusable Containers and Packaging Materials**. Sales and use tax applies to containers and packaging materials purchased for reuse by the seller or shipper of tangible personal property, including containers and packaging materials that temporarily pass to the purchaser until they are

catalogs, and other similar promotional materials.

(5) **Trade or Business Use Only.** The exemption in O.C.G.A. § 48-8-3(94) applies only to containers and packaging materials used in a trade or business. A purchaser must present a properly completed certificate of exemption in order to qualify for the exemption.

Rule 560-12-2-.26 Contractors

(1) Any person who contracts to furnish tangible personal property and perform services thereunder in constructing, altering, repairing or improving real property in this State is deemed to be the consumer of all tangible personal property used or consumed in performing such contract and shall pay the tax thereon at the time of purchase, use, storage or consumption in this State, whichever occurs first.

(2) **General or Prime Contractor Defined.**

(a) A general or prime contractor shall include but not be limited to any person, partnership, limited liability partnership, corporation or limited liability company who shall contract with the owner, lessee or other person having authority to enter into a contract involving the premises or property as designated by said contract, to perform services and/or furnish materials for the construction, alteration, or improvement of any real property or project.

(b) A general or prime contractor shall also include any person, partnership, limited liability partnership, corporation or limited liability company who owns or leases real estate for the purpose of developing said real estate other than for his or her own occupancy, and in the development thereof, contracts, alters, or makes improvements thereon.

(c) A general or prime contractor shall also include any person, partnership, limited liability partnership, corporation or limited liability company who owns or leases real estate and in the development, alteration, or improvement thereof, or construction thereon, contracts with another person, partnership, or corporation to furnish tangible personal property and perform services.

(3) **Subcontractor Defined.** A subcontractor shall include any person, partnership, limited liability partnership, corporation or limited liability company who contracts with the prime or general contractor to perform all or any part of the contract of the prime or general contractor or who shall contract with a subcontractor who has contracted to perform any part of the contract entered into by the prime or general contractor.

(b) Sales and use tax returns shall be made by general or prime contractors and by subcontractors on a monthly basis, unless otherwise authorized, for such taxes owed by each respectively. The returns are to be made on Form ST-3 as prescribed by the commissioner.

(c) Every general or prime contractor and every subcontractor shall have 20 days from the last day of the reporting period in which to file their sales and use tax returns and remit the tax to the commissioner, as is provided in these Rules and Regulations.

(5) **Initial General or Prime Contractor Notice.** Each general or prime contractor shall within thirty (30) days after the execution of a contract with a subcontractor whose aggregate contract(s) amount(s) on any single project is equal to or exceeds $250,000 file with the commissioner a notice, Form S & U T 214-1, that identifies each applicable subcontractor and contract amount. If a general or prime contractor has filed a notice (Form S & U T 214-1) as a result of a previous contract entered during the calendar year and is subsequently provided a notice (Form S & U T 214-5) from the commissioner concerning the subcontractor, then the general or prime shall be relieved from submitting any additional notices (Form S & U T 214-1) on any future contracts with such subcontractors during that calendar year.

(6) **Withholding and Remittance Requirements.**

(a) Each general or prime contractor whose aggregate contract(s) amount(s) on any single project is equal to or exceeds $250,000 with a single subcontractor is required to withhold 2% of the payments due the subcontractor, arising out of such contract(s), unless said contractor has filed an approved surety bond with the commissioner in accordance with the Act.

(b) Upon receipt of the written report from the subcontractor showing the amount of work completed on the contract and that all sales and use taxes due the State have been paid by the subcontractor, the Department of Revenue, Sales and Use Tax Division, shall send a written notice (Form S & U T 214-6) to the general or prime contractor and subcontractor. The general or prime contractor shall be authorized to pay the subcontractor all amounts withheld for the payment of sales and use tax during the period covered on the written notice (Form S & U T 214-6).

(c) Each general or prime contractor shall send a written notice (Form S & U T 214-7) to the commissioner identifying the total amount withheld after such amount has been held for a period of 60 days

(7) **Sales and Use Tax Surety Bond.**

(a) In lieu of the retention of the two percent (2%) by the general or prime contractor of the amounts due the subcontractor, the subcontractor may provide an annual or continuous surety bond (Forms S & U T 214-3 or Form S & U T 214-3C) approved by the commissioner as to form, sufficiency, value, amount, stability, and other features necessary to provide a guarantee of payment of tax due under the Act.

(b) The bond shall be made to the Department of Revenue, Sales and Use Tax Division, by the subcontractor on the application (Form S & U T 214-2). The annual surety bond shall cover a calendar year and shall expire on December 31 of each year, and a new bond, if needed, shall be filed with the commissioner. The continuous bond shall continue without interruption until notification has been received from the surety company that the subcontractor has not renewed the bond or that the bond has been cancelled.

(c) Each subcontractor who shall desire to make a bond in accordance with O.C.G.A. § 48-8-63 shall be required to have as surety on said bond a surety corporation authorized to do business in the State of Georgia. The amount of the bond shall be based on the following schedule:

1. Subcontractors whose anticipated annual gross receipts from subcontracting in Georgia for the year is less than $250,000 shall not be required to have a bond;

2. Anticipated annual gross receipts $250,000 to $500,000 - Bond in sum of $5,000.

3. Anticipated annual gross receipts $500,000 to $750,000 - Bond in sum of $20,000.

4. Anticipated annual gross receipts $750,000 to $1,000,000 - Bond in sum of $30,000.

5. Anticipated annual gross receipts over $1,000,000 - Bond in sum of $50,000.

(d) At any time while the bond is in force, the commissioner may within his discretion increase or decrease the amount of an individual bond or establish a new schedule for all bonds.

commissioner, the Department of Revenue, Sales and Use Tax Division, shall promptly prepare a certificate (Form S & U T 214-4) and forward the original of such certificate as notice to the subcontractor. Upon the subcontractor's written request the Department of Revenue, Sales and Use Tax Division, shall send a notice of the subcontractor's surety bond approval (Form S & U T 214-5) to each general or prime contractor in order to be relieved from withholding the two percent (2%) retainage. The subcontractor's bond approval notice (Form S & U T 214-5) issued on a subcontractor's continuous surety bond shall be valid until the Department of Revenue, Sales and Use Tax Division, notifies the general or prime contractor and subcontractor that the bond has not been renewed or that the bond has been cancelled.

(g) In the absence of the subcontractor's surety bond approval notice (Form S & U T 214-5) to the general or prime contractor, the contractor must withhold the two percent (2%) retainage of the subcontractor's receipts due on any given project that equals or exceeds $250,000.

(8) **Foreign and Non-Resident Contractors.** A foreign or nonresident subcontractor applicant shall be required to submit a sales and use tax bond to authorize release from withholding provisions of the Act in addition to the foreign and non-resident bonding requirements provided for under O.C.G.A. § 48-13-32 (See Revenue Rule 560-12-2-.43 entitled Foreign and Non-Resident Contractors and Subcontractors. Amended).

Rule 560-12-2-.27 Convalescent Homes

(Also see Rule 560-12-2-.92).

(1) The tax applies to purchases of tangible personal property by homes for the care and maintenance of children, the aged or other persons, whether or not operated for profit.

(2) The tax does not apply to receipts for the care and maintenance of such persons.

Rule 560-12-2-.28 Participation in "Fun Runs" and Other Road Races

Charges to participate in a 10k, half-marathon, marathon, "fun run", walk, wheelchair race, bicycle race, triathlon, or any other similar non-motorized race are not considered to be charges for participation in games or amusement activities and are therefore not subject to tax.

total charge therefor, without deduction for fabrication labor.

(3) Retail sales of dies, patterns, tools and castings are taxable based upon the sales price thereof.

Rule 560-12-2-.30 Drugs, Durable Medical Equipment, Prosthetic Devices, and Other Medical Items

(1) **Purpose.** This Rule sets forth the application of sales and use tax to certain drugs, durable medical equipment, prosthetic devices, and other medical items.

(2) **Definitions.** For the purposes of this Rule, the following definitions and explanations of terms shall apply:

(a) "Drug" means a compound, substance, or preparation, and any component of a compound, substance, or preparation, other than "food and food ingredients," "dietary supplements," or "alcoholic beverages":

1. Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or supplement to any of them; or

2. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

3. Intended to affect the structure or any function of the body.

(b) Durable medical equipment.

1. "Durable medical equipment" means equipment, including repair and replacement parts for the same, that:

i. Can withstand repeated use;

ii. Is primarily and customarily used to serve a medical purpose;

iii. Generally is not useful to a person in the absence of illness or injury;

iv. Is not worn in or on the body; and

v. Is not "mobility enhancing equipment."

2. Examples of durable medical equipment include but are not limited to:

monitors, and ventilators;

iii. Sitz bath chairs, bed pans, urinals;

iv. Heat lamps, heat pads, and hot water bottles; and

v. Blood glucose monitors, electronic nerve stimulators (non-implanted), breast pumps, and insulin infusion pumps (non-implanted).

(c) Mobility enhancing equipment.

1. "Mobility enhancing equipment" means equipment, including repair and replacement parts to the same, that:

i. Primarily and customarily is used to provide or increase the ability to move from one place to another and that is appropriate for use either in a home or a motor vehicle; and

ii. Generally is not used by persons with normal mobility; and

iii. Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

2. "Mobility enhancing equipment" does not include "durable medical equipment."

3. Examples of mobility enhancing equipment include but are not limited to:

i. Adjustable or raised toilet seats;

ii. Tub and shower stools or benches;

iii. Bed pull-up Ts;

iv. Canes;

v. Crutches;

vi. Grab bars and hand rails;

vii. Lift chairs;

xi. Transfer belts and benches;

xii. Walkers; and

xiii. Wheelchairs and ramps.

(d) "Natural person" means an individual human being.

(e) "Over-the-counter drug" means a drug that contains a label identifying the product as a drug as required by 21 C.F.R. § 201.66. The "over-the-counter drug" label includes:

1. A "Drug Facts" panel; or

2. A statement of the "active ingredient(s)" with a list of those ingredients contained in the compound, substance, or preparation.

(f) "Physician" means a person licensed to practice medicine pursuant to Article 2, Chapter 34 of Title 43.

(g) "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state.

(h) Prosthetic device.

1. "Prosthetic device" means a replacement, corrective, or supportive device including repair and replacement parts for the same worn on or in the body to:

i. Artificially replace a missing portion of the body; or

ii. Prevent or correct physical deformity or malfunction; or

iii. Support a weak or deformed portion of the body.

2. "Prosthetic device" does not include hearing aids and eyeglasses.

3. Examples of prosthetic devices include but are not limited to:

i. Artificial implants such as artificial arteries (e.g., vascular grafts, stents), hearts and valves (e.g., atrial, mitral, annuloplasty rings), ears, nose, eyes

implanted into the body used to correct deformities, or to preserve and restore the function of the human skeletal system;

iii. Organ implants;

iv. Breast prostheses, including surgical brassieres for post- mastectomy patients;

v. Cardiac pacemakers and implanted cardioverter defibrillators;

vi. Implanted nerve stimulators;

vii. Implanted tissue expanders;

viii. Implanted devices used for hydrocephalus;

ix. Surgical mesh;

x. Gastric bands and intragastric balloons;

xi. Colostomy, ileostomy and urostomy appliances, including bags and necessary equipment required for attachment, such as tubing;

xii. Electronic speech aids if the patient had a laryngectomy or if the larynx is inoperative;

xiii. Urinary collection systems, including Foley catheters, when replacing bladder function in cases of urinary incontinence;

xiv. Enteral or parenteral feeding systems and their individual components (e.g., catheters, filters, extension tubing, infusion pumps);

xv. Artificial legs, arms and eyes, including terminal devices such as artificial hands;

xvi. Braces, cervical collars, abdominal belts, anti-embolism stockings, pressure/compression garments, trusses, supports, suspensories, and similar devices worn on the body to correct or alleviate a physical incapacity or injury;

xvii. Hoods and space shoes that replace part of a foot;

(3) **Drugs.**

(a) The sale or use of drugs that are lawfully dispensable only by prescription for the treatment of natural persons is exempt from Georgia sales and use tax. This exemption applies to all purchasers including but not limited to individual consumers, hospitals, clinics, and medical practice groups.

(b) Unless otherwise exempt, all sales of over-the-counter drugs are subject to Georgia sales and use tax regardless of whether they are dispensed under a prescription, even if the over-the-counter drug is purchased on the advice or recommendation of a physician. Examples of over-the-counter drugs include but are not limited to aspirin, acetaminophen, ibuprofen, cold remedies, antacids, laxatives, and cold sore gels.

(c) Dealers must maintain sufficient prescription documentation to support exempt sales.

(4) **Durable Medical Equipment.**

(a) **Purchases for resale.** Durable medical equipment may be purchased tax exempt for resale only if title and possession will be permanently transferred to a natural person to whom a prescription for the equipment is issued or if full possession, control and use will be transferred, pursuant to a bona fide lease agreement, to a natural person to whom a prescription for the equipment is issued.

1. Durable medical equipment that can be sold or used only pursuant to a prescription under federal or state law may be purchased tax exempt for resale pursuant to this subparagraph without furnishing form ST-5 (Sales and Use Tax Certificate of Exemption).

2. If an item of durable medical equipment may lawfully be sold without a prescription, the purchaser must furnish form ST-5 to its vendor in order to purchase the item tax free for resale.

(b) **Transfers to patients.** Pursuant to O.C.G.A. § 48-8-3(54) durable medical equipment may be transferred tax exempt to a natural person to whom a prescription for the equipment is issued.

(c) **Use by service providers.** If a service provider uses, possesses or controls an item of durable medical equipment at any time in

(5) **Prosthetic Devices.**

(a) If a prosthetic device can be sold or used only pursuant to a prescription under federal or state law, and title and possession will be permanently transferred to a natural person to whom a prescription for the device is issued, the entity (including hospitals, clinics, and medical practice groups) transferring the device may purchase the item tax exempt without furnishing form ST-5 (Sales and Use Tax Certificate of Exemption). The entity subsequently may transfer the device tax exempt pursuant to O.C.G.A. § 48-8-3(54) to a natural person to whom a prescription for the device is issued.

(b) If a prosthetic device may lawfully be sold without a prescription, and title and possession will in fact be permanently transferred to a natural person pursuant to a prescription issued to that person, the entity transferring the device must furnish an ST-5 to its vendor in order to purchase the item tax free for resale. The transferring entity may then transfer the item tax exempt pursuant to O.C.G.A. § 48-8-3(54) when the transfer is made to a natural person pursuant to a prescription issued to that person.

(6) **Mobility Enhancing Equipment.**

(a) **Purchases for resale.** Mobility enhancing equipment may be purchased tax exempt for resale only if title and possession will be permanently transferred to a natural person to whom a prescription for the equipment is issued by a physician or if full possession, control and use will be transferred, pursuant to a bona fide lease agreement, to a natural person to whom a prescription for the equipment is issued by a physician.

1. Mobility enhancing equipment that can be sold or used only pursuant to a prescription under federal or state law may be purchased tax exempt for resale pursuant to this subparagraph without furnishing form ST-5 (Sales and Use Tax Certificate of Exemption).

2. If an item of mobility enhancing equipment may lawfully be sold without a prescription, the purchaser must furnish form ST-5 to its vendor in order to purchase the item tax free for resale.

(b) **Transfers or sales to patients.** Pursuant to O.C.G.A. § 48-8-3(72) mobility enhancing equipment may be transferred tax exempt to a natural person to whom a prescription for the equipment is issued by a physician.

provider is liable for sales or use tax on the service provider's cost price of the item.

(7) **Other Medical Items.**

(a) Eyeglasses and contact lenses.

1. The sale of eyeglasses and contact lenses is exempt from sales and use tax when the sale is made to a natural person pursuant to a prescription issued to that person.

2. The distribution of prescription contact lenses by the manufacturer to licensed dispensers, that are free samples not intended for resale and labeled as such, are exempt from sales and use tax.

(b) The sale of oxygen is exempt from sales and use tax when the sale is made to a natural person pursuant to a prescription issued to that person by a licensed physician.

For example, a medical service provider purchases oxygen from a seller and then sells the oxygen to a patient pursuant to a prescription issued to that patient by a licensed physician. The service provider's purchase is taxable unless the provider presents a resale certificate to the seller. The service provider's sale of oxygen to the patient is exempt under O.C.G.A. § 48-8-3(51).

(c) The sale of hearing aids is exempt from sales and use tax. This exemption applies to all purchasers including but not limited to individual consumers, hospitals, clinics, and medical practice groups.

(d) The sale of insulin syringes, insulin, and blood measuring strips is exempt from sales and use tax. This exemption applies to all purchasers including but not limited to individual consumers, hospitals, clinics, and medical practice groups.

(e) Enteral nutrition and parenteral nutrition are exempt from sales and use tax when sold to a natural person pursuant to a prescription issued to that person.

Rule 560-12-2-.31 Dunnage and Shoring Materials

The tax applies to sales of dunnage and other shoring materials.

Rule 560-12-2-.32 Utilities

to guarantee payment of utility services.

(2) **Water.** Sales and use tax does not apply to water delivered to consumers through water mains, lines, or pipes.

Rule 560-12-2-.33 Employee Associations and Organizations

Organizations of employees which sell tangible personal property to members or others are required to collect and remit the tax. It is the responsibility of all such organizations to request from the Commissioner a determination as to the necessity for registration with the Sales and Use Tax Unit.

Rule 560-12-2-.34 Repealed

Rule 560-12-2-.35 Repealed

Rule 560-12-2-.36 Explosives

The tax applies to dynamite, black powder and other explosives when purchased for mining, quarrying, construction work or for any purposes other than resale.

Rule 560-12-2-.37 Fabrication of Tangible Personal Property

(1) An operation which restores a used or worn piece of tangible personal property to its original state is a service and charges for labor in repairing such property are not taxable when billed separately to the customer. An operation which changes the form or state of the property is one of fabrication.

(2) Persons regularly engaged in the fabrication or production of tangible personal property for sale at retail shall collect and remit the tax on the sales price of such property. When the fabricator converts such property to his own use, he shall remit the tax based on the fair market value thereof at the time of its first use by him.

(3) The tax applies to the total charge for the fabrication or production of tangible personal property on a special order for a consideration. For example, if a manufacturer orders a part for machinery from a machine shop, the tax shall be collected on the total charge for the part, including labor, although charges for labor may be segregated from the cost of the materials.

(4) The tax applies to the charges for the fabrication of tangible personal property for users or consumers who furnish, either directly or indirectly, the materials used in the fabrication work. For example, the tax would apply to charges made by a tailor who makes an article of wearing apparel from material furnished by the customer. (Also see Rule 560-12-2-.88)

Rule 560-12-2-.38 Fairs, Circuses, Carnivals, etc

and similar places for rides on merry-go-rounds, roller coasters, ferris wheels and the like, and the participation in games are subject to the tax. For the purpose of collecting this tax, each admission or other charge shall be deemed a single sale unless the books and records of the dealer accurately reflect amounts of each combination or multiple sale.

(3) The tax does not apply to admissions by free pass. If a service charge or donation in excess of 10c is required for the issuance of an admission pass, the tax applies to the charge or donation.

(4) Tangible personal property used or consumed in the operations of fairs, circuses, carnivals, amusement parks, etc., is taxable, based on the sales price if purchased in Georgia. If purchased outside of Georgia, the tax shall be based on the cost price or fair market value at the time of first use in this State, whichever is the lesser, and subject to credit for sales or use taxes legally imposed and paid to a reciprocating state.

(5) Itinerant operators of fairs, circuses, or any other amusement or entertainment activity in this State shall furnish this Department with a complete itinerary prior to his first showing or activity herein. Such operators and concessionaires shall collect the tax as set out hereinabove and pay the same to the State Revenue Commissioner or as directed by an authorized agent of the Revenue Department.

Rule 560-12-2-.39 Farmers, Market Masters, and Other Marketers

(1) Farmers, market masters, and other persons engaged in selling tangible personal property, whether at retail or for resale, must register as a dealer.

(2) The tax applies to retail sales of farm products, whether sold by peddlers or at a public market, roadside stand, farm, or any other place, irrespective of whether the place of business is located on private, state, county, or municipal property.

(3) All sales are subject to the tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is on the seller unless the seller takes in good faith from the purchaser a certificate stating that the property is purchased for resale or is otherwise tax exempt.

Rule 560-12-2-.40 Federal and Military Reservations

(1) The tax applies to all retail sales by private concessionaires in Federal areas to servicemen, Federal employees and other persons to the same extent that it applies with respect to retail sales elsewhere within the State.

(2) The use tax applies to the cost price or fair market value, whichever is the

Georgia, or any county or municipality of the State of Georgia or any bona fide department of such government when paid for directly to the seller by warrant on appropriated government funds; provided that any hospital authority created by Chapter 8818 of the Code of Georgia is exempt from the tax.

(2) Sales to governmental employees for their own consumption or use are taxable.

(3) The tax applies to sales on Federal Property, i,e., sales to persons in the armed services of the United States and to civilian employees of such services, except when such sales are made to them as authorized purchasers for a service organization operating exclusively within a United States Military Reservation and authorized by the Secretary of Defense. The tax does not apply to sales to officers clubs, non-commissioned officers clubs and post exchanges organized, operated and controlled under regulations promulgated by the departmental Secretary of the Department of Defense having jurisdiction thereof, and operated exclusively in a functional area of the command of which they are a part. The exemption from the collection or the payment of sales and use tax does not cover individuals or organizations operating on a military reservation in their own right. No person shall be relieved from liability for payment of, collection of, or accounting for the tax on the ground that the sales or use, with respect to which the tax is levied, occurred in whole or in part within a Federal area.

Rule 560-12-2-.42 Florists and Nurserymen

(1) The tax applies to retail sales of flowers, potted plants, shrubbery, nursery stock, wreaths, bouquets, and similar items.

(2) When a nurseryman, florist, or other person makes retail sales of shrubbery and similar items, and as a part of the transaction agrees to transplant them on the land of the purchaser for a lump sum, the tax applies to the total charge therefor, except in those cases where installation is billed separately.

(3) Where florists sell through telegraphic delivery association the following rules will apply:

(a) On all orders taken by a Georgia florist and telegraphed to a second florist in Georgia for delivery in this State, the sending florist will be held liable for tax on the total amounts collected from the customer.

(b) In cases where a Georgia florist receives an order pursuant to which he gives telegraphic instructions to a second florist located outside Georgia for delivery of flowers to a point outside Georgia, tax will

tax with respect to any receipts which he may realize from the transaction. In this instance, if the order originated in Georgia, the tax will be payable by the Georgia florist who first received the order and gave the telegraphic instructions to the second florist.

(d) Charges for telegraphic messages are not taxable when billed separately to the customer.

(4) Where a florist directs a wedding, furnishes flowers, decorations, refreshments, etc. for a flat charge, the total charge is subject to the tax. However, if a separate charge is made for professional services, such charge may be excluded from the sales tax base.

Rule 560-12-2-.43 Foreign or Non-Resident Contractors and Subcontractors

(1) "Contractor" includes nonresident individuals, partnerships, firms or corporations, or associations engaged in the business of the construction, alteration, repairing, dismantling or demolition of buildings, roads, bridges, viaducts, sewers, water and gas mains, streets, disposal plants, water filters, tanks and towers, airports, dams, water wells, pipe lines, and every other type of structure, project, development or improvement coming within the definition of real property and personal property, including such construction, alteration, or repairing of such property to be held either for sale or rental, and further including all subcontractors so engaged.

(2) Application for Authorization to Perform Contract (Form S&UT-348-1) must be filed for each contract amounting to more than $10,000.00 and a fee paid in the sum of $10.00 for each such contract. A good and valid bond shall be executed by a Surety Company authorized to do business in this State in the amount of 10% of the contract price or the compensation to be received for each contract. Nonresident contractors engaging in multiple contracts, contingent or unit basis where the compensation to be received cannot be determined, a blanket bond may be executed in a sufficient amount, within the discretion of the Commissioner of Revenue but under no circumstances to be less than $10,000.00. Contractors so engaged must report each such contract on or by the first day of March of the subsequent calendar year and pay a fee of $10.00 for each such contract. Nonresident contractors and subcontractors must file a "Consent to Service of Process" appointing the Secretary of State of Georgia as the true and lawful agent upon whom may be served any summons or other lawful process.

(3) Upon posting the required bond and payment of the registration fee, nonresident contractors and subcontractors shall be furnished a "Qualification Acknowledgement", Form S&UT-348-2, which shall be maintained by a person in authority at the job site for inspection by any

been furnished to the Revenue Department by the contractor, accompanied by an affidavit that all fees and taxes incurred in connection with the contract have been paid to the State of Georgia and all political subdivisions thereof.

(5) Upon completion of every contract amounting to more than ten thousand dollars ($10,000), the contractor or subcontractor shall furnish to the Commissioner of Revenue a written notice of contract completion, together with an affidavit that all fees and taxes incurred in connection with the contract have been paid to the State of Georgia and all political subdivisions thereof. A contract is not deemed to be completed in accordance with the terms of said Act until such time as the contract completion has been reported in the aforementioned manner, nor shall the provision for automatic bond release apply until two (2) years after the receipt of such notice by the Commissioner.

Rule 560-12-2-.44 Foreign Vendors

Every person outside this State who engages in business in this State as a dealer as defined in the Act, is required to register, collect and remit the tax on all taxable tangible personal property sold or delivered for storage, use or consumption in this State. Such dealers must file monthly sales and use tax reports, unless otherwise authorized, and perform all other duties required of dealers in this State.

Rule 560-12-2-.45 Freight, Delivery and Transportation

(1) "Delivery charges" means charges by the seller of tangible personal property or services for preparation and delivery to a location designated by the purchaser of the tangible personal property or services, including but not limited to charges for transportation, shipping, postage, handling services, crating, and packing; fuel surcharges; split shipment charges; small order charges; and other similar charges. The term "delivery charges" does not include postage charges for the delivery of direct mail when the postage charge is passed on dollar-for-dollar without being marked up to the purchaser of the direct mail and separately stated on an invoice or other similar billing document given to the purchaser.

(2) Where taxable tangible personal property is sold at retail and the seller makes a delivery charge, the charge is taxable regardless of whether the charge is optional (i.e., not required to complete the underlying sale of the tangible personal property) or separately stated.

(3) Where taxable tangible personal property is sold at retail and the seller handles the shipping transaction as agent for the purchaser, the delivery charge is not taxable so long as:

(c) the seller maintains books and records reflecting the deposits, withdrawals, and the balance of the delivery escrow accounts maintained for each customer;

(d) the contract between the seller and the purchaser prohibits the seller from financing or marking up the delivery charges;

(e) the contract between the seller and the purchaser requires the purchaser to deposit funds for delivery charges into the escrow account in advance of delivery; and

(f) the contract between the seller and the purchaser states that the purchaser pays shipping cost and takes responsibility for the property when it leaves the seller's premises.

(4) Charges made for the transportation of tangible personal property are not subject to sales tax when the transportation charges are not associated with a taxable sale of tangible personal property.

(5) If a transaction between a dealer and a customer includes both taxable items and nontaxable items, the dealer may either charge and collect tax on the entire delivery charge or charge tax on a portion of the delivery charge based on either (i) the percentage of the sales price of the taxable property compared to the total sales price of all property in the shipment, or (ii) the percentage of the total weight of the taxable property compared to the total weight of all property in the shipment. The dealer must maintain records supporting the calculation of taxes on delivery charges.

(6) Examples:

(a) A seller of taxable tangible personal property arranges for a third party carrier to deliver items to the purchaser. The seller charges the purchaser the actual cost of delivery that the third party carrier charges the seller. The delivery charge from the seller to the purchaser is a taxable charge.

(b) A seller of taxable tangible personal property arranges for a third party carrier to deliver items to the purchaser. The carrier bills the purchaser directly, and the purchaser pays the carrier directly. The delivery charge is not taxable.

(c) An individual pays a moving company to move his furniture from his home to a storage facility. The charge made by the moving company for the transportation of tangible personal property is not taxable because it is not associated with the taxable sale of tangible personal property. Charges made by the moving company for

delivery charge is not taxable because the carrier, rather than a seller of tangible personal property, is making the charge.

(e) A retailer purchases inventory for resale and pays a delivery charge to the vendor. Because the purchase is a nontaxable purchase for resale, the delivery charge is not taxable.

(f) A retailer purchases tax exempt inventory for resale and taxable items for use in the retailer's business. The tax exempt property is $75 and 75 pounds, and the taxable property is $25 and 25 pounds. The seller delivers the items in one shipment for a fee of $6. The seller may either charge tax on the entire $6 delivery fee or charge tax on 25% ($1.50) of the delivery fee based on either (i) the percentage of the sales price of the taxable property compared to the total sales price of all property in the shipment (25%), or (ii) the percentage of the total weight of the taxable property compared to the total weight of all property in the shipment (25%).

Rule 560-12-2-.46 Funeral Services, Cemeteries and Crematoriums

(1) Funeral directors and undertakers are considered to be in the dual capacity of rendering services and selling tangible personal property. Their sales are taxable as follows:

(a) Except as provided for in paragraph (b) of this regulation, the tax applies to the retail sales price of all tangible personal property furnished in a funeral service.

(b) Funeral merchandise, outer burial containers and cemetery markers as defined in O.C.G.A. § 43-18-1 are exempt when purchased with funds received from the Georgia Crime Victims Emergency Fund under Chapter 15 of Title 17 of the Official Code of Georgia Annotated. This includes but is not limited to caskets or alternative containers, vaults, crypts and wooden enclosures. Funeral directors, undertakers, cemeteries and crematoriums must maintain sufficient documentation that the purchases are made with funds received from the Georgia Crime Victims Emergency Fund.

(c) Equipment and supplies, including but not limited to ambulances, hearses, embalming materials, and chapel furnishings are deemed purchases for use or consumption by undertakers and funeral directors and are taxable at the time of purchase.

(d) When a funeral director or undertaker conducts a funeral in Georgia and furnishes tangible personal property, the delivery of which takes

cemeteries and crematoriums, including boxes, urns, markers, vases and flowers.

(b) The tax applies to purchases of equipment and supplies for use and consumption by cemeteries and crematoriums. Such purchases include, but are not limited to, materials and supplies used in construction, maintenance, improvement or alteration of buildings and grounds; also seeds, insecticides, plants and fertilizers.

(3) The sale of lots, crypts and niches are real property transactions not subject to the tax.

Rule 560-12-2-.47 Furniture and Storage Warehousemen

Furniture and storage warehousemen are primarily engaged in the business of moving, storing, packing, and delivering tangible personal property belonging to other persons. These activities constitute services and proceeds therefrom are not subject to the tax. Crating, boxing, packing materials, etc., purchased by warehousemen for use in the performance of such services are taxable. Warehousemen are required to collect and remit the tax on retail sales of furniture or other tangible personal property.

Rule 560-12-2-.48 Repealed

Rule 560-12-2-.49 Golf and Country Clubs

Golf, country and other social clubs are required to register as dealers and to collect and remit the tax on all sales at retail, including separate charges for swimming, green fees and the like. The tax applies to purchases of tangible personal property by such clubs for use or consumption, including, but not limited to, equipment, seeds, plants, fertilizer, etc., for improvement and beautification.

Rule 560-12-2-.50 Hospitals, Sanitariums, Nursing Homes

(1) Hospitals, sanitariums and nursing homes are primarily engaged in the business of rendering services and are deemed users or consumers of all tangible personal property purchased for use or consumption in connection with the operation of the institution. They are required to pay the tax at the time of purchase, unless specifically exempt by law. They shall pay the tax to registered vendors; however, if a vendor fails to charge the tax, the purchaser shall be liable for the payment of the tax directly to the State.

(2) Sales of tangible personal property to hospitals, sanitariums and nursing homes owned and operated by the Federal government, the State of Georgia, any county or municipality of the state of Georgia, and hospital authorities created under the provisions of Section 88-1803, Georgia Health Code, are exempt.

hospitals coming within the provisions of Rule 560-12-2-.92 may apply for an exemption.

Rule 560-12-2-.51 Hotels, Motels, Trailer Parks, etc

(1) The tax applies to charges for rooms, lodgings or accommodations furnished to transients by hotels, motels, tourist camps, or any other place in which such accommodations are furnished. However, the tax shall not apply to rooms, lodgings or accommodations supplied for a period of 90 continuous days or more.

(2) The tax applies to sales or rentals of tangible personal property by such businesses, including food, beverage, radio and television.

(3) Purchases of furniture, linens, carpeting, drapes, and other tangible personal property by such businesses are taxable at the time of purchase.

(4) Charges for parking spaces in trailer parks are not subject to the tax.

Rule 560-12-2-.52 Repealed

Rule 560-12-2-.53 Interior Decorators

The tax does not apply to charges for professional services rendered by an interior decorator. When a decorator goes beyond the rendition of services and sells tangible personal property, the decorator shall register as a dealer, collect and remit the tax on retail sales. When a decorator makes a lump sum charge for professional services and furnishes tangible personal property, the tax applies to the total charge, unless the charge for professional services is billed separately from the tangible personal property.

Rule 560-12-2-.54 Interstate Commerce

(1) The tax applies to:

(a) All sales at retail of tangible personal property, the delivery of which takes place in Georgia, regardless of any subsequent employment or use thereof in interstate commerce; and

(b) The first use in Georgia of tangible personal property bought elsewhere in a transaction which would have been taxed had the transaction occurred in Georgia, provided such property has become a part of the mass of the property in this State, irrespective of the fact that such property may have been, or may be used in interstate commerce.

(c) The tax due under (b) above is subject to the credit for like taxes paid elsewhere, if under reverse circumstances the other state would grant credit for like taxes paid to the State of Georgia.

(b) Deliveries of tangible personal property outside the State by use of an independent trucker hired by the seller when a valid Certificate of Exemption (Form ST-6) is secured;

(c) Deliveries of tangible personal property to a common carrier or to the U.S. Post Office for transportation outside the State;

(d) Purchases for resale and immediate transportation out of this State by a dealer properly registered in another state, provided a valid Certificate of Exemption (Form ST-4) is secured by the Georgia seller;

(e) Purchases of aircraft, watercraft, motor vehicles and other transportation equipment manufactured or assembled in this State if sold by the manufacturer or assembler for use exclusively outside this State and if possession is taken from the manufacturer or assembler by the purchaser within this State for the sole purpose of removing the same from this State under its own power when it does not lend itself more reasonably to removal by other means.

(f) Purchases of aircraft parts (other than parts and materials described below which are consumed or installed on aircraft while in Georgia) when (1) the delivery terms are "F.O.B. buyer's aircraft, (City), Georgia," or terms with the same meaning, and (2) the parts are delivered by the seller directly on board the foreign purchaser's aircraft (3) for immediate exportation outside the United States (4) pursuant to an export license issued by the federal government and (5) such parts are actually transported outside the United States as soon as practicable after loading onto the aircraft without any use in Georgia or diversion to any other state. The tax shall apply to parts and materials which are installed on or in an aircraft while in Georgia or used or consumed in repairing or servicing an aircraft when the aircraft is repaired or serviced in Georgia.

Rule 560-12-2-.55 Kennels, Stables and Pet Shops

The tax does not apply to charges for the keep of pets. Operators of kennels, stables and pet shops are required to pay the tax on purchases of tangible personal property used in such operations. Sales of horses, dogs, animals, goldfish and other pets are subject to the tax, unless purchased for resale or otherwise exempt.

Rule 560-12-2-.56 Repealed

Rule 560-12-2-.57 Laundries and Dry Cleaners

personal property, they must register as dealers, collect and remit the applicable tax.

(2) The tax does not apply to receipts from coin operated laundry and dry cleaning devices. The tax does apply to all tangible personal property purchased by coin operated laundries to be used in the furnishing of laundry services, including machinery, equipment, repair parts, materials and supplies.

Rule 560-12-2-.58 Linen Supply

Persons engaged in the business of furnishing coats, caps, aprons, dresses, uniforms, smocks, towels, linens, diapers and similar articles to barber shops, beauty parlors work shops, and other establishments and to individuals under agreements which provide for a service to be rendered in the periodic cleaning or laundering of such articles, are lessors of tangible personal property and are required to collect the tax upon the gross rental receipts. Items which are used exclusively for rental purposes are purchased tax exempt. All other purchases of tangible personal property for use in connection with these rentals are taxable.

Rule 560-12-2-.59 Loan and Finance Companies

Loan companies, finance companies and others making sales of tangible personal property are required to collect and remit the applicable tax as dealers irrespective of the fact that such property may have been repossessed or obtained by default of borrowers.

Rule 560-12-2-.60 Lost, Damaged, Or Unclaimed Property

The tax does not apply to compensation paid by common carriers to their customers for tangible personal property which is lost or damaged while in possession of such carriers. However, if a common carrier retains such property and converts it to its own use, the carrier shall pay the tax on the salvage value. When a common carrier sells damaged or unclaimed property, it must collect and remit the applicable tax.

Rule 560-12-2-.61 Repealed

Rule 560-12-2-.62 Manufacturing Machinery and Equipment, Industrial Materials, and Packaging Supplies

(1) Purpose. This Rule explains the sales and use tax exemptions in O.C.G.A § 48-8-3.2 for machinery and equipment necessary and integral to the manufacture of tangible personal property in a manufacturing plant, for repair and replacement parts associated with such machinery and equipment, and for industrial materials and packaging supplies.

(2) Definitions. For purposes of this Rule, the following definitions and

machinery or equipment and items that are readily disposable.

(b) "Energy" means natural or artificial gas, oil, gasoline, electricity, solid fuel, wood, waste, ice, steam, water, and other materials necessary and integral for heat, light, power, refrigeration, climate control, processing, or any other use in any phase of the manufacture of tangible personal property. The term excludes energy purchased by a manufacturer that is primarily engaged in producing electricity for resale.

(c) "Equipment" means tangible personal property, other than machinery, industrial materials, and energy. The term "equipment" includes durable devices and apparatuses that are generally designed for long-term continuous or repetitive use. The term also includes consumable supplies. Examples of equipment include but are not limited to machinery clothing, cones, cores, pallets, hand tools, tooling, molds, dies, waxes, jigs, patterns, conveyors, safety devices, and pollution control devices. The term includes components and repair or replacement parts. The term "equipment" excludes real property.

(d) "Fixtures" means tangible personal property that has been installed or attached to land or to any building thereon and that is intended to remain permanently in its place. A consideration for whether tangible property is a fixture is whether its removal would cause significant damage to such property or to the real property to which it is attached. Fixtures are classified as real property. Examples of fixtures include but are not limited to plumbing, lighting fixtures, slabs, and foundations.

(e) "Industrial materials" means materials that are purchased for future processing, manufacture, or conversion into articles of tangible personal property for resale when the industrial materials become a component part of the finished product. The term also means materials that are coated upon or impregnated into the product at any stage of its processing, manufacture, or conversion, even though such materials do not remain a component part of the finished product for sale. The term "industrial materials" includes raw materials.

(f) "Local sales and use tax" means any sales or use tax that is levied and imposed in an area consisting of less than the entire state.

(g) "Machinery" means an assemblage of parts that transmits force, motion, and energy one to the other in a predetermined manner to accomplish a specific objective. The term "machinery" includes a

term "machinery" includes repair or replacement parts. The term excludes real property, energy, and consumable supplies.

(h) "Machinery clothing" means felts, screen plates, wires or any other items used to carry, form, or dry work in process through the manufacture of tangible personal property.

(i) "Manufacture of tangible personal property," used synonymously with the term "manufacturing," means a manufacturing operation, series of continuous manufacturing operations, or series of integrated manufacturing operations, engaged in at a manufacturing plant or among manufacturing plants to change, process, transform, or convert industrial materials by physical or chemical means, into articles of tangible personal property for sale, for promotional use, or further manufacturing that have a different form, configuration, utility, composition, or character. The term includes but is not limited to the storage, preparation, or treatment of industrial materials; assembly of finished units of tangible personal property to form a new unit or units of tangible personal property; movement of industrial materials and work in process from one manufacturing operation to another; temporary storage between two points in a continuous manufacturing operation; random and sample testing that occurs at a manufacturing plant; and a packaging operation that occurs at a manufacturing plant.

(j) "Manufacturer" means a person or business, or a location of a person or business that is engaged in the manufacture of tangible personal property for sale, promotional use, or further manufacturing.

1. To be considered a manufacturer, the person or business, or the location of a person or business, must be:

   (i) Classified as a manufacturer under the 2007 North American Industrial Classification System Sectors 21, 31, 32, or 33; or North American Industrial Classification Systems industry code 22111 or specific code 511110; or

   (ii) Generally regarded as a manufacturer.

2. Businesses that are primarily engaged in providing personal or professional services, or in the operation of retail outlets, generally including but not limited to grocery stores, pharmacies, bakeries, or restaurants, are not considered manufacturers.

containerizing, cutting, measuring, weighing, wrapping, labeling, palletizing, or other similar processes necessary to prepare or package manufactured products in a manner suitable for sale or delivery to customers as finished goods, or suitable for the transport of work in process at or among manufacturing plants for further manufacturing, and the movement of such finished goods or work in process to a storage or distribution area at a manufacturing plant.

(m) "Packaging supplies" means materials, whether reusable or single-use, used in a packaging operation solely for packaging tangible personal property. The term includes but is not limited to containers, sacks, boxes, wraps, fillers, cones, cores, pallets, and bags. The term also includes such items as labels, invoices, packing slips, tags, and plates affixed to the product or affixed to or inserted into product packaging.

(n) "Real property" means land, any buildings thereon, and any fixtures attached thereto.

(o) "Repair or replacement part" means a part that is used to maintain, repair, restore, install, or upgrade machinery or equipment that is necessary and integral to the manufacture of tangible personal property. Examples of repair and replacement parts may include but are not limited to oils, greases, hydraulic fluids, coolants, lubricants, machinery clothing, molds, dies, waxes, jigs, and other interchangeable tooling.

(p) "Substantial purpose" means the purpose for which an item of tangible personal property is used more than one-third of the total amount of time that the item is in use. Alternatively, instead of time, the purpose may be measured in terms of other applicable criteria such as the number of items produced.

(3) Machinery and Equipment Exemption. The sale, use and storage of machinery or equipment that is necessary and integral to the manufacture of tangible personal property are exempt from sales and use tax.

(a) General requirements. In order to qualify for the manufacturing machinery and equipment exemption in O.C.G.A § 48-8-3.2, the property purchased or leased must:

1. Have the character of machinery or equipment, or of repair or replacement parts to machinery or equipment, at the time of sale or lease, or consist of components which, when assembled, will have the character of machinery or equipment;

(b) Leases. The exemption under O.C.G.A § 48-8-3.2 applies to all lease payments for machinery or equipment made on or after the date that the machinery or equipment qualifies for the exemption, even if the machinery or equipment did not qualify for the exemption at the date of lease inception.

(c) Parts withdrawn from inventory. Miscellaneous spare parts, the ultimate use of which is unknown at the time of purchase, are eligible for the exemption as components or repair or replacement parts. However, use tax must be accrued and remitted if spare parts are withdrawn from the inventory of spare parts and used for any purpose other than to maintain, repair, restore, install, or upgrade machinery or equipment that is necessary and integral to the manufacture of tangible personal property.

(d) Application of Machinery and Equipment Exemption: Necessary and Integral. When determining whether machinery or equipment is necessary and integral to the manufacture of tangible personal property, the Commissioner shall evaluate the facts and circumstances of each case.

1. Examples of machinery or equipment that generally does not qualify as necessary and integral to the manufacture of tangible personal property at any time include but are not limited to:

(i) Motor vehicles that are required to be registered for operation on public highways;

(ii) Power lines or transformers that bring electricity into a manufacturing plant;

(iii) Real property. Examples include but are not limited to concrete slabs and foundations, and structures or fixtures used for general manufacturing plant ventilation, heating, cooling, illumination, communications, plumbing, or the personal comfort and convenience of the manufacturer's employees;

(iv) Storage tanks, containers, racking systems, or other machinery or equipment used to handle, store, or distribute finished goods upon completion of the packaging operation unless exempted by another code section;

non-manufacturing functions, including but not limited to sales, marketing, research and development, accounting and payroll, purchasing, finished goods inventory control, warehousing, and distribution;

(vi) Machinery or equipment that is not operated under the control of the manufacturer's employees or other persons under the manufacturer's direction and control. Customer self-service or vending machinery or equipment is not considered to be operated under the manufacturer's direction and control; and

(vii) Machinery or equipment used in quarrying and mining for site preparation, including the removal and clearing of overburden.

2. Examples of machinery or equipment that generally qualifies as necessary and integral to the manufacture of tangible personal property include but are not limited to:

(i) Machinery or equipment used to convey or transport industrial materials, work in process, consumable supplies, or packaging supplies at or among manufacturing plants, or to convey and transport finished goods to a distribution or storage point at the manufacturing plant. Specific examples may include but are not limited to forklifts, conveyors, cranes, hoists, and pallet jacks;

(ii) Machinery or equipment used to gather, arrange, sort, mix, measure, blend, heat, cool, clean, or otherwise treat, prepare, or store industrial materials for further manufacturing;

(iii) Machinery or equipment used to control, regulate, heat, cool, or produce energy for other machinery or equipment that is necessary and integral to the manufacture of tangible personal property. Specific examples may include but are not limited to boilers, chillers, condensers, water towers, dehumidifiers, humidifiers, heat exchangers, generators, transformers, motor control centers, solar panels, air dryers, and air compressors;

(v) Starters, switches, circuit breakers, transformers, wiring, piping, and other electrical components, including associated cable trays, conduit, and insulation, located between a motor control center and exempt machinery or equipment, or between separate units of exempt machinery or equipment;

(vi) Machinery or equipment used to provide safety for the employees working at a manufacturing plant or to protect the quality of the product, including but not limited to safety machinery and equipment required by federal or state law, gloves, ear plugs, face masks, protective eyewear, hard hats or helmets, or breathing apparatuses;

(vii) Machinery or equipment used to condition air or water to produce conditions necessary for the manufacture of tangible personal property, including water treatment systems;

(viii) Machinery or equipment used in quarrying and mining activities, including blasting, extraction, and crushing;

(ix) Machinery or equipment, including repair, replacement and component parts, used to maintain, clean, repair, restore, install, upgrade or manufacture machinery or equipment that is necessary and integral to the manufacture of tangible personal property;

(x) Machinery or equipment used in pollution control, sanitizing, sterilizing, or recycling processes. Pollution control machinery or equipment that is necessary and integral to the manufacture of tangible personal property is not required to be certified by the Environmental Protection Division, Georgia Department of Natural Resources as being adequate and necessary for the purpose of eliminating or reducing air or water pollution; and

(xi) Maintenance and replacement parts for machinery or equipment, stationary or in transit, used to mix, agitate, and transport freshly mixed concrete in a plastic and unhardened state, including but not limited to mixers and components, engines and

energy in a concrete mixer truck are not exempt or refundable.

(II) Subparagraph (3)(d)2.(xi) is effective for the period commencing on July 1, 2021, and ending on June 30, 2026.

3. For machinery or equipment that has multiple purposes, some purposes necessary and integral to the manufacture of tangible personal property, and some purposes not necessary and integral to the manufacture of tangible personal property, the substantial purpose of such machinery or equipment will prevail for purposes of determining the eligibility for exemption. The Commissioner may consider any reasonable methodology for measuring the substantial purpose of machinery or equipment for which the substantial purpose is not readily identifiable.

(e) Application of Machinery and Equipment Exemption: Manufacture of Tangible Personal Property. The manufacture of tangible personal property commences as industrial materials are received at a manufacturing plant and concludes once the packaging operation is complete and the tangible personal property is ready for sale or shipment, regardless of whether the manufacture of tangible personal property occurs at one or more separate manufacturing plants.

Examples of activities that are not considered the manufacture of tangible personal property:

1. Research and development activities;

2. Storage, general handling, and distribution of finished goods inventory; and

3. Any other activity that occurs prior to industrial materials being received at a manufacturing plant or after the completion of the packaging operation at a manufacturing plant.

(4) Industrial Materials Exemption. The sale, use, storage, and consumption of industrial materials are exempt from sales and use tax. In order to qualify for the exemption, the materials must be used for the processing or

processing, manufacture, or conversion, even though such materials do not remain a component part of the finished product for sale.

(5) Exemption for Packaging Supplies. The sale, use, storage, or consumption of packaging supplies is exempt from sales and use tax.

(6) Certificates of Exemption.

(a) Any person making a sale or lease of machinery or equipment (including components and repair or replacement parts) that is necessary and integral to the manufacture of tangible personal property, packaging supplies, or industrial materials must collect sales tax unless such person takes a direct pay permit from the purchaser or lessee or, in good faith, accepts from the purchaser or lessee a properly completed Form ST-5M Certificate of Exemption.

(b) Where a certificate of exemption or direct pay permit has not been previously obtained and submitted and tax is remitted on the purchase or lease of exempt property, the purchaser or lessee may apply to the Commissioner for a refund of such tax.

(7) Agriculture Producers. Every person defined as a dealer in O.C.G.A. § 48-8-2 is required to file a sales and use tax registration for each place of business in this state. A dealer that performs both manufacturing and agricultural operations at a single place of business may avail itself of the exemptions under either O.C.G.A. § 48-8-3.2 or O.C.G.A. § 48-8-3.3, but not both, for that place of business in any one calendar year.

Rule 560-12-2-.63 Repealed

Rule 560-12-2-.64 Energy Necessary and Integral to Manufacturing

(1) **Purpose.** This Rule addresses the sales and use tax exemptions for energy used in manufacturing.

(2) **Definitions.** The terms defined in Rule 560-12-2-.62 entitled "Manufacturing Machinery and Equipment, Industrial Materials, and Packaging Supplies" apply to this Rule. In addition, for purposes of this Rule:

(a) "Competitive project of regional significance" means the location or expansion of some or all of a business enterprise's operations in Georgia where the Department of Economic Development determines that the project would have a significant regional impact.

(b) "Energy" means natural or artificial gas, oil, gasoline, electricity, solid fuel, wood, waste, ice, steam, water and other materials

(3) **Exemption under O.C.G.A § 48-8-3.2.**

(a) **Requirements.** Except as otherwise provided in this paragraph, the sale and use of energy are exempt from sales and use tax if the energy is:

1. necessary and integral to the manufacture of tangible personal property and

2. sold, used, stored, or consumed at a manufacturing plant in Georgia.

(b) **Energy used to produce electricity.** This exemption does not apply to energy purchased by a manufacturer that is primarily engaged in producing electricity for resale.

(c) **Sales and use tax for educational purposes.** Energy otherwise exempt under O.C.G.A § 48-8-3.2 is not exempt from the sales and use tax for educational purposes levied pursuant to Part 2 of Article 3 of Chapter 8 and Article VIII, Section VI, Paragraph IV of the Constitution or from local sales and use taxes for educational purposes authorized by or pursuant to local constitutional amendment.

(d) **Phase-in period.** Except as provided in subsections (b), (c), and (e) of this paragraph, such sale and use of energy qualify for a phased-in exemption in accordance with the following schedule:

1. Transactions occurring during the 2013 calendar year qualify for a 25 percent exemption.

2. Transactions occurring during the 2014 calendar year qualify for a 50 percent exemption.

3. Transactions occurring during the 2015 calendar year qualify for a 75 percent exemption.

4. Transactions occurring on or after January 1, 2016, qualify for a 100 percent exemption.

(e) **Competitive projects of regional significance.**

1. **Energy necessary and integral to manufacturing.** Beginning April 19, 2012, manufacturers qualifying as a competitive project of regional significance are exempt from all state and local sales and use tax on the sale and use of energy that is necessary and integral to the manufacture of

Department of Economic Development during the time period of January 1, 2012 through June 30, 2019, sales of energy used for and in the construction of a competitive project of regional significance are exempt from all state and local sales and use tax pursuant to O.C.G.A. § 48-8-3(93), including sales and use taxes for educational purposes.

(4) **Exemption from the Special District Transportation Sales and Use Tax and the Special District Mass Transportation Sales and Use Taxes.**

(a) **Requirements**. Except as otherwise provided in this paragraph, the sale and use of energy are exempt from the Special District Transportation Sales and Use Tax (O.C.G.A. Title 48, Chapter 8, Article 5) and the Special District Mass Transportation Sales and Use Taxes (O.C.G.A. Title 48, Chapter 8, Article 5A, Parts 1, 2, and 3) if the energy is:

1. necessary and integral to the manufacture of tangible personal property and

2. sold, used, stored, or consumed at a manufacturing plant.

(b) **No phase-in period.** This exemption is not subject to a phase-in period.

(c) **Energy used to produce electricity.** This exemption does not apply to energy purchased by a manufacturer primarily engaged in producing electricity for resale.

(5) **Scope of the exemptions: Necessary and integral to the manufacture of tangible personal property.** Energy used for any purpose at a manufacturing plant is considered necessary and integral to the manufacture of tangible personal property. This includes, for example, energy used:

(a) to operate machinery or equipment;

(b) to create conditions necessary for the manufacture of tangible personal property;

(c) to perform an actual part of the manufacture of tangible personal property;

(d) in administrative or other ancillary activities that are located and performed at the manufacturing plant;

manufacturer's employees at the manufacturing plant.

(6) **Examples.**

(a) A manufacturer uses fuel gases to perform repairs for unrelated parties at a Georgia manufacturing plant. The fuel gases are not exempt because they are not used in the manufacture of tangible personal property and, therefore, do not meet the definition of "energy."

(b) A manufacturer uses fuel gases to perform repairs to its own machinery and equipment at a Georgia manufacturing plant. The fuel gases are exempt to the extent provided in this Rule because they are used in the manufacture of tangible personal property.

(7) **Certificates of Exemption.**

(a) Any person making a sale of energy that is necessary and integral to the manufacture of tangible personal property must collect sales and use tax unless the purchaser furnishes the supplier with a properly completed Certificate of Exemption or a direct pay permit.

(b) Where a Certificate of Exemption or direct pay permit has not been previously obtained and submitted and tax is remitted on the sale of exempt energy, the purchaser may apply to the Commissioner for a refund of such tax.

(8) **Transaction date.** For purposes of this Rule, a transaction occurs on the date of purchase or, in the case of energy billed on a monthly basis, on the billing date.

Rule 560-12-2-.65 Meals

(1) The tax applies to the sale of food and food ingredients or other tangible personal property by railroad, pullman car, steamship, airline, or other transportation companies while operating in the State of Georgia or Georgia waters. The tax applies to food and food ingredients delivered to carriers in this State to be furnished complimentary to passengers regardless of where served.

(2) Fraternities, sororities and other student societies, with members residing at a common location and jointly sharing household expenses, including food and food ingredients, are not considered to be selling at retail; and furnishing food and food ingredients to members is not taxable. Sales of food and food ingredients and other tangible personal property to these organizations are sales at retail and subject to the tax. Caterers or other

part of the sales price and are subject to the tax.

(4) Food and food ingredients sold or provided without charge to employees.

(a) Food and food ingredients sold to employees.

1. The sale of food and food ingredients by an employer to an employee is subject to Georgia sales tax on the total sales price charged to the employee. The following examples illustrate the application of Georgia sales and use tax to such transactions:

(i) An employer allows an employee to purchase a $15.00 meal from the menu at a fifty percent (50%) discount. The employer is required to charge Georgia sales tax to the employee on $7.50.

(ii) An employer provides a meal to an employee and declares $5.00 as a part of the employee's compensation. The employer is required to charge sales tax to the employee on $5.00.

(b) Food and food ingredients provided without charge by employer.

1. Food and food ingredients provided by an employer without charge to an employee are taxable to the employer. The employer must remit use tax on the cost as shown in the employer's books and records. The following examples illustrate the application of sales and use tax to such transactions:

(i) An employer provides a $15.00 meal off the menu at no charge to an employee. The employer is responsible for use tax on the cost price of the food purchased to prepare the meal.

(ii) An employer provides a meal and beverage that is prepared especially for employees. The meal and beverage is provided at no charge to the employee. The employer paid Georgia sales tax on the items used to prepare the meal and beverage when purchased from the supplier. No additional tax is due from the employer on the items used to prepare the employee's meal and beverage.

(iii) An employer allows an employee to have soft drinks during work hours without charge. The employer

cost shall be deemed to be fifty percent (50%) of the retail sales price of the food and food ingredients.

Rule 560-12-2-.66 Monuments and Memorial Stones

(1) The tax applies to retail sales of memorial stones and monuments, without deduction for labor used in cutting and marking the same. The installation or erection charge, if separately stated, is not taxable but the person making the installation shall pay the tax on the materials purchased for use in such installation at the time of purchase.

(2) If the installation or erection charge is not separately stated, the tax applies to the entire sales price.

Rule 560-12-2-.67 Repealed

Rule 560-12-2-.68 Painters and Paperhangers

Painters and paperhangers perform services not taxable under the Act. They are consumers of all tangible personal property used by them and shall pay the tax on purchases of paint, wallpaper, supplies, equipment, etc.

Rule 560-12-2-.69 Pawnbrokers

The tax applies to retail sales of tangible personal property by pawnbrokers, lien holders, mortgagees, etc. The manner in which such property was acquired does not affect the taxability of the sale.

Rule 560-12-2-.70 Peddlers, Street Vendors, and Others, and Their Vendors

(1) Except as otherwise provided in paragraph (2) of this regulation, persons engaged in retail selling of tangible personal property, whether from private residences, through stores, from trucks or wagons, by house to house canvassing, or in any other manner whatsoever, are required to file application for certificate of registration and to collect and remit any tax due the state.

(2) In the case of peddlers, street merchants, persons who sell at retail from other than established places of business, and persons described in Ga. Code § 91A-4501(f)(7) [and any successor of said statute], as now or hereafter amended, the vendor of such persons shall collect the tax imposed by the Act from said vendee on the retail price to be charged by the vendee, and said vendor shall remit the tax to the Commissioner. In such instances the Commissioner will not issue a certificate of registration to the peddler, street merchant or other such person, and failure of any vendor to comply with this regulation shall subject the vendor to loss of his registration certificate.

Rule 560-12-2-.71 Petroleum Dealers

(1) Gasoline sold at retail for any purpose and other motor fuels sold for on the highway use only are subject to the 4% State tax rate, of which 3% is a Motor Fuel Tax and 1% is a State Sales and Use Tax. Sales of motor fuels, other than gasoline, for non-highway use are subject to the 4% State Sales and Use Tax.

(2) Retailers of gasoline sold for any purpose and other motor fuels for on-the-highway use only shall exclude the State Motor Fuel Excise Tax imposed thereon before computing the 3% Second Motor Fuel Tax. (See Regulation 560-12-2-.35.)

(3) Sales for resale of gasoline and of other motor fuels are exempt from the 4% State Tax provided the seller secures from the purchaser in good faith a properly executed Certificate of Exemption (Form ST-5).

(4) Retailers making sales of such fuels by means of a metered pump, which, in process of delivery, computes the total sales price, may elect to collect the 4% State Tax in addition to the sales price shown on the metered pump, or include the 4% State Tax in the metered pump price.

(5) Retailers electing to collect the 4% State Tax in addition to the sales price indicated on metered pumps shall post on such pumps and other signs or placards used to advertise the price, a notice to the effect that the 4% State Tax is in addition to the price indicated on such pump.

(6) Retailers electing to include the 4% State Tax in the metered pump price shall post on each pump and other signs or placards used to advertise the price, a notice stating such sales price includes Federal and State Motor Fuel Excise Tax and 4% State Tax.

Rule 560-12-2-.72 Photographs, Photostats, Blue Prints, etc

(1) The tax applies to sales of photographs, portraits, prints from camera film, including charges for coloring and tinting, photostats, blue prints, frames, camera film and other such tangible personal property.

(2) The tax applies to purchases of camera equipment and other tangible personal property by commercial photographers and other for use or consumption. Paper and other materials which become component parts of the finished photograph or other such print for sale, and industrial materials which are coated upon or impregnated into the product for sale at any stage of the processing, may be purchased under Certificate of Exemption. The tax does not apply to charges for developing films and coloring or tinting photographs furnished by customers, when a separate

purchased under a Certificate of Exemption.

Rule 560-12-2-.73 Repealed

Rule 560-12-2-.74 Premiums and Gifts

(1) Donors of tangible personal property are users or consumers and purchases by them are taxable, including purchases of gifts for advertising purposes.

(2) The tax applies to the cost price of property purchased originally for resale and later used as a gift.

(3) The tax applies to purchases of property to be awarded as prizes at the cost price of such property.

Rule 560-12-2-.75 Printing

(1) Custom Printing:

(a) Custom printing is the production or fabrication of printed matter, in accordance with a customer's order or copy, for the customer's use or consumption.

(b) The sale of custom printing is the sale of tangible personal property and is subject to the tax imposed by this Act on the total invoice charge made on the transaction. The total invoice charge includes the charge made for any engraved, lithoplated, or other type photo-processed plate, die, or mat, involved in the printing and includes the charge made for printing and imprinting when the customer furnishes the printing stock.

(c) The printer shall add the amount of the tax on to the invoice charge and shall collect same as part of the purchase price thereof. He shall register as a dealer under the Act and shall file monthly sales tax returns with the State Revenue Commissioner and pay therewith the tax required of him as a retail dealer under the Act.

(d) When the tax is not added on to the invoice charge, or the customer does not pay the amount of the tax to the printer, as aforesaid, the customer is liable for the amount of the tax directly to the State Revenue Commissioner. In such case, the customer shall, on or before the twentieth of the month following such purchase, file with the State Revenue Commissioner a use tax return showing all of such transactions for that month and compute thereon and remit therewith the required tax.

(e) Purchases by the printer of ink, printing stock, staples, stapling wire, binding twine, glue, and other tangible personal property

lithoplated, or other type of plate, die, or mat, are purchases for resale when properly certificated as such, and are exempt from the tax imposed by the Act. However, to the extent that the printer's invoice to his customer does not indicate that the sale of the plate, die, or mat is included therein, the plate, die, or mat will be deemed to have been converted by the printer to his own use, and the cost price thereof will be subject to the use tax imposed by the Act to be reported and paid as a taxable use in the manner prescribed hereinafter in subparagraph (j).

(g) Purchases by the printer of typesetting are purchases of services and are not subject to the tax imposed by the Act.

(h) Purchases by the printer of machinery, equipment, tools, replacement and repair parts, type, stock engraved, photo-processed, lithoplated, or other types of plates, dies, or mats, and supplies, including blotting papers and drying powders, which do not become a component part of the printed matter, or which are not coated upon or impregnated therein, are purchases subject to the tax imposed by the Act.

(i) The supplier of items within the scope of subparagraph (h) above shall add the amount of the tax on to the total invoice charge for such items, and shall collect same as part of the purchase price thereof. He shall register as a dealer under the Act and shall file monthly sales tax returns with the State Revenue Commissioner and pay therewith the tax required of him under said Act.

(j) When the tax is not added on to the invoice charge made by the supplier, or the printer does not pay the amount of the tax to the supplier, as set forth in subparagraph (i) above, or when the printer buys for resale and then converts the tangible personal property to his own use and consumption, as described in subparagraph (f) above, the printer is liable for the amount of the tax directly to the State Revenue Commissioner. In such case the printer shall include in his monthly sales tax return the amount of such purchases and compute thereon and remit therewith the amount of such tax.

(2) Consumer Printing:

(a) Consumer printing is the production or fabrication of printed matter for one's own use or consumption and not for resale.

(b) Purchases for consumer printing of the following articles of tangible personal property are purchases for use and consumption and are subject to the tax imposed by the Act: Machinery, equipment, tools

printing or fabrication thereof.

(c) Purchases of typesetting for consumer printing are purchases of services and are not subject to the tax imposed by the Act.

(d) The supplier of items within the scope of subparagraph (b) above shall add the amount of the tax on to the total invoice price thereof. He shall register as a dealer under the Act and shall file monthly sales tax returns with the State Revenue Commissioner and pay therewith the tax required of him under the Act.

(e) When the tax is not added on to the invoice charge made by the supplier, or the consumer printer does not pay the amount of the tax to the supplier, as aforesaid, the consumer printer is liable for the amount of the tax directly to the State Revenue Commissioner. In such case the consumer printer shall, on or before the twentieth of the month following such purchase, file with the State Revenue Commissioner a use tax return showing all of such transactions for that month and compute thereon and remit therewith the required tax.

(3) Manufacturer Printing:

(a) Manufacturer printing is printing done upon an article of tangible personal property in the process of its manufacture.

(b) Purchases by the manufacturer-printer of machinery, equipment, tools, replacement and repair parts, type, and supplies, including blotting papers and drying powders, which do not become a component part of the manufactured article or which are not coated upon or impregnated therein, are purchases subject to the tax imposed by the Act.

(c) Purchases by the manufacturer-printer of typesetting are purchases of services and are not subject to the tax imposed by the Act.

(d) Purchases by the manufacturer-printer of ink, printing stock, and other tangible personal property which becomes a component part of the manufactured article, or which are coated upon or impregnated therein, are purchases of industrial materials and, when properly certificated, are not subject to the tax imposed by the Act.

(e) Purchases by the manufacturer-printer of any engraved, photo-processed, lithoplated, or other type of plate, die, or mat, are purchases for his own use and consumption and are subject to the

above shall add the amount of the tax on to the total invoice charge for such items, and shall collect same as part of the purchase price thereof. He shall register as a dealer under the Act and shall file monthly sales tax returns with the State Revenue Commissioner and pay therewith the tax required of him under the Act.

(g) when the tax is not added on to the invoice charge made by the supplier, or the printer does not pay the amount of the tax to the supplier, as set forth in subparagraph (f) above, the manufacturer-printer is liable for the amount of the tax directly to the State Revenue Commissioner. In such case the manufacturer-printer shall, on or before the twentieth of the month following such purchase, file with the State Revenue Commissioner a use tax return showing all of such transactions for that month and compute thereon and remit therewith the required tax.

(h) Where a manufacturer-printer purchases a plate, die or mat for the account of a customer as described in subparagraph (e) above, and the supplier does not add on the tax as required by subparagraph (f), as between the manufacturer-printer and the customer, the liability for returning and remitting the applicable use tax under subparagraph (g) shall be determined as follows: The manufacturer-printer shall not be required to return and remit the applicable use tax if the customer is a resident of, or has a place of business in, this State, **and** the State Revenue Commissioner is satisfied that an agency relationship existed at the time of such purchase, **and** the books and records of the manufacturer-printer show that such purchase was actually made for the customer **and** that the customer became the actual owner of such plant, die, or mat, **and** the customer is disclosed by name and address on the invoice of such purchase as principal. If the foregoing conditions do not exist, the manufacturer-printer personally shall be required to return and remit the applicable use tax. However, the liability of the manufacturer-printer for the use tax shall be abated upon payment thereof by the customer. It is not the purpose of this regulation to interfere with or modify the legal right, if any, of the manufacturer-printer to be reimbursed by the customer for taxes incurred and paid in behalf of the customer.

(4) Publisher Printing:

(a) Publisher printing is the printing of books, newspapers, magazines, or other periodicals for sale by the publisher-printer for resale or for use and consumption, but not custom printing.

and pay therewith the tax required of him as a retail dealer under the Act.

(c) When the tax is not added on to the charge made therefor, or the customer does not pay the amount of the tax to the publisher-printer, as aforesaid, the customer is liable for the amount of the tax directly to the State Revenue Commissioner. In such case, the customer shall, on or before the twentieth of the month following such purchase, file with the State Revenue Commissioner a use tax return showing all of such transactions for that month and compute thereon and remit therewith the required tax.

(d) Purchases by the publisher-printer of ink, printing stock, staples, stapling wire, binding twine, glue and other tangible personal property which becomes a component part of the publication, or are coated upon or impregnated therein, are purchases of industrial materials and, when properly certified, are not subject to the tax imposed by the Act.

(e) Purchases by the publisher-printer of typesetting are purchases of services and are not subject to the tax imposed by the Act.

(f) Purchases by the publisher-printer of machinery, equipment, tools, replacement and repair parts, type, plates, dies, and supplies, including blotting papers, and drying powders, which do not become a component part of the publication, or which are not coated upon or impregnated therein, are purchases subject to the tax imposed by the Act.

(g) The supplier of items within the scope of subparagraph (f) above shall add the amount of the tax on the total invoice charge for such items, and shall collect same as a part of the purchase price thereof. He shall register as a dealer under the Act and shall file monthly sales tax returns with the State Revenue Commissioner and pay therewith the tax required of him under the Act.

(h) When the tax is not added on to the invoice charge made by the supplier, or the printer does not pay the amount of the tax to the supplier, as set forth in subparagraph (g), the publisher-printer is liable for the amount of the tax directly to the State Revenue Commissioner. In such case the publisher-printer shall, on or before the twentieth of the month following such purchase, file with the State Revenue Commissioner a use tax return showing all of such transactions for that month and compute thereon and remit therewith the required tax.

replacement and repair parts, lead, and all other materials and supplies, irrespective of whether they become a component part of the "make-up" and irrespective of whether they are coated upon or impregnated into the "make-up", are purchases subject to the tax imposed by the Act.

(c) The supplier of the items within the scope of subparagraph (b) above shall add the amount of said tax on to the total invoice charge for such items and shall collect same as part of the purchase price thereof. He shall register as a dealer under the Act and shall file monthly sales tax returns with the State Revenue Commissioner and pay therewith the tax required of him under the Act.

(d) When the tax is not added on to the invoice charge made by the supplier, or the typesetter does not pay the amount of the tax to the supplier, or both, as aforesaid, the typesetter is liable for the amount of said tax directly to the State Revenue Commissioner. In such case the typesetter shall, on or before the twentieth of the month following such purchase, file with the State Revenue Commissioner a use tax return showing all of such transactions for that month and compute thereon and remit therewith the required tax.

(6) Plates, Dies and Mats:

(a) Purchases by a printer of engraved, photoprocessed, lithoplated, or other types of plates, dies or mats, are purchases of tangible personal property for resale and, when properly certificated, are not subject to the tax imposed by the Act. However, to the extent that the printer's invoice to his customer does not indicate that the sale thereof is included therein, it will be deemed to have been converted by the printer to his own use, and the cost price thereof will be subject to the use tax imposed by the Act to be reported and paid by the printer as a taxable use in the manner prescribed in Paragraphs (1)(f) and (1)(j) above.

(b) Purchases of engraved, photo-processed, lithoplated, or other types of plates, dies or mats by any person other than a printer are purchases for use and consumption and are subject to the tax imposed by the Act. Such purchases by an advertising agency are purchases for its use and consumption in rendering its advertising services. When such purchases are made by an advertising agency for the account of its customer, it is nevertheless a purchase for the use and consumption of the customer and is subject to the tax imposed by the Act.

therewith the tax required of him as a retail dealer.

(d) When the tax is not added on to the invoice charge or the purchaser does not pay the amount of the tax to the processor, as aforesaid, the purchaser is liable for the amount of the tax directly to the State Revenue Commissioner. In such case, the purchaser shall, on or before the twentieth of the month following such purchase file with the State Revenue Commissioner a use tax return showing all of such transactions for that month and compute thereon and remit therewith the required tax.

(e) Where an advertising agency purchases a plate, die, or mat for the account of a customer, as described in subparagraph (b) above, and the processor thereof does not add on the tax as required by subparagraph (c) above, as between the advertising agency and its customer, the liability for returning and remitting the applicable use tax under subparagraph (d) shall be determined as follows: The advertising agency shall not be required to return and remit the applicable use tax if its customer is a resident of, or has a place of business in, this State, **and** the State Revenue Commissioner is satisfied that an agency relationship existed at the time of such purchase, **and** the books and records of the advertising agency show that such purchase was actually made for the customer, **and** that the customer became the actual owner of such plate, die or mat, **and** the customer is disclosed by name and address on the invoice of such purchase as principal. If the foregoing conditions do not exist, the advertising agency personally shall be required to return and remit the applicable use tax. However, the liability of the advertising agency shall be abated upon payment thereof by the customer. It is not the purpose of this regulation to interfere with or modify the legal right, if any, of the advertising agency to be reimbursed by the customer for taxes incurred and paid in behalf of the customer.

(f) Purchases by a processor of such plates, dies, or mats, of metals, plastics, wood, chemicals, and other supplies, which become a component part of the finished plate, die, or mat, or which are coated upon or impregnated therein, are purchases of industrial materials, and, when properly certificated, are not subject to the tax imposed by the Act.

(g) Purchases by such a processor of machinery, tools, replacement and repair parts, film, and other materials and supplies which do not become a component part of the finished plate, die, or mat or are not coated upon or impregnated therein are purchases subject to the tax imposed by the Act.

and pay therewith the tax required of him under the Act.

(i) When the tax is not added on to the invoice charge made by the supplier, or the processor does not pay the amount of the tax to his supplier, as aforesaid, the processor is liable for the amount of the tax directly to the State Revenue Commissioner. In such case, the processor shall on or before the twentieth of the month following such purchase, file with the State Revenue Commissioner a use tax return showing all such transactions for that month and compute thereon and remit therewith the required tax.

Rule 560-12-2-.76 Repealed

Rule 560-12-2-.77 Publishers

(1) Publishers of newspapers, magazines, periodicals, etc. are required to collect and remit the tax on sales to persons other than registered dealers. Publications sold by subscription are subject to the tax based on the subscription price.

(2) Charges for advertising in newspapers, magazines and periodicals are not subject to the tax.

(3) Industrial materials, including paper and ink, which become component parts of the publication for sale, or which are coated upon or impregnated into the product at any stage of processing, may be purchased tax exempt under Certificates of Exemption. However, publishers must pay the tax on other property used or consumed in the process, including supplies, machinery, equipment, photo engravings, mats, plates and lead.

Rule 560-12-2-.78 Repairs and Alterations

(1) Replacement parts, materials, and supplies used or consumed by repairmen in repairing tangible personal property belonging to others are taxable either to the person performing the work or to the owner of the property being repaired, on the following basis:

(a) If the dealer performing the repair work does not state separately, itemize or segregate at a fixed or retail price the materials and supplies so used or consumed, the tax will apply to the total charge for such materials and labor.

(b) If the dealer performing the repair work does separate, itemize, and invoice at a retail selling price the parts, materials and supplies used, stating separately the amount for labor, the tax will apply to the retail selling price of the materials and supplies listed and itemized.

(3) Dealers engaged in the business of repairing tangible personal property for others may purchase such property for resale under Certificates of Exemption.

(4) Repairmen who are not required by the Commissioner to register as dealers shall pay the tax to their vendors on all tangible personal property purchased by them. If purchases are made from non-registered vendors, such repairmen shall report and remit the applicable tax directly to the Commissioner.

Rule 560-12-2-.79 Schools

(1) Vendors and lessors of tangible personal property to public schools, public school principals, teachers, officers and employees, public school organizations (parent, student, teacher or otherwise) and public school students (individually or as unorganized groups) shall collect the tax at the time of sale, at the sales price thereof, irrespective of the fact that same may be sold for resale.

(a) Public schools, for the purpose of this regulation, include all State, county or municipal educational institutions, except such schools as may be required to register, collect, remit and report sales and use taxes.

(b) A Certificate of Registration shall be granted only to those public schools having a continuity of sales of tangible personal property or charges for admission to games or entertainments and maintaining adequate facilities for collecting, remitting and reporting sales and use taxes.

(c) A Certificate of Registration may be issued to a county or municipal Board of Education for reporting sales and use taxes for all schools under its jurisdiction, provided adequate records are maintained and regularly audited by the Board.

(d) Exemption certificates covering purchases of tangible personal property by registered schools and Boards of Education shall be honored only when purchase is pursuant to an official purchase order signed by a person authorized to obligate the school or Board of Education for payment therefor out of public funds.

(2) Purchase orders, oral or written, issued by a person duly authorized to obligate a Board of Education, municipality, county, or the State for payment of tangible personal property so purchased shall be deemed "Official Purchase Orders." However, purchase orders issued for property which does not become and remain the property of the Board of Education,

State.

(4) Certificates of Exemption (Forms ST-5): Certificate of Exemption (Form ST-5) shall be honored only when purchases are made pursuant to Official Purchase Orders to be paid for out of public funds. Such certificates must be completed and signed by a person authorized to issue Official Purchase Orders. Item 4 should be checked, and "Board of Education, ... County, (City or State of Georgia)" inserted in the space provided for "Certificate of Registration Number".

(5) School Lunches. Sales tax does not apply to school lunches sold and served to pupils or employees of public schools. Food and drink which become component parts of such lunches are also exempt from the tax and may be purchased under Certificates of Exemption (Forms ST-5).

(6) School Cafeterias. Schools operating cafeterias selling meals to students and the public are required to register, collect and remit sales tax. Such cafeterias may purchase tangible personal property for resale under Certificates of Exemption (Form ST-5).

(7) Snack Bars. Snack bars operated by schools, the proceeds from which go directly into "School Revolving Funds," or "Unappropriated School Funds" shall pay the tax to vendors at the time of purchase at the purchase price thereof. Any Certificates of Registration heretofore issued to schools for the purpose of reporting and remitting the tax on such sales must be returned to this office for cancellation.

(8) Miscellaneous Sales. Where public schools hold doughnut sales, candy sales, carnivals, etc. and such purchases for resale are made from public funds, the tax must be paid to vendors at the time of purchase at the purchase price thereof. Proceeds from the resale of such property, which go directly into "School Revolving Funds" or "Unappropriated School Funds," are not taxable.

(9) Admissions. The tax applies to all charges for admissions, voluntary contributions and donations in lieu of charges for admission to athletic events, entertainments, lectures, concerts, etc. Public schools which are not registered shall file a Miscellaneous Sales and Use Tax Report for each quarter in which such charges are made.

(10) Purchases by Public Schools, School Groups, Organizations, etc. Official Purchase Orders shall not be recognized for tangible personal property such as year books, class rings, graduation gowns and caps, photographs, etc. or purchases for any school group, organization, association, or individual. The tax shall be paid to vendors on such purchases. If no tax is

charges, and sales of tangible personal property, including candy, doughnuts, etc. are subject to the tax. Purchases for resale on which the tax is paid to vendors may be claimed as exemptions on Line 5 of the Sales Tax report form. "Miscellaneous" Sales Tax reports must be filed for each month in which taxable sales are made.

Rule 560-12-2-.80 Repealed

Rule 560-12-2-.81 Shoe, Leather and Like Repairmen

The tax does not apply to charges for services rendered by shoe repairers. Purchases of equipment, tools, materials, and supplies purchased for use or consumption in rendering services are taxable at the time of purchase. When repairers go beyond the rendition of services and regularly engage in selling tangible personal property, they are required to register, collect and remit the tax on sales at retail.

Rule 560-12-2-.82 Advertising Display Devices, Sign Manufacturers, and Painters

(1) An advertising agreement which calls for furnishing of advertising displays under which the advertiser is entitled to a given quantity of exposures in a general area is considered a service which is not taxable as a lease of tangible personal property.

(2) An agreement which requires an outdoor advertising company to display an advertiser's message only and grants to the advertiser neither the right to possess nor use the personalty upon which the advertising message is displayed is considered a service which is not taxable as a lease of tangible personal property.

(3) The person furnishing services is the consumer of all tangible personal property used or consumed in displaying messages and shall pay the tax at the time of purchase.

(4) An agreement which grants to a party advertiser the rights to possess, control or use described personalty at a stated location is considered a lease and the gross lease or rental charge is taxable.

(5) The sale of special equipment which becomes the property of the advertiser is taxable.

(6) Charges made for service of a device owned by an advertiser are not subject to the tax. The person furnishing such service shall pay the tax on all tangible personal property used or consumed in furnishing such services.

(7) The tax does not apply to charges for painting signs on buildings, trucks,

(1) The tax applies to retail sales of tangible personal property to all social and fraternal organizations, including but not limited to fraternal societies, trade or professional associations, lodges, orders, their auxiliaries, sororities and fraternities.

(2) When such an organization regularly engages in the business of selling tangible personal property, it shall register as a dealer, collect and remit the applicable tax.

Rule 560-12-2-.84 Taxicabs

(1) Taxicab owners and operators. Any person owning and operating a taxicab or taxicabs shall register as a dealer and pay the tax at the time of purchase on tangible personal property used or consumed in the operations. Such purchases include taxicabs, meters, accessories, tires, repair parts, gasoline, lubricants, tools, and other supplies. Additionally, such person shall collect the tax on fares for the transportation of persons in accordance with the uniform bracket system and shall remit same to the State Revenue Commissioner.

(2) Taxicab operators leasing cabs to drivers. Any person leasing or renting taxicabs to others and supervising their operations must register as a dealer. Taxicabs, meters, accessories, repair parts, and tires exclusively for lease or rental should be purchased tax exempt under Certificates of Exemption. Other materials and supplies, including gasoline, lubricants, soaps, etc., used or consumed in connection with their operations are taxable at the time of purchase. Lessees or rentees of taxicabs and other tangible personal property shall be liable for a tax thereon at the rate of 4% of the gross lease or rental charges. Additionally, lessees or rentees of taxicabs shall collect the tax on fares for transportation of persons in accordance with the uniform bracket system. Said lessees or rentees shall pay the tax on charges for the lease or rental of tangible personal property and fares collected for transportation of persons to their lessors or renters and said lessors or renters shall remit same to the State Revenue Commissioner.

(3) Taxicab operators and lessors. Any person owning and leasing taxicabs which are operated partially by the owner and partially by the lessee shall register as a dealer and pay the tax at the time of purchase on tangible personal property used or consumed in the operations, including taxicabs, meters, accessories, tires, repair parts, gasoline, lubricants, and other supplies. Additionally, such lessors shall collect the tax on the gross lease or rental charges for taxicabs and equipment, and shall collect the tax on any tangible personal property sold to lessees. Lessees shall collect the tax on fares for transportation of persons in accordance with the uniform

members operating from such headquarters shall pay the tax at the time of purchase, lease or rental, on all tangible personal property used or consumed in the operations. Additionally, such drivers shall collect the tax on fares for transportation of persons in accordance with the uniform bracket system and pay the same to the dealer operating the headquarters for remittance to the State Revenue Commissioner.

(5) Independent taxicab operators. Independent taxicab operators shall register as dealers and pay the tax at the time of purchase, lease or rental on all equipment, materials, and supplies used or consumed in the operations. Additionally, such persons shall collect the tax on fares for transportation of persons in accordance with the uniform bracket system and remit same to the State Revenue Commissioner.

(6) Cars for hire. For the purpose of this regulation, cars for hire are taxable in the same manner as taxicabs.

(7) Definitions.

(a) For purposes of this regulation the term "independent taxicab operator" means a person who is totally unassociated with any headquarters operation and with any lessors of taxicabs and with any other taxicab business or driver.

(b) Due to the likelihood that the State would otherwise lose tax funds due to the difficulty of policing the business operations of taxicab drivers because of the nature of the business, the lack of an office or regular place of business and the turnover of drivers, headquarters operators and lessors of taxicabs shall collect the tax on fares for transportation of persons from their drivers as required above, and the term "headquarters operators" includes not only any person operating a headquarters for taxicabs and supervising or directing taxicab drivers, or receiving and relaying calls to cab driver members, but also any person or entity allowing use of the trade name of the headquarters or allowing any driver to hold himself out as being associated with the headquarters. The term "taxicab lessors" includes any person or entity leasing a vehicle to another person or entity for use as a taxicab.

Rule 560-12-2-.85 Trading Stamp Companies

(1) The tax does not apply to amounts charged by a trading stamp company to a dealer which entitles the dealer to distribute to its customers trade stamps that are redeemable by the trading stamp company in cash or premiums.

books, premium catalogs, promotional or advertising materials, or any other item of tangible personal property, in addition to any charges made under the first paragraph of this rule, it shall collect the tax thereon from its customer. In such cases, the trading stamp company is entitled to credit for tax previously paid on the purchase of the items sold.

(3) When a trading stamp company accepts trade stamps or a combination of trade stamps and cash in exchange for premiums,the transaction is subject to the tax and the trading stamp company shall collect the tax from the person surrendering the stamps, based on the total value of the stamp book and any cash paid. The trading stamp company shall not pay the tax on the purchase of such premiums, but should furnish its suppliers resale certificates as provided by 560-12-1-.08.

Rule 560-12-2-.86 Trustees, Receivers, Executors, and Administrators

(1) Trustees, receivers, executors and administrators who continue to operate, manage or control a business engaged in making retail sales of tangible personal property must make application for a new Certificate of Registration except in the case of a corporation which continues to exist as the same legal entity.

(2) The tax must be collected and remitted in the same manner as by other dealers and it is immaterial that such officers may have been appointed by the courts.

Rule 560-12-2-.87 Machinery for Reducing Air or Water Pollution

(1) The sale of machinery or equipment that is used for the primary purpose of reducing or eliminating air or water pollution, or any repair, replacement, or component parts for such machinery or equipment, is exempt from tax.

(2) The exemption applies only to tangible personal property that remains tangible personal property after installation.

(3) Any person making a sale of such machinery, equipment, or parts must remit tax unless the purchaser furnishes the seller with a Form ST-M8 Certificate of Exemption, certifying that the purchaser is entitled to purchase such machinery, equipment, and parts without paying tax. A purchaser may obtain Form ST-M8 Certificate of Exemption by completing and submitting to the Department Form ST-M7.

(4) Pursuant to O.C.G.A. § 48-8-63, a contractor must pay the tax when purchasing such machinery, equipment, or parts. However, the ultimate owner of the property may file a claim for refund of such tax.

(6) Taxpayers selling or acquiring machinery, equipment, and parts under this exemption must maintain records of the sale.

Rule 560-12-2-.88 Labor

(1) Fabrication labor is a part of the sales price of tangible personal property and subject to the tax, whether or not the charge therefor is separately stated. For the purpose of this regulation, fabrication means the production of an article from a material or materials by giving such material or materials a new form, quality or property, and includes the cutting, carving, dressing, shaping, bending or further processing a stock or custom made article of tangible personal property into an article for a specific or general use.

(2) Charges for labor in installing, applying, remodeling or repairing tangible personal property sold, when billed separately to the consumer, are not considered a part of the sales price of the article sold. Unless such labor is separately stated on the consumer's invoice, the total charge shall be subject to the tax.

(3) Charges for labor in repairing and restoring an article of tangible personal property to its original form, when billed separately from materials used, are not subject to the tax, provided the same article is returned to the customer.

Rule 560-12-2-.89 Repealed

Rule 560-12-2-.90 Bona Fide Private Elementary and Secondary Schools

(1) For the purpose of this regulation, a bona fide private elementary school means one regularly established for the purpose of teaching basic subjects above the kindergarten and below the secondary school commonly embracing 6 to 8 grades; bona fide private secondary school means one regularly established for the teaching of basic subjects between elementary and collegiate, including a junior college.

(2) Any bona fide private elementary or secondary school eligible to receive tax deductible contributions should make application to the Department of Revenue, Sales and Use Tax Unit, for exemption from payment of sales and use tax on its purchases of tangible personal property and services to be used exclusively for educational purposes, and food for school lunch program to be consumed on the premises by pupils and employees of such school.

(3) The application shall be by letter, stating the name and address of the school, the date opened, number of grades equivalent to public schools, number of class rooms, number of teachers regularly employed, average

(4) Upon approval of an application, the Sales and Use Tax Unit will furnish the school with a "Letter of Authorization", (Form ST-USC-1). The school must furnish one photographic copy of the letter to each supplier of tangible personal property or services in order to relieve him from collecting the tax. Misuse of a Letter of Authorization shall be ground for cancellation.

(5) The exemption does not extend to sales made to Parent Teacher Associations, Class Room Mothers, Student Groups or other school groups, or to sales made on school property through vending machines, snack bars, or other such outlets.

Rule 560-12-2-.91 Repealed

Rule 560-12-2-.92 Nursing Homes, General or Mental Hospitals

(1) Definitions.

(a) Licensed Non-Profit Nursing Home.

1. A licensed non-profit nursing home means any institution, not operated for profit, which admits for temporary residence in the institution patients or medical referral only and for whom arrangements have been made for medical care, and which meets the requirements and maintains the services and facilities specified in subsections (c), (d), or (e) of Regulation 270-3-4-.02, Official Compilation, Rules and Regulations of the State of Georgia, as it read on March 29, 1971, and which holds a permit for such operation as a nursing home issued by the Department of Public Health under Regulation 270-3-4-.05, Official Compilation, Rules and Regulations of the State of Georgia.

(b) Non-Profit General Hospital.

1. A non-profit general hospital means any institution, not operated for profit, designed, equipped, staffed and operated to receive persons in need of hospitalization for any physical illness or disability for temporary residence in the institution for diagnosis, treatment, and other offered health services, which include medical, and surgical services, for periods continuing twenty-four (24) hours or longer under the supervision of an active, licensed, professional, medical and nursing staff. An institution is not a general hospital if its services are limited by policy, practice, or the manner in which it holds itself out to the public, so that it would fall within the classifications established under subsections (5), (6), or (7) of Regulation 270-3-2-.03, Official Compilation, Rules and Regulation of the State of Georgia, as it read on

but which as a result of limited admission do not include the other services typically provided by general hospitals such as obstetrical services.

(c) Non-Profit Mental Institution.

1. A non-profit mental hospital means any institution, not operated for profit, which is designed, equipped, staffed and operated for the purpose of receiving mentally ill persons for temporary institutional residence for psychiatric and other health services, which must include psychiatric evaluation, diagnosis and treatment, for continuous periods of twenty-four (24) hours or longer, under the supervision of an active, licensed, professional nursing and psychiatric staff.

(2) Certificate of Exemption.

(a) Application for Certificate of Exemption.

1. Applications for exemption by institutions described in Section (1) shall be made to the State Revenue Commissioner on Sales Tax Form ST-NH-1. The application must contain the following:

(i) A statement of the name and address of the institution, the date on which the institution was first operated, and such other information as the Commissioner may require.

(ii) A copy of the application, and all exhibits thereto, made to the Internal Revenue Service and a copy of the Internal Revenue Services determination letter confirming the exempt status of the institution under the Internal Revenue Code of 1954.

(iii) A copy of any permit issued by the Department of Public Health of the State of Georgia with respect to the performance of the functions by virtue of which an exemption is claimed.

(iv) A copy of the non-profit charter or other governing instrument under which the institution is operated.

(v) A written verified statement of its admission policies.

(3) Scope of Exemption.

(a) Purchases. Exemption certificates are validly used only for purchases by the institution of tangible personal property and services for use exclusively by the institution in performing a general nursing home or hospital treatment function. Purchases by the institution, for example, of property for the personal use of a staff member outside the facilities used for nursing or health services are not exempt. Generally, property placed within a facility used for the purposes of performing the nursing or health services will be considered exempt. The exemption is validly used only by an institution to which the certificate has been issued and does not affect the liability of any other person. A contractor engaged in real property improvement for the institution is not exempt.

(b) Sales. Sales by the institution to which a certificate under this Section has been issued are not exempt under this Regulation.

(c) Multi-Function Institutions. An institution which performs a function which would entitle it to an exemption but which performs additional non-exempt functions, will be issued an exemption certificate. Such certificate may be validly used only for property or services used exclusively in performing the exempt functions and may not be used for property or services employed in performing the non-exempt function. Continued use of the exemption certificate for non-exempt purchases will be ground for revocation of the certificate. If a certificate is revoked, tax paid on exempt purchases will be refunded upon a properly supported claim for refund.

Rule 560-12-2-.93 Repealed

Rule 560-12-2-.94 Cabinet Makers

(1) Any person engaged in the business of selling cabinets, fixtures and similar custom made or stock items shall register as a dealer, collect and remit the tax on the sales price of the finished items. Charges for labor in installing such tangible personal property is not subject to the tax when billed separately to the consumer.

(2) Any person who contracts to furnish tangible personal property and perform services under the contract by building cabinets, fixtures and similar items at the job site and incorporating the same into real property construction shall be classified as a contractor and shall pay the tax on the cost price of all tangible personal property purchased or consumed in performing a contract.

(a) Persons operating pilot training schools providing classroom, ground and flight instructions, including a given number of hours flight time for which no separate charge is made, are primarily engaged in providing services. Such persons are deemed to be consumers of all tangible personal property (including aircraft) purchased and used in providing such services and shall pay the tax thereon at the time of purchase.

(b) Persons operating pilot training schools providing classroom, ground and flight instructions, and exclusively following the practice of separately charging for aircraft flight time including both solo and dual instruction, are engaged both in providing services and in the rental of tangible personal property. Considering the record keeping requirements imposed by various governmental and regulatory agencies, such persons may elect to treat all such aircraft flight time which is a part of the training program as a rental of aircraft to the student. Such rental, however, must be at arm's length and based upon fair rental value. To qualify for this election, the practice of separately charging for aircraft flight time must exclusively be followed both with respect to all aircraft and all students. Aircraft (as well as accessories, tires, and repair parts therefor) employed exclusively in these type operations may be purchased for resale, free of sales or use tax. All other tangible personal property purchased and use in operation of the schools shall be taxable to same as the consumer thereof.

1. This election will only be available to those schools which are either appropriately certificated by the FAA as pilot training schools, or operating under FAR Part 61 with an established base of operations. Such persons must provide evidence satisfactory to the Commissioner of compliance with this requirement.

(c) Those schools operating under paragraph (a) which go beyond the rendition of services and lease or rent aircraft to licensed pilots and all schools operating under paragraph (b) shall register as a dealer, collect and remit the tax on the gross lease or rental charge.

(d) The sale of used aircraft and other tangible personal property is subject to the tax.

(2) Vocational Training Schools.

(a) Persons operating vocational schools are primarily engaged in providing services consisting of classroom instructions and the use of various types of equipment, tools, books, etc. Such persons are

collect and remit the tax thereon.

Rule 560-12-2-.98 Alarm, Warning, Sound and Music Devices

(1) Any person making retail sales of alarm, warning, sound or music devices shall collect and remit the tax on the sales price of such tangible personal property.

(2) A lessor of an alarm, warning, sound or music device shall collect and remit the tax on the gross lease or rental charges, including records or tapes furnished to the lessee.

(a) Where a lessor furnishes sound music or recordings from a central location operated by the lessor, an additional charge for such services would not be subject to the tax when billed separately to the lessee. However, the lessor must pay the tax on all tangible personal property purchased, used or consumed in providing such services.

(3) Any person who contracts to furnish such a device or system and perform services thereunder in installing the same into real property construction shall be liable for the tax on the fair market value of all tangible personal property purchased, used or consumed in performing the contract.

(a) Where a contract requires the contractor to also provide sound music or recordings from a central location operated by the contractor, an additional service charge therefor would not be subject to the tax. The contractor must pay the tax on all tangible personal property purchased, used or consumed in providing such services.

Rule 560-12-2-.99 Sheet Metal Contractors

(1) Any person who contracts to furnish tangible personal property and perform services thereunder within this State in constructing, repairing, remodeling or improving real property shall pay the tax levied by this Act at the time of purchase. Further, any person who so contracts to perform services and is furnished tangible personal property for use under the contract and a sales or use tax has not been paid to this State shall pay the tax on the fair market value of the tangible personal property so used.

(2) Sheet metal contractors are required to register, pay sales and use tax on all tangible personal property purchased, stored, used or consumed in this State.

(3) At times a sheet metal contractor may be called upon to fabricate and

(4) A sheet metal contractor who holds himself out as a producer and seller of tangible personal property, or who solicits buyers by advertising, brochures, salesmen or any other manner shall make application for a dealer certificate of registration, collect and remit the tax on the total sales price of all tangible personal property.

Rule 560-12-2-.100 Child - caring Institution, Child - placing Agency, or Maternity Home

(1) **Purpose.** The purpose of this Rule is to provide guidance regarding the administration of O.C.G.A. § 48-8-3(41), which provides for an exemption from Georgia sales and use tax with respect to certain sales to or by certain nonprofit tax-exempt organizations engaged primarily in providing child services.

(2) **Definitions.**

(a) "Child services provider" means a child-caring institution as defined under O.C.G.A. § 49-5-3(1), as amended, a child-placing agency as defined under O.C.G.A. § 49-5-3(2), as amended, or a maternity home as defined under O.C.G.A. § 49-5-3(14), as amended.

(b) "Cost of operations" means all reasonable direct operational costs incurred by a child services provider. Costs shall be determined based on the child services provider's method of accounting. Such costs include, but are not limited to: salaries; supplies; rent; mortgage payments; furniture and fixtures; loan payments; food; transportation; and educational and special activities.

(c) "Exemption determination letter" means a letter issued by the Commissioner permitting a child services provider to purchase certain tangible personal property and services exempt from Georgia sales and use tax.

(d) "Nonprofit tax-exempt organization" means any organization that holds a letter of determination from the Internal Revenue Service demonstrating that it qualifies as a nonprofit tax-exempt organization under Internal Revenue Code § 501(c)(3).

(3) **Exemption from sales and use tax.** Sales of tangible personal property and services to a child services provider are exempt from Georgia sales and use tax only when the child services provider obtains an exemption determination letter from the Commissioner, is a nonprofit tax-exempt organization, and engages primarily in providing child services.

and

2. More than fifty percent (50%) of thechild services provider's cost of operations for the previous fiscal year is directly related to providing the services and activities as defined in O.C.G.A. § 49-5-3, as amended.

(i) If a child services provider has been in business for less than twelve full months, the provider's budgeted cost of operations will be used to determine its eligibility for the exemption on a temporary basis.

(ii) A child services provider submitting an application using its budgeted cost of operations must submit the actual cost of operations within thirty days following the end of its initial twelve-month period.

(iii) Any cost of operations that is not readily identifiable as being directly attributable to providing child services shall be excluded from the numerator when calculating the percentage.

(b) Exemption determination letter. To obtain an exemption determination letter from the Commissioner, a child services provider must submit a completed Revenue Form ST-CH-1, *Application for Certificate of Exemption for aChild-caring Institution, Child-placing Agency, or Maternity Home*, and include any additional documentation required by the Commissioner. Revenue Form ST-CH-1 may be downloaded from the forms section of the Department of Revenue's website.

1. Upon the Commissioner's approval of the child services provider's application, the Commissioner will issue an exemption determination letter to the child services provider that will be valid for the duration of the child services provider's annual license as provided by the Georgia Department of Human Resources or until revoked in writing by the Commissioner, whichever occurs first.

2. A copy of the exemption determination letter issued to a qualifying child services provider must be furnished to dealers selling tangible personal property or taxable services in order to excuse the dealers from collecting Georgia sales and use tax.

cash, personal check, or credit card on behalf of a child services provider remain subject to sales and use tax even though the purchaser will be reimbursed by the child services provider.

4. An exemption determination letter is issued for the exclusive use of the qualifying child services provider, and is not transferable. Use of the exemption determination letter by any person or entity other than the child services provider to whom it was issued is not permitted.

5. Any child services provider whose license is suspended or revoked by the Georgia Department of Human Resources, or who terminates business operations, must immediately return its exemption determination letter to the Commissioner.

6. If a child services provider's application is denied or a previously issued exemption determination letter is revoked, the Commissioner shall issue a written response providing the reason(s) for the denial or revocation. Reasons for denial of an application or revocation of a previously issued exemption determination letter include, but are not limited to, an insufficient or incomplete application, failure to submit all necessary documentation, misuse or noncompliance with any federal, state or local laws, or failure to satisfy any requirements as stated under the pertinent statute or this Rule.

7. The denial of an application or revocation of a previously issued exemption determination letter is final unless, within sixty (60) days of the mailing of the denial or revocation, the child services provider submits a written application for reconsideration to the Commissioner. The application must contain the child services provider's reason(s) for reconsideration. The child services provider has the burden of proof to establish that the denial or revocation decision was not correct.

(4) **Annual Renewal Process.** Any child services provider who was previously issued an exemption determination letter and who desires to continue to receive the benefits of exemption beyond the duration of the initial period described in subparagraph (3)(b)1. must provide the Commissioner with a copy of the annual inspection report that renews the license issued by the

supplies; medical, educational, personal care and janitorial supplies; food, clothing, motor vehicles used exclusively to transport children; and other such items necessary to provide care for children or mothers when purchased directly by a qualifying child services provider.

(b) Purchases that are not eligible for the exemption include, but are not limited to: motor vehicles for personal and business use; gifts to any person other than children or mothers under the care of a qualifying child services provider; building materials used by contractors; and purchases made by other persons performing services for a child services provider.

(6) **Sales by child services providers.**

(a) A sale of tangible personal property or services by a qualifying child services provider is exempt from Georgia sales and use tax if the transaction satisfies the following conditions:

1. The sale constitutes a fund-raising activity on behalf of the child services provider;

2. The fund-raising activities do not exceed thirty (30) days in any calendar year;

3. No sale proceeds are used for the benefit of anyone other than the child services provider; and

4. The sale proceeds are used solely for child services.

(b) The following examples illustrate the taxation of sales by qualifying child services providers:

1. A child services provider's retail sales derived from the operation of a booth selling food at a fair for two weeks are not subject to Georgia sales tax if all of the conditions in subparagraph (6)(a) of this Rule are satisfied.

2. A child services provider's retail sales for admission derived from a charity fund-raising event are not subject to Georgia sales tax if the provider satisfies all of the conditions in subparagraph (6)(a) of this Rule.

3. A child services provider's retail sales derived from the operation of a store every weekend throughout the year are subject to Georgia sales tax.

provider are exempt from sales tax when an exemption determination letter is provided to the dealer. If a dealer donates tangible personal property purchased for resale to a child services provider, the dealer will be responsible for payment of Georgia sales tax as provided under O.C.G.A. § 48-8-39.

(7) **Records.** A child services provider is required to maintain records of all purchases and sales for a three-year period.

(8) **Effective Date.** This rule is effective beginning July 1, 2004.

Rule 560-12-2-.101 Repealed

Rule 560-12-2-.102 Video Tape or Motion Picture Film

The sale or rental of video tape or motion picture film for private use would be subject to the tax.

Rule 560-12-2-.103 Material Handling Equipment and Racking Systems

(1) For purposes of qualifying for the exemption provided for by O.C.G.A. § 48-8-3(34.1), and as used in this Regulation, the following definitions and explanations of terms shall apply:

(a) The term "distribution facility" means a warehouse, facility, structure, or enclosed area which is used primarily for the storage, shipment, preparation for shipment, or any combination of such activities, of goods, wares, merchandise, raw materials, or other tangible personal property.

(b) The term "primary material handling equipment" means the principal machinery and equipment used to lift or move tangible personal property in a warehouse or distribution facility located in this State. Depending upon whether or not it is the principal machinery and equipment used to lift or move tangible personal property, the following items may be considered primary material handling equipment:

1. conveyers, carousels, lifts, positioners, pick-up-and-place units, cranes, hoists, mechanical arms, and robots;

2. mechanized systems, including containers which are an integral part thereof, whose purpose is to lift or move tangible personal property;

3. automated storage and retrieval systems, including computers which control them, whose purpose is to lift or

(c) The term "primary material handling equipment" does not include parts or equipment used to repair, refurbish, or recondition other equipment, but does include equipment, as defined above, which replaces in its entirety other primary material handling equipment.

(d) The term "racking system" means any system of machinery, equipment, fixtures, or portable devices whose function is to store, organize, or move tangible personal property within a warehouse or distribution facility, including, but not limited to, conveying systems, chutes, shelves, racks, bins, drawers, pallets, and other containers and storage devices which form a necessary part of the facility's storage system.

(e) The term "warehouse" means a facility, structure, or enclosed area which is used primarily for the storage of goods, wares, merchandise, raw materials, or other tangible personal property.

(2) For purposes of qualifying for the exemption provided for by O.C.G.A. § 48-8-3(34.1), the following general requirements shall apply:

(a) Except as otherwise provided in this Regulation, effective for deliveries which occur on or after July 1, 1994, the tax does not apply to sales of primary material handling equipment used directly for the handling or movement of tangible personal property in a warehouse or distribution facility located in this State, when the following conditions are met:

1. the equipment is part of an expansion of an existing warehouse or distribution facility or part of the construction of a new warehouse or distribution facility in this State;

2. the total value of all real and personal property purchased or acquired by the taxpayer for use in the expansion or new construction of the warehouse or distribution facility is worth 10 million dollars or more (See paragraph (4)). Purchases made over a period of time, even though made in anticipation of an expansion, without definite plans will not be considered an expansion of an existing warehouse or distribution facility; and

3. the purchaser has obtained a Certificate of Exemption as provided in subparagraph (c) of this Regulation.

(b) Except as otherwise provided for in this Regulation, effective for deliveries occurring on or after July 1, 1995, the tax does not apply to sales of racking systems used for the conveyance and storage of

this State;

2. the total value of all real and personal property purchased or acquired by the taxpayer for use in the expansion or new construction of the warehouse or distribution facility is worth 10 million dollars or more (See paragraph(4)). Purchases made over a period of time, even though made in anticipation of an expansion, without definite plans will not be considered an expansion of an existing warehouse or distribution facility; and

3. the purchaser has obtained a Certificate of Exemption as provided in subparagraph (c) of this Regulation.

(c) To obtain such Certificate of Exemption, the purchaser or lessee must submit an Application for Certificate of Exemption (Form ST-WD1). The application shall include a schedule of equipment to be purchased or leased, a full description of the usage of the equipment, and the cost of each piece of equipment. The Commissioner may require the purchaser or lessee to furnish such additional information as deemed necessary to determine whether the requirements and qualifications for the exemption are met.

(3) Effective July 1, 1995, in order to qualify for the exemption provided for by O.C.G.A. § 48-8-3(34.1), a warehouse or distribution facility must not make retail sales from such family to the general public which equal or exceed 15% of the total revenue of the warehouse or distribution facility. A taxpayer who has qualified for the exemption provided for by O.C.G.A. § 48-8-3(34.1), or obtained a Certificate of Exemption therefor, shall be disqualified from receiving such exemption as of the date the taxpayer's warehouse or distribution facility makes retail sales to the general public equal to or greater than 15% of the total revenues of the warehouse or distribution facility. In the event that a taxpayer has obtained the benefit of the exemption contained in O.C.G.A. § 48-8-3(34.1) at a time when the warehouse or distribution facility made retail sales to the general public which equaled or exceeded 15% of the total revenues of the warehouse or distribution facility, the taxpayer may be required to repay any tax benefits received under said Code section or under this Regulation on and after the date such taxpayer became disqualified from receiving such exemption, and to pay penalty and interest at the rates provided for by law on such tax amounts.

(4) Effective January 1, 1997, the total value of all real and personal property purchased or acquired by the taxpayer for use in the expansion or new construction of the warehouse or distribution facility must be worth 5

(1) Sales of food and food ingredients qualify for an exemption from sales and use tax as provided herein.

(2) Definitions.

(a) "Alcoholic Beverages" means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.

(b) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

1. Contains one or more of the following dietary ingredients: a vitamin, mineral, herb or other botanical, amino acid, a dietary substance for use by humans to supplement the diet by increasing the total dietary intake, or a concentrate, metabolite, constituent, extract, or combination of any ingredient described above; and

2. Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

3. Is required to be labeled as a dietary supplement, identifiable by the "Supplemental Facts" box found on the label and as required pursuant to 21 C.F.R. § 101.36.

(c) "Eating utensils" includes plates, knives, forks, spoons, glasses, cups, napkins and straws, but does not include other containers or packaging used to transport the food.

(d) "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" shall not include alcoholic beverages, dietary supplements, or tobacco.

(e) "Natural person" means an individual human being.

(f) "Prepared food", which is subject to both state and local sales and use taxes, means:

1. Food sold in a heated state or heated by the seller at the seller's location (i.e., the place where the sale takes place). This includes food that was heated by the seller at any time

3. Food sold with eating utensils provided by the seller. Food shall be considered to be sold with eating utensils provided by the seller when the food is customarily intended for consumption with the utensils provided. The presence of self-service utensils in a facility does not make otherwise exempt food taxable unless it is customarily intended that the food be consumed with those utensils.

(g) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that includes tobacco.

(3) Food Exemptions.

(a) O.C.G.A. § 48-8-3(57) exemption. Effective for transactions occurring on or after January 1, 2011, food and food ingredients sold to natural persons for consumption off premises are not subject to state sales and use tax, but are subject to any local sales and use tax.

1. The state sales and use tax exemption for food and food ingredients is not available to businesses including but not limited to corporations, partnerships, limited liability companies, and sole proprietorships. Unless another exemption applies, business entities, including nonprofit organizations, must pay both state and local sales and use tax on all purchases of food and food ingredients.

2. For purposes of the exemption for food and food ingredients contained in O.C.G.A. § 48-8-3(57),"food and food ingredients" does not include the following:

(i) Prepared food;

(ii) Items ingested or chewed primarily for medical or hygiene purposes, such as cough drops, throat lozenges, breath strips, and over the counter medications;

(iii) Alcoholic beverages;

(iv) Tobacco and tobacco products;

(v) Dietary supplements; and

purchased with food stamps is exempt after January 1, 2011 to the same extent that it was exempt before January 1, 2011.

(c) O.C.G.A. § 48-8-3(12) exemption. Food and food ingredients, including prepared food, sold and served to pupils and employees of public schools as part of a school lunch program are exempt from state and local sales tax.

(d) O.C.G.A. § 48-8-3(13) exemption. Sales of food and food ingredients, including prepared food, consumed by pupils and employees of bona fide private elementary and secondary schools, which have been approved by the Internal Revenue Service as organizations eligible to receive tax deductible contributions, are exempt from state and local sales tax when application for exemption is made to the Department and proof of the exemption is established.

(e) O.C.G.A. § 48-8-3(59) exemption.

(i) Sales of food and food ingredients to and by member councils of the Girl Scouts of the U.S.A. in connection with fundraising activities of any such council are exempt from state and local sales tax.

(ii) Sales of food and food ingredients to and by member councils of the Boy Scouts of America in connection with fundraising activities of any such council are exempt from state and local sales tax.

(f) O.C.G.A. § 48-8-3(81) exemption. The sale of food and food ingredients to a qualifying airline for service to passengers and crew in the aircraft is exempt from state and local sales tax, whether in flight or on the ground; and the furnishing without charge of food and food ingredients to qualifying airline passengers and crew in the aircraft, whether in flight or on the ground. "Qualifying airline" is defined in O.C.G.A. § 48-8-3(81).

(4) Examples of the food exemption in O.C.G.A. § 48-8-3(57).

(a) Food and food ingredients that are exempt from state sales and use tax include:

1. Most prepackaged or repackaged items sold for ingestion by humans for taste or nutritional value, such as prepackaged boxed cereal, cartons of milk, peanut butter ground in the store by either the seller or the customer, candy;

to customers by weight or volume as long as the seller does not add any ingredients to the potato salad;

3. Raw animal foods such as eggs, fish, meat, poultry, and foods comprised of these raw animal foods, that require cooking by the consumer;

4. Packaged beverages of all kinds, including bottled water;

5. Liquids such as cooking wine and vanilla extract used in cooking that exceed an alcohol content of 0.5% but are not intended for sale as a beverage (drinkable liquid);

6. Food sold without eating utensils by a seller whose proper primary North American Industrial Classification System (NAICS) code is subsector 311 (food manufacturing) except industry group 3118 (bakeries and tortilla manufacturing); and

7. Prepackaged food sold from vending machines.

(b) Food and food ingredients that are not exempt and are subject to both state and local sales and use tax include:

1. Business purchases and uses of food and food ingredients.

(i) A business purchases frozen turkeys to give to employees as holiday gifts. The purchase of such turkeys is subject to both state and local sales and use tax because the purchaser is a business entity, and not an individual human being, making a purchase for off-premises consumption. Food purchases by a sole proprietorship are considered to be purchases by a business that are subject to both state and local sales tax. If the business does not pay state sales tax at the time of purchase, the business should accrue and remit state use tax on its purchase of the food items.

(ii) Water in bottles, coolers, or other containers purchased by a business that provides the water for no charge to its employees or customers is subject to both state and local sales and use tax.

purchases. The purchases are subject to both state and local tax; and if the day care center or for-profit nursing home only pays local tax at the time of purchase, it should accrue and remit state use tax on the purchase.

2. Food and food ingredients sold for on-premises consumption, such as prepackaged candy sold at movie theaters and sports arenas.

(c) Prepared food, which is not exempt and is subject to both state and local sales and use tax, generally includes:

1. Food sold by restaurants, street food vendors, food carts, and fast food establishments;

2. Popcorn and fountain beverages sold by movie theaters because the popcorn is heated onsite and the fountain beverages are made by mixing ingredients;

3. Cakes, breads and pastries made by a retail bakery onsite and sold with or without utensils for off-premises consumption;

4. Bread heated or baked by the seller at the seller's location, even though the dough was made off-site;

5. Food with two or more food ingredients mixed or combined at the seller's location by the seller for sale as a single item, such as:

(i) Potato salad purchased in bulk by the seller to which the seller adds an ingredient, such as salt or pepper, and then sells by weight or volume; and

(ii) Deli sandwiches made by the seller at the seller's location;

6. Prepackaged food sold with a utensil such as yogurt sold by a coffee shop with a spoon for off-premises consumption; and

7. Heated food sold by a vending machine, such as coffee.

Rule 560-12-2-.105 Machinery-Remanufacturing of Aircraft Engines or Aircraft Engine Parts or Components

manner to accomplish a specific objective.

(b) The term "packaging operation" means bagging, boxing, crating, packaging, wrapping, labeling, palletizing, and other similar processes used by the remanufacturer to enclose or containerize remanufactured products in a manner suitable for sale or delivery to customers.

(c) The term "remanufacture of aircraft engines or aircraft engine parts or components" means the substantial overhauling or rebuilding of aircraft engines or aircraft engine parts or components on a factory basis. Substantial overhauling or rebuilding of aircraft engines or aircraft engine parts or components means the disassembling, repairing, renovating, reassembling, reconstructing, inspecting, or testing, thereby restoring the aircraft engine or aircraft engine parts or components to their original state or an upgraded state. Such term includes a packaging operation when it is a part of a continuous remanufacturing operation; and the conveyance of work in process or finished units from one remanufacturing operation to another in the same plant facility. Such term does not include: storage; delivery to or from the plant; delivery to or from storage within the plant; repairing or maintenance of facilities; research; developmental testing; random or sample testing of materials or products; or cleaning when not part of a continuous remanufacturing operation.

(2) **General Requirements for the Remanufacturing Machinery Exemption.** In order to qualify for the remanufacturing machinery exemption provided for in O.C.G.A. § 48-8-3(34.2), the property being purchased or leased must have the character of machinery at the time of the sale or lease, or consist of components which, when assembled, will have the character of machinery; the machinery must be used in the remanufacture of aircraft engines or aircraft engine parts or components; the machinery must be used directly in the remanufacturing operation; and the appropriate Certificate of Exemption under this Regulation must be obtained or provided. The exemption is not applicable to machinery used indirectly in the remanufacturing operation, or to auxiliary equipment and appurtenances or to materials or items to be incorporated into real estate construction. The Commissioner may allow an Application for Certificate of Exemption required by this Regulation to be filed subsequent to the purchase or lease of the machinery.

(3) **New and Existing Remanufacturing Plants.**

(a) Any person making a sale or lease of machinery which is used

paying the tax.

(b) Any person making a sale or lease or machinery which is used directly in the remanufacture of aircraft engines or aircraft engine parts or components and which is incorporated, as additional machinery, for the first time into a remanufacturing plant presently existing in this State, or which is purchased or leased to replace machinery in a remanufacturing plant presently existing in this State, shall collect the tax imposed thereon by the O.C.G.A. §§ 48-8-1, *et seq.,* as amended, unless the purchaser or lessee furnishes the vendor with a properly completed Certificate of Exemption (Form ST-5).

(c) Any purchaser or lessee of machinery which is used directly in the remanufacture of aircraft engines or aircraft engine parts or components and incorporated for the first time into a new remanufacturing plant located in this State who desires to secure the benefit of the exemption provided by O.C.G.A. § 48-8-3(34.2) shall file an Application for Certificate of Exemption (Form STAERl) with the Commissioner, which shall include a schedule of machinery to be purchased or leased, a full description of the usage of the machinery in the remanufacturing operation, and the cost of each item of machinery In addition thereto, the Commissioner may require such other information as deemed necessary for the determination of the claim for exemption. These requirements are applicable to all purchasers and lessees, including holders of direct pay permits under Regulation 560-12-1-.16.

(d) Upon approval of an application for the first time into a new remanufacturing plant, the Commissioner will issue a Certificate of Exemption for Remanufacturing Machinery (Form ST-AER2) for presentation by the purchaser or lessee to the machinery suppliers, whereupon the purchaser or lessee shall be relieved from payment of the tax and the machinery suppliers shall be relieved from collection of the tax.

(4) **Specific Applications.**

(a) When an otherwise exempt piece of machinery has multiple or interchangeable molds, dies, chucks, bits, or other tooling, only one such item per position on the machine will be recognized as an exempt component of an exempt machine.

(b) Additional items which may qualify for the exemption include, but are not limited to, electrical components, including transformers,

monitors all of the materials or work in process, provided that, machinery used in random or sample testing cannot qualify for the exemption.

(c) Examples of some common items that do not qualify for the exemption include, but are not limited to, foundations, supports, catwalks, hand tools, items used for protection or safety, and parts used in the repair, refurnishing, or reconditioning of machinery.

Rule 560-12-2-.106 United States Government Defense Contractors

(1) Purpose. The purpose of this Rule is to provide guidance regarding the direct consumable supplies and overhead materials exempt from Georgia sales and use tax in accordance with O.C.G.A. § 48-8-3(58).

(2) Definitions. For the purposes of qualifying for the exemption provided for by O.C.G.A. § 48-8-3(58), and as used in this Rule, the following definitions and explanation of terms shall apply:

(a) "Appropriate title passing clauses" means those title passing clauses whereby title to overhead materials or direct consumable supplies purchased for use in fulfilling a government contract passes to the United States Department of Defense or the National Aeronautics and Space Administration before the government contractor uses the property.

(b) "Direct consumable supplies" means supplies, tools, or equipment used or consumed in the performance of a government contract which are specifically identified to the government contract and the actual cost of which is charged as a direct item of cost to the specific contract. Direct consumable supplies include, but are not limited to, property used to repair items of capital equipment when a portion of the contractor's use is properly allocable to government contracts, notwithstanding the fact that title to the property being repaired remains with the government contractor. The term "direct consumable supplies" does not include tangible personal property that is incorporated into real property.

(c) "Government contract" means a contract directly between the United States Department of Defense or the National Aeronautics and Space Administration and a government contractor, for the purpose of national defense, to sell services or tangible personal property which contain the appropriate title passing clauses for overhead materials and direct consumable supplies. The term "government contract" does not include any contract providing for the construction, improvement, maintenance, or repair of or to real

Aeronautics and Space Administration to sell services or tangible personal property. This can include a manufacturer, modifier, assembler or repairer of tangible personal property, or seller of services. The term "government contractor" also includes a subcontractor who enters into a contract directly with a government contractor as defined in the first sentence of this paragraph and who incorporates the appropriate title passing clauses. The term "government contractor" does not include any person who enters into a contract to construct, improve, maintain, or make repairs on or to real property, or make purchases of tangible personal property for use in fulfilling such contracts.

(e) "Overhead materials" means any tangible personal property used or consumed in the performance of a contract between the United States Department of Defense or the National Aeronautics and Space Administration and a government contractor, the cost of which is charged to an expense account and allocated to various United States government contracts based upon generally accepted accounting principles, and consistent with government contract accounting standards. The term "overhead materials" does not include tangible personal property which is incorporated into real property.

(3) Application of Exemption.

(a) Direct Consumable Supplies, Tools or Equipment. Sales to a government contractor of direct consumable supplies, tools or equipment, are considered to be sales for resale to the United States Department of Defense or the National Aeronautics and Space Administration if used in a government contract containing the appropriate title passing clauses. The exemption will apply to these sales even though the tangible personal property does not become a component part of the tangible personal property or the services provided by the government contractor. The government contractor may purchase direct consumable supplies, tools or equipment without payment of the tax by issuing a properly executed Certificate of Exemption, Form ST-5, to the appropriate vendor. If the government contractor uses the tangible personal property prior to title passing to the United States Department of Defense or the National Aeronautics and Space Administration, the tax will apply to the sales or use by the government contractor.

(b) Overhead Materials. Sales to a government contractor of overhead materials used exclusively in a government contract containing the appropriate title passing clauses for overhead materials shall qualify

contract which do not contain the appropriate title passing clauses, or any other use, shall not qualify for exemption from sales or use tax. The appropriate title passing clauses contained in the government contract will determine if title to the direct consumable supplies and overhead materials passes to the government, and the time at which title does pass. In the absence of the appropriate title passing clauses, the tax will apply to either the sale or use by a government contractor of such direct consumable supplies and overhead materials. In a case where the cost of direct consumable supplies or overhead materials are charged to an expense account which is then allocated to various locations, cost centers or contracts, some of which are engaged in non-government contracts, it will be considered that title did not pass prior to use of the property, and tax will apply with respect to the purchase or use of the property charged to the expense account. If the item is specifically accounted for as being charged to a specific government contract containing the appropriate title passing clauses the tax will not apply. Property will be considered charged to a specific government contract when it is allocated pursuant to the Cost Accounting Standard Disclosure Statement, generally accepted accounting principles, or accounting standards promulgated by the Cost Accounting Standards Board. The government contractor shall be responsible for maintaining adequate records to substantiate the exemption provided for in this Rule. Any government contractor who fails to maintain sufficient documentation shall pay the amount of tax that would have been imposed on the sales or use of such tangible personal property.

Rule 560-12-2-.107 Computer Equipment

(1) In accordance with O.C.G.A. § 48-8-3(68)(A) and this Regulation, transactions occurring on or after January 1, 2001, which involve the purchase or lease of computer equipment not otherwise exempt under Chapter 8 of Title 48 of the Official Code of Georgia Annotated will be exempt from sales and use tax. To qualify for the exemption, the following conditions must be met:

(a) The computer equipment must be purchased or leased exclusively for operational use in this state at a high-technology company as defined in this Regulation; and

(b) The value of computer equipment purchased during any calendar year must exceed $15 million, or the fair market value of leased computer equipment, as defined in paragraph (2)(b) of this Regulation, must exceed $15 million during any calendar year.

definitions and explanations of terms shall apply.

(a) **Classification Codes.** The term "classification codes" means the designated codes associated with the North American Industrial Classification System, as specified in O.C.G.A. § 48-8-3(68)(A).

(b) **Computer Equipment.** The term "computer equipment" means any individual computer or organized assembly of hardware or software, such as a server farm, mainframe or midrange computer, mainframe-driven high speed print and mail devices and workstations connected to those devices via high bandwidth connectivity such as a local area network, wide area network, or any other data transport technology which performs one of the following functions: storage or management of production data, hosting of production application system development activities, or hosting of applications systems testing which are not otherwise exempt under Chapter 8 of Title 48 of the Official Code of Georgia Annotated.

(c) **Company Facility.** The term "company facility" means a single physical establishment, as defined in the North American Industrial Classification System United States Manual 1997, where the primary business activity is designated within the classification codes as specified in O.C.G.A. § 48-8-3(68)(A) and approved by the commissioner.

(d) **Fair Market Value.** The term "fair market value," for the purpose of qualifying a lease for this exemption, means the book value of the computer equipment being purchased by the leasing company at the time of the lease's inception. The fair market value of the computer equipment for leases entered into prior to January 1, 2001, will be determined by the book value of the computer equipment as of January 1, 2001.

(e) **High-technology Company.** The term "high-technology company" means a company or specific company facility that has been assigned a classification code as specified in O.C.G.A. § 48-8-3(68)(A). This includes, but is not limited to, a company that is engaged in providing computer programming and design services, providing data processing services, manufacturing semi-conductors and related devices, and providing telephone and telegraph communications.

(f) **Majority of Business.** The term "majority of business" means greater than fifty (50) percent of the gross revenues derived from the services designated in the classification code.

1. The qualified purchasers or lessees of such computer equipment must obtain a Certificate of Exemption from the commissioner as provided in paragraph (3)(b) of this Regulation. The application for such Certificate must contain a specific schedule of planned purchases or leases, or both, of qualified computer equipment for the calendar year for which the application is filed.

2. The computer equipment must be purchased or leased exclusively for operational use in this state by a high-technology company which is classified under specific classification codes as designated in O.C.G.A. § 48-8-3(68).

3. The exemption is applicable only for qualified computer equipment which is purchased or leased exclusively for operational use in this state by a high-technology company on or after January 1, 2001.

4. Effective October 1, 2002, to qualify for the exemption, any corporation, partnership, limited liability company, or any similar entity which qualifies for the exemption and is affiliated in any manner with a nonqualified corporation, partnership, limited liability company, or other similar entity, must conduct at least a majority of its business, as measured by gross revenues received in arms length transactions, with entities with which it has no affiliation.

(b) Any purchaser or lessee desiring to secure the benefits of the exemption provided by O.C.G.A. § 48-8-3(68) must file an Application for Certificate of Exemption (Form ST-CE1). The application shall include disclosure of business name, address, specific company facility location (if applicable), North American Industry Classification Code as indicated on the Federal Income Tax return for the high-technology company, North American Industry Classification Code for a specific company facility (if applicable), whether equipment is purchased, leased or both, anticipated dates of purchase or lease, and a schedule of the computer equipment to be purchased or leased for the entire calendar year including purchase price, or in the case of a lease, the book value. In addition thereto, the commissioner may require such other information as deemed necessary for the determination of the claim for exemption. These requirements are applicable to all purchasers and lessees, including holders of a direct pay permit.

(c) Upon approval of an application, the commissioner will issue a Certificate of Exemption (Form ST-CE2) to the company that relieves

previously been obtained and tax is collected on the purchase or lease of computer equipment which may be qualified for exemption, the purchaser or lessee may apply for a refund of such tax. The Claim for Refund (Form ST-12) shall be accompanied by an Application for Exemption (Form ST-CE1).

(4) **Specific Applications; Exemptions and Exceptions Relating Thereto.**

(a) For purposes of determining the appropriate classification code for a high-technology company, the classification code of the high-technology company as indicated on its Federal Income Tax Return shall be used unless that classification code is determined by the commissioner to be inappropriate for purposes of the exemption; or in the case of a specific company facility the classification code designated and approved by the commissioner on the Application for Certificate of Exemption (Form ST-CE1) shall be used.

(b) In determining the $15 million requirement for a specific company facility meeting the designated North American Industry Classification Code, only computer equipment purchases or leases solely designated for that specific company facility in this state are eligible for the exemption.

(c) The purchase price of all computer equipment or the fair market value of all leased computer equipment, or any combination thereof, used by a high-technology company in this state, regardless of the number of purchases or leases entered into during a calendar year, shall be used when determining the $15 million requirement.

(d) In determining the $15 million requirement for a qualifying lease, the fair market value of the computer equipment under the qualifying lease shall only be used in the initial year's determination and shall not be used in subsequent years. In addition, the exercise of any option to purchase such computer equipment under a qualifying lease shall not be used in subsequent years to meet the $15 million requirement.

(e) If, after obtaining the Certificate of Exemption required under paragraph (3)(c) of this Regulation, the actual purchase(s) or lease(s) fails to meet the requirements for this exemption, the high-technology company will be liable for tax, penalty and interest on the purchase(s) or lease(s).

(f) Any Certificate of Exemption issued prior to the effective date of this Regulation for calendar year 2002 to a high-technology company that fails to conduct at least a majority of its business with

data transmission equipment; equipment with imbedded hardware or software used primarily for training, product testing or in manufacturing; scanners; printers and paper; ink and toner; wrist and mouse pads; tools; all removable storage media such as, diskettes, compact disks or tapes; and parts for maintenance or repair of computer system hardware.

Rule 560-12-2-.108 Bullion, Coins, or Currency

(1) **Definitions.** For the purposes of this Regulation, the following definitions and explanations of terms shall apply:

(a) **Bullion.** The term "bullion" means bars, ingots, or coins of gold, silver, platinum or any combination thereof, which has been processed by coining, smelting, refining, or in some other manner and where the sales price depends upon the content of the metal and not the form. Such term shall not include jewelry, works of art, or items used for industrial or professional purposes.

(b) **Coins or Currency.** The term "coins or currency" means a coin or currency or any combination thereof made of gold, silver, platinum, or other metals or paper which has been or may be used as legal tender under the laws of any state, the United States of America, or any foreign state or nation. Such term shall not include any coin or currency or combination thereof that has been incorporated into a piece of jewelry or artwork.

(c) **Legal Tender.** The term "legal tender" means coin or currency that at the time of issue or sale a creditor would be required to accept in payment of a debt.

(d) **Medal.** The term "medal" means a medallion, token, or coin that has never been accepted as legal tender and was created to commemorate a specific event, place, person or thing.

(2) **Bullion, Coins or Currency.** The sale of bullion, coins or currency is not subject to sales and use tax. The dealer is required to maintain documentation of the exempt transaction as provided for within this Regulation.

(3) **Jewelry or Other Works of Art.** The sale of jewelry or other works of art that contain bullion, coins or currency is subject to sales and use tax.

(4) **Medals.** The sale of medals is subject to sales and use tax. However, medals of gold, silver, platinum, or any combination thereof, whose sales

will describe the country of issue, denomination, and sales price of each item, items, lots, groups or sets of coins or currency. In the case of a transaction involving bullion, the proper documentation will describe the metal, quantity, form (such as bars or ingots), and sales price of each item, items, lots, groups or sets of bullion.

Rule 560-12-2-.109 Film Producer or Film Production Company

(1) A Film Producer or Film Production Company is primarily engaged in the production of feature films, training films, series, pilots, movies for television, commercials, music videos or sound recordings captured on film, video or digital format. Such entities are subject to sales and use tax on all purchases and taxable services unless otherwise exempt within the Act and this Regulation.

(2) **Definitions.** For purposes of qualifying for the exemption provided for by O.C.G.A. § 48-8-3(73), and as used in this Regulation, the following definitions and explanation of terms shall apply:

(a) "Certified Film Producer or Certified Film Production Company" means any person that is certified by the Georgia Film and Videotape Office of the Department of Industry, Trade and Tourism that is engaged in the business of organizing and supervising qualified production activities.

(b) "Film Producer" means any person engaged in the business of organizing and supervising qualified production activities. Such person may also be engaged in the business of organizing and supervising nonqualified production activities.

(c) "Film Production Company" means any company that employs one or more film producers and whose goal is to engage in film production activity. Such company may also be engaged in the business of organizing and supervising nonqualified production activities.

(d) "Nation-Wide Commercial Distribution" means intended for commercial distribution extending outside the State of Georgia. Such term shall not mean distribution primarily via Internet or live coverage of an event, including, but not limited to news, sporting events, and concerts.

(e) "Production Equipment" means items purchased or leased for use exclusively in qualified production activities in Georgia, including, but not limited to, cameras, camera supplies, camera accessories, lighting equipment, cables, wires, generators, motion picture film and videotape stock, cranes, booms, dollies and teleprompters

(g) "Qualified Production Activities" means the production or postproduction of film or video projects including feature films, series, pilots, movies for television, commercials, music videos or sound recordings used in feature films, series, pilots or movies for television, for which the film producer or film production company will be compensated and which are intended for nation-wide commercial distribution.

(3) **Purchases.** Except as provided for in paragraph (4) of this Regulation, the tax does not apply to all tangible personal property or taxable services purchased, leased, or rented for use in production activities. Such purchases include, but are not limited to, office equipment, furniture or supplies, maintenance or janitorial equipment and supplies, motor vehicles, trailers and motor homes, nonqualified production equipment, telecommunications equipment, catering services, including food and beverages and restaurant meals, any fuel or gas, lodging, flowers and gifts.

(4) **Production Equipment or Production Services Exemption.**

(a) In accordance with O.C.G.A. § 48-8-3(73), transactions occurring on or after January 1, 2002, which involve the purchase of production equipment or production services for exclusive use in Georgia, not otherwise exempt under Chapter 8 of Title 48 of the Official Code of Georgia Annotated, will be exempt from sales and use tax.

(b) **General Requirements for the Production Equipment or Production Services Exemption.** In order to qualify for the production equipment or production services exemption provided for in O.C.G.A. § 48-8-3(73) and this Regulation, the following conditions must be met:

1. The qualified purchasers, renters or lessees of such production equipment or production services must obtain a Certificate of Exemption from the Commissioner as provided in paragraph (4)(c) of this Regulation. The application for such Certificate of Exemption must be requested using the Application for Certificate of Exemption (Form ST-PE1) and contain an itemized listing of the production equipment or production services.

2. The production equipment or production services must be purchased, rented or leased for exclusive use in this state by a certified film producer or certified film production company.

3. As a condition precedent to the issuance of the Certificate of Exemption, a film producer or film production company must

Department of Industry, Trade and Tourism designating the film producer or film production company to be a certified film producer or certified film production company.

(c) **Application and Certificate of Exemption.**

1. Any purchaser or lessee desiring to secure the benefits of the exemption provided by O.C.G.A. § 48-8-3(73) must file an Application for Certificate of Exemption (Form ST-PE1). The application shall include the following information: name of the producer, name of the production company, title of the project, type of project (feature film, television series, commercial, etc.), dates of project (production through final shoot day), federal employer's identification number, description of the property anticipated to be purchased, including the sales price or rental or lease amount payable, and a copy of the certification from the Georgia Film and Videotape Office of the Department of Industry, Trade and Tourism. In addition thereto, the Commissioner may require such other information as deemed necessary for the determination of the claim for exemption.

2. Upon approval of an application, the Commissioner will issue a Certificate of Exemption (Form ST-PE2) for presentation by the purchaser, renter or lessee to the production equipment or production service suppliers, whereupon the purchaser or lessee shall be relieved from the payment of the tax and the equipment suppliers shall be relieved from the collection of the tax.

3. Where the Certificate of Exemption (Form ST-PE2) has not previously been obtained and tax is collected or accrued on the purchase or lease of production equipment or production services, which may qualify for exemption, the purchaser or lessee may apply for a refund of such tax. The Claim for Refund (Form ST-12) shall be accompanied by an Application for Certificate of Exemption (Form ST-PE1) and any other documentation deemed necessary by the Commissioner.

(d) **Specific Applications; Exemptions and Exceptions Relating Thereto.**

1. Production equipment when sold or leased to a certified film producer or certified film production company and used exclusively in connection with a qualified film production

(iii) Digital discs and masters;

(iv) Lighting equipment, including gel, bulbs and lamps;

(v) Stage equipment;

(vi) Cranes, booms, dollies and jibs;

(vii) Electric stands, cables and wires;

(viii) Generators used to operate tax exempt lighting and stage equipment;

(ix) Time code equipment;

(x) VTR and digital editing equipment;

(xi) Switchers;

(xii) Character generators;

(xiii) Sound recording equipment;

(xiv) Costumes, props, scenery and materials to construct them;

(xv) Design equipment;

(xvi) Heating and air conditioning equipment that is not a part of the realty and is used on the set;

(xvii) Drafting equipment;

(xviii) Special effects supplies and equipment;

(xix) Photographic film;

(xx) Animation equipment;

(xxi) Computer graphic and image equipment;

(xxii) Motor vehicle rentals and leases that are exclusively used on film production sets; and

(xxiii) Equipment and supplies for dubbing, mixing, editing and cutting.

are not limited to:

(i) Film processing;

(ii) Computer graphics services;

(iii) Photography on the set used in the film; and

(iv) Fabrication, printing, or production of scripts, storyboards, costumes, wardrobes, props, scenery or special effects.

3. The exemption provided for under O.C.G.A. § 48-8-3(73) shall not extend to:

(i) Leases or rentals that are continuous in nature where the leased or rented equipment is not exclusively for use in Georgia;

(ii) Equipment used for both qualifying production activities and non-qualifying production activities;

(iii) Any person who contracts to furnish tangible personal property and perform services under a real property contract. Contractors are deemed to be the consumers of all tangible personal property used in a real property contract and shall pay the tax at the time of purchase; and

(iv) Items not considered production equipment or production services. Such items include, but are not limited to, office supplies and furniture, bottled water, catered food and beverages, crew uniforms, flowers and plants used off the set, personal gifts, utilities, cell phones, pagers and battery chargers, hotel rooms and lodging, reusable shipping cases and packaging materials, janitorial supplies, make-up, motor fuel, repairs to equipment, transportation services, purchases of motor vehicles or motor vehicle leases or rentals used to transport items or individuals and any other tangible personal property or taxable services not specifically exempt under this Regulation.

4. If, after obtaining the Certificate of Exemption required under paragraph (4)(c) of this Regulation, the actual

(a) Charges for services rendered by a film producer or film production company are exempt when performing production or postproduction work on a motion picture master under the direction of another producer or production or post-production company. Postproduction work includes, but is not limited to, editing and synchronization of a motion picture master.

(b) The sale or rental of master tapes or master records that are used by the recording industry in reproducing audio recordings and visual images for showing on screens or television are not considered subject to sales and use tax.

(c) Sales of training films or other non-qualified production activities that are not reproduced are subject to sales and use tax.

(d) Retail sales of any film producer's or production company's assets that would not otherwise be exempt from Georgia sales and use tax, are subject to sales and use tax.

(e) A transaction involving only a charge for a copyright license and does not include a sale, lease, or rental of video tape or motion picture film would not be considered taxable.

Rule 560-12-2-.110 Sales Tax Holidays

(1) **Purpose.** The purpose of this Rule is to provide guidance regarding the sales and use tax exemption for certain clothing, computers, computer components, software, school supplies, Energy Star Qualified Products, and WaterSense Products pursuant to O.C.G.A. § 48-8-3(75) and (82).

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

(a) "Clothing" means all human wearing apparel suitable for general use and includes footwear." "Clothing" excludes "clothing accessories" and "clothing equipment." Examples of exempt and taxable items are listed in paragraph (4) of this Rule.

(b) "Clothing accessories or equipment" means incidental items worn on the person or in conjunction with "clothing."

(c) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions. Such term does not include cellular telephones. The term "computer" includes computer components that are commonly regarded as essential parts of a computer purchased for noncommercial home or personal use. Examples of exempt and taxable items are listed in paragraph (5) of this Rule.

prewritten computer software, school supplies, school art supplies, school computer supplies, school instructional materials, Energy Star qualified product, or WaterSense product.

(f) "Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services, including but not limited to transportation, shipping, postage, handling, crating, and packing.

(g) "Eligible property" means:

1. Articles of clothing with a sales price of $100.00 or less per item;

2. Computers, computer components, and prewritten computer software purchased for noncommercial home or personal use with a sales price of $1,000.00 or less per item;

3. School supplies, school art supplies, school computer supplies, and school instructional materials purchased for noncommercial use with a sales price of $20.00 or less per item; or

4. Energy Star Qualified Products or WaterSense Products purchased for noncommercial home or personal use with a sales price of $1,500.00 or less per product.

(h) "Energy Star Qualified Product" means any dishwasher, clothes washer, air conditioner, ceiling fan, fluorescent light bulb, dehumidifier, programmable thermostat, refrigerator, door, or window that is not purchased for trade, business, or resale and that meets the energy efficient guidelines set by the United States Environmental Protection Agency and the United States Department of Energy and is authorized to carry the Energy Star label.

(i) "Exemption period" for clothing, computers, computer components, prewritten computer software, school supplies, school art supplies, school computer supplies, and school instructional materials means the time period provided in O.C.G.A. § 48-8-3(75)(A). "Exemption period" for Energy Star Qualified Products and WaterSense Products means the time period provided in O.C.G.A. § 48-8-3(82)(A).

(j) "Layaway sale" means a transaction in which articles are set aside for future delivery to a customer who makes a deposit; agrees to pay the balance of the sales price over a period of time; and, at the

the combination to be other than "prewritten computer software." "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the specific purchaser. Where a person modifies or enhances "computer software" of which the person is not the author or creator, the person shall be deemed to be the author or creator only of such person's modifications or enhancements. "Prewritten computer software" or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains "prewritten computer software;" provided, however, that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute "prewritten computer software."

(l) "Sales price limit" means the maximum sales prices for eligible property.

(m) "School art supply" means an item commonly used by a student in a course of study for artwork and includes only the following items:

1. Clay and glazes
2. Paints
3. Paintbrushes for artwork
4. Sketch and drawing pads
5. Watercolors

(n) "School computer supply" means an item commonly used by a student in a course of study in which a computer is used and includes only the following items:

1. Computer storage media
2. Handheld electronic schedulers, except devices that are cellular phones
3. Personal digital assistants, except devices that are cellular phones
4. Computer printers, printer paper, and printer ink

2. Reference maps and globes
3. Textbooks
4. Workbooks

(p) "School supply" means an item commonly used by a student in a course of study and includes only the following items:

1. Binders
2. Book bags
3. Calculators
4. Cellophane tape
5. Blackboard chalk
6. Compasses
7. Composition books
8. Crayons
9. Erasers
10. Folders (expandable, pocket, plastic, and manila)
11. Glue, paste, and paste sticks
12. Highlighters
13. Index cards
14. Index card boxes
15. Legal pads
16. Lunch boxes
17. Markers
18. Notebooks
19. Paper (loose leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster

22. Pencils
23. Pens
24. Protractors
25. Rulers
26. Scissors
27. Writing tablets

(q) "WaterSense Product" means a product authorized to bear the United States Environmental Protection Agency WaterSense label.

(3) **Exemption for eligible property.** Except as otherwise provided in this Rule, sales of eligible property are exempt from sales and use tax during the applicable exemption period.

(4) **Exemption for clothing.** Clothing with a sales price of $100.00 or less per item is exempt if purchased within the applicable exemption period.

(a) The application of the exemption to the sale of clothing during the exemption period is illustrated by the following examples:

1. A customer purchases three shirts for $45.00 per shirt. All three items qualify for the exemption, even though the customer's total purchase price ($135.00) exceeds $100.00.
2. A customer purchases a pair of shoes for $110.00. The purchase does not qualify for the exemption because the customer's purchase price exceeds $100.00.
3. A customer purchases a tie for $50.00, a shirt for $55.00, and a suit for $300.00. The purchase of the tie and shirt qualify for the exemption, but the suit purchase does not qualify.
4. A customer purchases football pads for $75.00 and football cleats for $50.00. These purchases qualify for the exemption.
5. A customer purchases a gold pin for $99.00. The purchase does not qualify for the exemption because the item is a clothing accessory, which is not eligible property.

4. Athletic pads and guards
5. Athletic supporters
6. Baby receiving blankets
7. Baby clothes
8. Bandanas
9. Bathing suits and caps
10. Bathing suit cover-ups
11. Belts and suspenders
12. Belts for weightlifting or back support
13. Blouses
14. Bras
15. Caps and hats
16. Coats and jackets of all types
17. Capes, shawls, and wraps
18. Corsets and corset laces
19. Costumes
20. Coveralls
21. Dresses
22. Diapers, children and adult, including disposable and reusable diapers and diaper covers
23. Ear muffs
24. Football pads
25. Footwear of all types, including cleated and spiked shoes
26. Formal wear

30. Hats and caps
31. Hand muffs
32. Headbands (athletic)
33. Helmets
34. Hosiery
35. Insoles and inserts for shoes
36. Knee pads
37. Lab coats
38. Leg warmers
39. Leotards and tights
40. Lingerie
41. Neckties and bowties
42. Pants
43. Rainwear
44. Robes
45. Scarves
46. Shin guards
47. Shirts
48. Shoe laces
49. Shorts and skorts
50. Skates (ice, roller, roller blades)
51. Skirts
52. Sleepwear
53. Socks

57. Underwear, including long or thermal underwear

58. Uniforms, athletic and non-athletic

59. Vests

(c) Taxable items include but are not limited to:

1. Baby bibs

2. Belt buckles sold separately

3. Briefcases

4. Clothing accessories or equipment

5. Corsages and boutonnieres

6. Cosmetics

7. Costume masks sold separately

8. Crib blankets

9. Cuff links

10. Diaper bags

11. Eyewear, non-prescription

12. Fanny packs

13. Hair notions, including but not limited to barrettes, hair bows, and hair nets

14. Handbags

15. Handkerchiefs

16. Hard hats

17. Jewelry

18. Key cases

19. Life jackets and vests

23. Personal flotation devices

24. Sewing equipment and supplies, including but not limited to knitting needles, patterns, pins, scissors, sewing machines, sewing needles, tape measures, and thimbles

25. Sewing materials that become part of "clothing," including but not limited to buttons, heels, soles, fabric, lace, thread, yarn, and zippers

26. Umbrellas

27. Wallets

28. Watches

29. Watchbands

30. Wigs and hair pieces.

(5) **Exemption for computers, computer components, and prewritten computer software.** Computers, computer components, and prewritten computer software with a sales price of $1,000.00 or less per item purchased for noncommercial home or personal use are exempt if purchased within the applicable exemption period.

(a) The application of the exemption to the sale of computers, computer components, and prewritten computer software is illustrated by the following examples:

1. A customer purchases three computer cables for $45.00 each and a computer for $1,000.00. All of the items qualify for the exemption, even though the customer's total purchase price ($1,045.00) exceeds $1,000.00.

2. A customer purchases a computer for $1,100.00. The purchase does not qualify for the exemption because the customer's purchase price exceeds the $1,000.00 sales price limit.

3. A customer purchases a computer cable for $50.00, a modem for $55.00 and a computer for $1,300.00. The purchase of the cable and modem qualify for the exemption, but the computer purchase does not qualify because it exceeds the sales price limit.

for $300.00 without purchasing a personal computer. The purchase is eligible for the exemption.

6. A customer purchases a computer for $1,000.00 to use in his business. The computer is not exempt because the customer purchased it for commercial use.

(b) Exempt computers, computer components, and prewritten computer software include but are not limited to:

1. Batteries (designed for a computer)
2. Cables (computer)
3. Car adaptors for laptops
4. Central processing units
5. Compact disk drives
6. Computers, including electronic book readers and laptop, desktop, handheld, tablet, and tower computers, consisting of a central processing unit, random access memory, and a storage drive
7. Data storage devices (e.g., DVDs, CDs, flash drives, diskettes, memory cards), excluding those designed for use only in digital cameras or other taxable items
8. Docking stations (designed for a computer)
9. Hard drives (computer)
10. Keyboards (computer)
11. Memory
12. Microphones
13. Modems
14. Monitors
15. Motherboards
16. Mouses

19. Prewritten computer software
20. Printer cartridges
21. Printers (including "all-in-one" models)
22. Routers
23. Scanners
24. Speakers (computer)
25. Web cameras
26. Zip drives

(c) Taxable items include but are not limited to:

1. Batteries (regular)
2. Cases for electronic devices
3. CDs/DVDs (music, voice or prerecorded items)
4. Cellular telephones
5. Computer bags
6. Copy machines
7. Digital cameras
8. Game controllers (e.g., joy sticks)
9. Game systems and consoles
10. MP3 Players or accessories
11. Projectors
12. Surge protectors
13. Televisions
14. Items purchased for commercial use

during the exemption period is illustrated by the following examples:

1. A customer purchases a box of pencils for $5.00. The purchase qualifies for the exemption.

2. A customer purchases a calculator for $30.00. The purchase does not qualify for the exemption because the sales price exceeds the $20.00 sales price limit.

3. A customer purchases ten composition books for $2.50 each. The total purchase of $25.00 qualifies for the exemption because the sales price for each item does not exceed $20.00.

4. A customer purchases a box of pens for $10.00, paper for $15.00, and chalk for $3.00 and pays with a business credit card or business check. The purchase will be presumed to be purchased for commercial use and, therefore, taxable.

(b) Exempt items are listed in the definitions of "school supplies," "school art supplies," "school computer supplies," and "school instructional materials."

(c) Taxable items include but are not limited to:

1. Briefcases

2. Envelopes

3. Janitorial Supplies

4. Medical Supplies

5. Supplies purchased for a commercial use (i.e., used in a trade or business).

(7) **Exemptions for Energy Star Qualified Products and WaterSense Products.** Energy Star Qualified Products and WaterSense Products with a sales price of $1,500.00 or less per item purchased for noncommercial home or personal use are exempt if purchased within the applicable exemption period. The application of the exemptions to the sale of Energy Star Qualified Products and WaterSense Products during the exemption period is illustrated by the following examples:

(a) A customer purchases an air conditioner from a retail dealer. The air

the sales price of each water efficient product is equal to or less than $1,500.00.

(c) A contractor enters into a contract to furnish and install an air conditioner for a customer for a total contract price of $1,000.00. The air conditioner carries the Energy Star label. The exemption does not apply to this transaction because this is a lump sum contract and not a retail sale of tangible personal property. The contractor is considered the consumer of the tangible personal property used in the performance of a real property construction contract. The contractor owes sales or use tax on the purchase of the air conditioner.

(d) A customer enters into a contract with a home improvement store to furnish and install a toilet for $1,000.00. The toilet carries the WaterSense label. The exemption does not apply to this transaction, as the home improvement store is acting as a contractor and is therefore the consumer of tangible personal property (i.e., the toilet) in the performance of a real property construction contract.

(e) A customer purchases for personal use a door for $500.00 and five windows for $250.00 each at a home improvement store. The customer takes possession of the products at the time of purchase and does not enter into an installation contract with the home improvement store. The door and windows carry the Energy Star label. The door and windows qualify for the exemption since the sales price of each energy efficient product is equal to or less than $1,500.00. Note: the customer did not enter into an installation contract, contrary to the facts in the previous example.

(f) Assume the same facts as the previous example. After purchasing the items tax exempt, the customer provides them to a contractor to install in the customer's home. Pursuant to O.C.G.A. § 48-8-63(c), the contractor owes use tax on the fair market value of the items.

(8) **Sales price limits.**

(a) **Articles normally sold as a unit.** Articles normally sold as a unit may not be priced separately and sold as individual items in order to meet the sales price limit. The following examples illustrate the application of the rule to the exemption:

1. A pair of shoes sells for $200.00. The pair of shoes cannot be split in order to sell each shoe for $100.00 to qualify for the exemption.

articles and qualify for the exemption.

3. A packaged gift set consisting of a wallet (ineligible item) and tie (covered item) does not qualify for the exemption.

(b) **"Buy one, get one free" and other similar offers.** If a dealer offers "buy one, get one free" or "two for the price of one" on covered items, the covered items are exempt only if the sales price falls within the sales price limit during the exemption period. If a dealer offers "buy one, get one for a reduced price," the two prices cannot be averaged to meet the sale price limit.

The following examples illustrate the application of this rule to the exemption:

1. A dealer offers "buy one, get one free" on a pair of shoes. The first pair of shoes has a sales price of $99.00 and the second pair is free. Both pairs of shoes qualify for the exemption because the first pair of shoes does not exceed the $100.00 sales price limit.

2. A dealer offers "buy one, get one free" on a pair of shoes. The first pair of shoes has a sales price of $150.00 and the second pair is free. The transaction does not qualify for the exemption because the first pair of shoes exceeds the $100.00 sales price limit.

3. A coat is purchased for $120.00 and a second coat is purchased for half price ($60.00) at the time the first coat is purchased. The second coat will qualify for the exemption, but tax will be due on the first coat. In this example, the sales price of the items may not be averaged in order to qualify for the exemption.

(c) **Discounts, coupons, and rebates.** The application of the exemption to discounts, coupons, and rebates extended to a covered item during the exemption period is illustrated by the following examples:

1. Dealer discounts taken by the customer at the time of sale reduce the sales price of items for purposes of determining whether the sales price falls within the sales price limit. For example, during the exemption period, if a dealer sells a pair of jeans with a sales price of $110.00 at a 10 percent discount, the exemption applies because the actual sales price of the jeans is $99.00.

$105.00, the exemption applies to the purchase because the dealer's actual sales price to the customer is $100.00.

3. Manufacturers' coupons (i.e., coupons whereby the manufacturer reimburses the dealer the amount discounted by the coupon) do not reduce the sales price for purposes of determining whether the item meets the sales price limit. For example, if a customer gives a dealer a manufacturer's coupon for $100.00 toward the purchase of a computer with a sales price of $1,100.00, the exemption does not apply because the $1,100.00 price exceeds the sales price limit.

4. Rebates to the customer made after the point of sale do not reduce the sales price of the purchased item for purposes of determining whether or not an item is taxable. For example, a customer purchases a pair of jeans for $110.00. After the sale the customer receives a $10.00 rebate. The exemption does not apply because the sales price exceeds $100.00.

5. An "instant rebate" that is actually a store discount reduces the sales price for purposes of determining whether or not the item qualifies for the exemption.

6. If a discount applies to the total amount paid by a purchaser rather than to the sales price of a particular item and the purchaser has purchased covered items and taxable property, the seller should allocate the discount based on the total sales price of the taxable property compared to the total sales price of all property sold in that same transaction. For example, a purchaser buys a pair of jeans for $110.00 and an umbrella for $20.00 with a store coupon for 20 percent off the total sale. After the discount, the jeans are exempt because they cost $88.00.

(d) **Gift certificates and gift cards.** A gift certificate or gift card cannot be used to reduce the selling price of a covered item to meet the sales price limit. For example, a purchaser uses a $50.00 gift card to buy a computer with a sales price of $1,025.00. The computer is not exempt because it exceeds the $1,000.00 sales price limit.

(e) **Delivery charges.** Delivery charges are not included in the purchase price for purposes of determining whether an item falls within the sales price limit. For example, an article of clothing is purchased for $99.00, and a shipping charge of $2.00 is imposed.

order, when the seller accepts the order, when the seller completes the electronic payment transaction, or when the order is delivered.

(a) **Electronic payments.** For purposes of this Rule, a purchaser using an electronic payment method, such as a debit card or a credit card, tenders payment at the time when the purchaser provides the seller with the purchaser's payment information. The following examples illustrate the rules pertaining to electronic payment transactions:

1. A customer places an order and gives the seller the customer's credit card information during the exemption period for the purchase of eligible property. The seller charges the credit card and ships the item after the exemption period. The item qualifies for exemption.

2. A customer places an order and gives the seller the customer's credit card information before the exemption period for the purchase of eligible property. The seller charges the credit card and ships the item during the exemption period. The item is not exempt because payment was not tendered during the exemption period.

(b) **Layaway sales.** A sale of eligible property under a layaway sale qualifies for exemption ifthe purchaser makes the final payment during the exemption period even if delivery is made after the exemption period.

1. A customer places eligible property on layaway during the exemption period. The customer makes final payment after the exemption period. The exemption does not apply.

2. A customer places eligible property on layaway before the exemption period and makes the final payment during the exemption period. The entire purchase price of the property is exempt because the customer paid in full during the exemption period. The exemption applies even if the customer retrieves the property after the exemption period.

(c) **Rental property.** Recurring periodic rental payments are not exempt even if made during the exemption period. A full payment for the rental of eligible property is exempt if made during the exemption period. The following examples illustrate the tax treatment of rental charges during the exemption period:

1. A customer pays in full during the clothing sales tax holiday exemption period for the rental of a tuxedo. The rental charge is exempt from sales tax.

(d) **Exchanges.** The application of the exemption to an exchange (i.e., wherein a purchaser returns an item and receives a credit toward the purchase of a new item) of eligible property is illustrated by the following examples:

1. A customer purchases eligible property during the exemption period, but later exchanges the item for a product with the same price. No additional tax is due, even though the exchange is made after the exemption period, because the credit on the exchange reduces the sales price to zero.

2. A customer purchases eligible property during the exemption period. After the exemption period has ended, the customer exchanges the product for a product with a higher price. Sales tax is due on the difference between the price of the newly purchased item and the price of the returned item.

3. If a customer purchases eligible property before the exemption period, but during the exemption period the customer returns the item and receives credit toward the purchase of a different item of eligible property, sales tax paid on the returned item must be refunded to the customer.

(e) **Gift certificates and gift cards.** Eligible property purchased during the exemption period using a gift certificate or gift card is exempt, regardless of when the gift certificate or gift card was purchased. Covered items purchased after the exemption period using a gift certificate or gift card are taxable even if the gift certificate or gift card was purchased during the exemption period.

(f) **Rain checks.** A rain check allows a customer to purchase an item at a certain price at a later time because the particular item is out of stock. Eligible property purchased during the exemption period using a previously issued rain check qualifies for the exemption. However, a rain check issued during the exemption period will not qualify eligible property for the exemption if the property is purchased after the exemption period.

(g) **Different time zones.** The time zone of the seller's location determines the authorized time period for a sales tax holiday.

(10) **Records.**

(a) **Dealer records.** Dealers are not required to obtain an exemption certificate for sales of eligible property during the exemption

customer returns an item that would qualify for the exemption, no refund of tax may be given unless the customer provides a receipt or invoice showing tax was paid or the dealer has sufficient documentation to show that tax was paid on the specific covered item. This 60-day period is set solely for the purpose of designating a time period during which the customer must provide documentation that shows that sales tax was paid on returned merchandise. The 60-day period is not intended to change a seller's policy on the time period during which the seller will accept returns.

(11) **Calculation of tax on delivery charges.**

(a) Delivery charges associated with taxable sales are taxable regardless of whether the charge is optional (i.e., not required to complete the underlying sale of the tangible personal property) or separately stated.

(b) Delivery charges associated with nontaxable sales are not taxable.

(c) If a shipment includes exempt item(s) and taxable property (including an otherwise eligible item with a sales price in excess of the price limit), the seller must tax the percentage of the delivery charge allocated to the taxable property but does not have to tax the percentage allocated to the eligible property. To determine the taxable portion of the delivery charge, the seller should allocate the delivery charge by using:

1. a percentage based on the total sales prices of the taxable property compared to the total sales prices of all property in the shipment; or

2. a percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment.

For example, two articles of clothing are purchased - one for $110.00 and one for $99.00. The seller charges a $5.00 shipping fee. The $99.00 item qualifies for the exemption. Since the $110.00 item exceeds the sales price limit, it is taxable. The total sales price of the two items, without taking into account the shipping fee, is $209.00. 53 percent of that amount represents taxable items; therefore, 53 percent of the shipping fee ($2.65) is taxable.

Services

(1) **Purpose**. This Rule sets forth the application of Georgia sales and use tax concerning the sale or use of computer software and computer-related services.

(2) **Definitions.** For the purposes of this Rule, the following definitions and explanations of terms shall apply:

(a) "Application program" means a set of statements or instructions that when incorporated in a machine-usable medium is capable of causing a machine or device having information processing capabilities to indicate, perform, or achieve a particular function, task, or result for the end user. Application programs include any other computer software that does not qualify under subparagraph (2)(h) or (2)(n).

(b) "Computer" means the components and accessories that constitute the physical computer assembly that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions. A computer includes but is not limited to these components and accessories: a central processing unit, keyboard, console, monitor, memory unit, disk drive, tape drive or reader, terminal, printer, plotter, modem, document sorter, and optical reader.

(c) "Computer-related services" means services including, but not limited to, computer programming, installation, time-sharing, consulting, training, data processing, system testing, and information retrieval.

(d) "Computer software"means any computer data, program or routine, or any set of one or more programs or routines, which are used or intended for use to cause one or more computers, pieces of computer-related peripheral equipment, automatic processing equipment, or any combination thereof, to perform a task or set of tasks. Without limiting the generality of the foregoing, the term "computer software" shall include operating programs, application programs, system programs, and any other subdivisions (such as assemblers, compilers, generators, and utility programs).

(e) "Custom computer software" means computer software, including custom updates, which is designed and developed by the author to the specifications of a specific purchaser. Any subsequent sale of custom software to a different purchaser, customer, person, or entity shall be deemed the sale of prewritten computer software.

transferred to the purchaser.

(h) "Operating program" means a set of statements or instructions that when incorporated into a machine or device having information processing capabilities is an interface between the computer hardware and the application program or system program.

(i) "Prewritten computer software," also known as "canned computer software," means computer software that is designed, prepared, or held for general distribution or repeated use, or software programs developed in-house and subsequently held or offered for repeated sale, lease, license, or use.

(j) "Software license agreement" means the transfer of possession and the right to use computer software for the purpose of reproduction or other use in a computer.

(k) "Software maintenance agreement" means providing error corrections, fixes, improvements, technical support upgrades and updates to purchased or licensed computer software under a single agreement.

(l) "Streamlined Sales Tax Project" ("SSTP") is an effort created by state governments, with input from local governments and the private sector, to simplify and modernize sales and use tax collection and administration. The SSTP's proposals include tax law simplifications, more efficient administrative procedures, and emerging technologies to substantially reduce the burden of tax collection. The SSTP will develop measures to design, test and implement a sales and use tax system that simplifies sales and use taxes.

(m) "Streamlined Sales and Use Tax Agreement" describes the agreement developed by the Streamlined Sales Tax Project, which provides for uniform definitions, terms of art, collection and registration responsibilities, governing board procedures, and other articles of importance related to sales and use tax. These items will provide for simplification and uniformity when adopted by the implementing states.

(n) "System program" means a set of statements or instructions that interacts with the operating program that is developed, licensed, and intended to build, test, manage, or maintain application programs.

(3) **Computer software sold in a tangible medium.**

1. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be anything other than prewritten computer software.

2. Prewritten computer software includes computer software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold in a tangible medium to a person other than the specific purchaser.

(b) Custom computer software. The sale, lease, rental, license, or use of custom computer software is a professional service transaction not subject to sales and use tax.

1. A purchaser may receive custom software by means of a tangible medium without changing the taxability of the purchase. The transfer to the purchaser in a tangible medium is deemed to be merely an incidental part of the sale of a nontaxable professional service.

2. Sales of multiple copies or license agreements of custom software to the original purchaser are not subject to sales and use tax. Custom software becomes prewritten computer software when it is sold to someone other than the person for whom it was designed and developed.

3. Charges for custom computer software that are not separately stated on the dealer's invoice from the sale, lease, or rental of hardware, machinery, or equipment are considered subject to the tax as part of the hardware, machinery, or equipment sale.

(c) Modified prewritten computer software.

1. Prewritten computer software or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software.

2. If there is a separately stated charge on the dealer's invoice for the modification or enhancement of prewritten computer software, the charge for modification or enhancement is not subject to sales and use tax.

not indicated on the dealer's invoice, purchase contract, or other documentation, delivery will be presumed to have been made through a tangible medium, and the burden will be upon the taxpayer to establish to the satisfaction of the Department that the computer software was delivered electronically.

(b) If a dealer delivers computer software electronically and also provides the same computer software to the purchaser in a tangible medium, the transaction shall be treated as the taxable sale of tangible personal property unless the software qualifies as custom software.

(5) **Computer software installation and maintenance agreements**.

(a) Computer software installation services. Charges for computer software installation services are not subject to sales and use tax when such charges are separately stated on the dealer's invoice.

(b) Software maintenance agreements - charges bundled. Software maintenance agreements that are bundled, as opposed to separately stated, on the dealer's invoice for prewritten software provided in a tangible medium are subject to sales and use tax.

(c) Software maintenance agreements - charges separately stated. Separately stated charges for software maintenance agreements, when such agreements include prewritten software updates, upgrades, or enhancements delivered in a tangible medium and include support services, are deemed to be taxable at 50 percent of the software maintenance agreement's total stated sales price. The dealer may elect to use an alternate percentage if the percentage can be established to the satisfaction of the Department that the alternate percentage is based upon reasonable accounting methods. For example, the alternate percentage may be derived using the cost or estimated retail sales price of the software update, upgrade or enhancement. If it is determined that the alternate percentage used by the dealer is not based on reasonable accounting methods, the Department shall require the dealer to remit additional sales and use tax based upon 50 percent of the stated sales price of the software maintenance agreement.

(d) Software maintenance agreements - updates, upgrades, or enhancements only. Separately stated charges for software maintenance agreements that include only prewritten software updates, upgrades, or enhancements delivered in a tangible medium, and no support services, are subject to sales and use tax on the total sales price.

(f) Software maintenance agreements - custom software. Separately stated charges for custom software maintenance agreements, including software updates, upgrades, or enhancements delivered in a tangible medium, are not subject to sales and use tax.

(g) Taxed software maintenance agreements - Deductions. If a dealer has previously taxed the sale of a software maintenance agreement, and software updates, upgrades, or enhancements are not provided in a tangible medium or are not provided at all, then the dealer may claim a deduction on their sales and use tax return for the taxable amount of the software maintenance agreement. In order to claim the deduction, the dealer must be able to show that sales tax was previously collected and remitted to the Department and that a corresponding credit for all sales tax paid on the software maintenance agreement has been issued to the purchaser.

(h) Streamlined Sales and Use Tax Agreement. In the event that the Streamlined Sales and Use Tax Agreement adopts a different taxable percentage or amount with respect to software maintenance agreements, the percentage as stated in subparagraph (5)(c), as well as the ability to establish a different percentage to the satisfaction of the Department, shall be replaced with the taxable percentage or amount provided in the Streamlined Sales and Use Tax Agreement. If the Streamlined Sales and Use Tax Agreement is silent with respect to the taxability of software maintenance agreements, the provisions of subparagraph (5)(c) shall apply.

(6) **Miscellaneous.**

(a) Load and leave. Prewritten or modified computer software transferred to the retail purchaser by means of load and leave is not subject to sales and use tax. The transaction is not deemed to be the sale of tangible personal property when the retailer installs the computer software and the computer software does not remain permanently in the purchaser's possession in a tangible medium after the computer software has been installed.

(b) Computer-related services. The sale of a computer-related service is not subject to sales and use tax when the charge is separately stated on the dealer's invoice. If the charge for a computer-related service is bundled together with a taxable retail sale, lease, rental, license or use of prewritten computer software, then the entire charge is subject to tax.

(d) Prewritten computer software sold, leased, rented or licensed and delivered in a tangible medium, is exempt from Georgia sales and use tax when the transaction qualifies for exemption under O.C.G.A. §§ 48-8-3(34), 48-8-3(34.1), 48-8-3(34.2), 48-8-3(36), 48-8-3(36.1), 48-8-3(58), or 48-8-3(68).

Rule 560-12-2-.112 Repealed

Rule 560-12-2-.113 Hunting Preserves and Hunting Clubs

(1) Purpose. This Rule sets forth the application of sales and use tax to the operation of hunting preserves, hunting clubs, or other similar operations conducting outdoor recreational activities related to hunting animals.

(2) Definitions. For the purposes of this Rule, the following definitions and explanation of terms shall apply:

(a) "Hunting Preserves and Hunting Clubs" means those business operations that allow the general public the privilege of hunting animals in a designated area for a charge or fee. Such business may also routinely offer lodging, meals, sales or rental of tangible personal property, and other types of entertainment or recreational activity.

(b) "Real Property Lease" means a lease of land that grants the privilege of hunting animals located on the land.

(3) Sales.

(a) Charges or fees, except as provided for in subparagraph (3)(b) of this Rule, for conducting outdoor recreational activities related to hunting animals in Georgia are subject to sales tax. Outdoor recreational activities related to hunting animals may include, but are not limited to:

1. Admission or membership charges or fees paid to a hunting preserve, hunting club, or any other similar operations that provide the privilege of hunting stocked and/or wild game;

2. Hunting charges or fees derived on a basis of per bird or animal, additional bird or animal, or released bird or animal;

3. Providing lodging or accommodations;

4. Providing meals or beverages;

5. Providing skeet, trap, or target range shooting;

property;

8. Sales of ammunition, clothing, or other tangible personal property; and

9. Trophy fees and game release charges or fees.

(b) Charges or fees for a state-hunting license, guide services, cleaning, processing and packing of game, voluntary gratuities, taxidermy, the boarding of animals, or the training of dogs are not subject to sales tax when separately itemized on the seller's invoice.

(4) Purchases.

(a) The purchase of live game birds, food, beverages, ammunition, skeet birds, items exclusively used for rental, and other items purchased for resale by a hunting preserve, hunting club, or other similar operations providing for the outdoor recreational activity of hunting animals are not subject to tax when a properly executed *Certificate of Exemption*, Form ST-5, is provided to the dealer. Alcoholic beverages are only considered purchases for resale when the operator of a hunting preserve, hunting club, or other similar operations holds a valid Georgia alcohol license.

(b) Purchases of equipment and supplies used in the operation of a hunting preserve, hunting club, or other such place providing for the outdoor recreational activity of hunting animals are subject to sales and use tax at the time of purchase. Examples include, but are not limited to, motor vehicles, all-terrain vehicles, boats, rafts, oars, motors, hunting dogs, horses, hunting stands, cooking gear, safety equipment, targets, skeet and trap equipment, brochures, animal feed, motor fuel, furniture, and promotional give-away items.

(5) A real property lease or membership in a private club that provides access solely to its members and not to the general public for the exclusive right to hunt animals is not subject to sales tax.

Rule 560-12-2-.114 Repealed

Rule 560-12-2-.115 Restaurants

(1) **Purpose.** This Rule addresses the application of sales and use tax to purchases and sales made by establishments that sell prepared food. Such establishments are generally referred to as restaurants and include but are not limited to coffee shops, cafeterias, short order cafes, luncheonettes, taverns, lunchrooms, soda fountains, food carts, food trucks, itinerant restaurants, catering establishments, and similar facilities.

platters, and the accompanying lids.

(b) "Premises" means the total space and facilities in or on which the seller conducts business, including but not limited to parking areas for the convenience of in-car consumption, counter space, indoor or outdoor tables, chairs, benches, and similar conveniences.

(3) **Sales of food.** Pursuant to O.C.G.A. § 48-8-3(57), certain food items are exempt from state sales tax. Rule 560-12-2-.104 addresses the taxation of food and is summarized as follows:

(a) **Prepared food.** "Prepared food" is subject to both state and local sales and use tax. The term "prepared food" generally includes meals sold by a restaurant but does not include food items entirely prepared off the seller's premises. "Prepared food" includes the following:

1. Food sold in a heated state or heated by the seller at the seller's location. This includes food heated by the seller at any time before the sale, even if the item is in an unheated state at the time of sale.

2. Food with two or more food ingredients mixed or combined at the seller's location by the seller for sale as a single item.

3. Food sold with eating utensils provided by the seller. Food is considered to be sold with eating utensils provided by the seller when the food is customarily intended for consumption with the utensils provided. The presence of self-service utensils in a restaurant does not make otherwise exempt food taxable unless it is customarily intended that the food be consumed with those utensils.

Example 1: Seller purchases tea prepared off-site and sells the tea in cups. The seller does not add any ingredients and does not heat the tea. The tea is subject to both state and local tax because the cup is a "utensil" according to Rule 560-12-2-.104.

Example 2: The seller purchases and subsequently sells single-serving size bottled beverages. Utensils are not customarily used to consume single-serving bottled beverages; therefore, single-serving bottled beverages sold for off-premises consumption are subject only to local tax.

Example 3: The seller sells bottles of barbecue sauce prepared off-site. The seller neither heats nor adds

(b) **Food and food ingredients.** "Food and food ingredients" sold to natural persons for consumption off premises is not subject to state sales and use tax, but is subject to local sales and use tax.

1. For purposes of the food exemption in O.C.G.A. § 48-8-3(57),"food and food ingredients" does not include prepared food, alcoholic beverages, dietary supplements, tobacco, and items ingested or chewed primarily for medical or hygiene purposes, such as cough drops, throat lozenges, breath strips, and over-the-counter medications.

2. The term "food and food ingredients" includes food that is prepared off-premises. For example, if sold for off-premises consumption without utensils, cakes prepared off-premises are exempt from state sales and use tax, but are subject to local sales and use tax. However, if utensils customarily intended to be used to consume the cake are provided or made available by the seller, the cake is subject to both state and local sales and use tax as "prepared food."

3. "Food and food ingredients" sold for on-premises consumption is subject to both state and local sales and use tax. Thus, a bag of chips sold by a restaurant for on-premises consumption is subject to state and local sales and use tax.

4. The state sales and use tax exemption for "food and food ingredients" is not available to businesses purchasing food and food ingredients. Unless another exemption applies, business entities, including nonprofit organizations, must pay both state and local sales and use tax on all purchases of food and food ingredients.

(c) **Food sold in bulk.** Food sold in bulk is not afforded special tax treatment, but is taxed in accordance with the rules set forth in this paragraph (3).

Example 1: Seller purchases cole slaw prepared off-site in bulk. Without heating or adding ingredients to the cole slaw, the seller then resells the cole slaw in a bulk size (multi-serving) package for off-premises consumption. The seller makes forks available at no charge. The cole slaw is prepared food since it is sold with utensils and is thus subject to both state and local tax.

Example 2: Assume the same facts as Example 1, except the seller makes no utensils available. The cole slaw is exempt from state tax.

seller makes straws available at no charge. The tea is exempt from state tax because gallon jugs of tea are not customarily consumed with straws.

Example 5: Same facts as in Example 3, but the seller makes no utensils available. The tea is exempt from state tax.

Example 6: The seller sells 10-pound bags of ice prepared off-premises. The seller makes cups available at no charge. The ice is subject to both state and local tax.

Example 7: Same facts as in Example 6, but the seller makes no utensils available. The ice is exempt from state tax.

Example 8: The seller makes ice on-site and sells it in 10-pound bags. The seller makes no utensils available. The ice is exempt from state tax because making ice involves neither mixing nor heating ingredients.

(d) **Combination meals.** If the sales price of a combination meal is attributable to products that are subject to tax at different tax rates, the total price must be treated as attributable to the products subject to tax at the highest tax rate unless the seller can identify, by reasonable and verifiable standards from the seller's books and records that are kept in the regular course of business for other purposes, including nontax purposes, the portion of the sales price attributable to the products subject to tax at the lower tax rate.

For example, a lunch consisting of hot chicken (subject to state and local tax because it is sold heated) and a bag of chips is sold for off-premises consumption for a single price of $3.95. No eating utensils are provided by the seller. The seller must charge both state and local sales tax on the entire sales price of the meal. However, the seller may instead charge state and local sales tax for the chicken and only local sales tax for the bag of chips if the seller can demonstrate with its books and records the portion of the total sales price attributable to the chips, that the chips were not prepared by the seller on premises, that the chips were sold without utensils customarily used to consume chips, and that the chips were sold for off-premises consumption.

(4) **Employee meals.** Rule 560-12-2-.65 addresses employee meals and is summarized as follows:

(a) The sale of food and beverages by an employer to an employee is subject to sales tax on the total sales price charged to the

the employee's food and beverages is not represented in the employer's records, the cost shall be deemed to be fifty percent (50%) of the retail sales price of the food and beverages.

(5) **Gratuities.**

(a) An amount, whether designated as a tip, gratuity, or service charge, is mandatory and subject to tax when

1. negotiated between the seller and the customer in advance of a meal or event;

2. unilaterally added to the bill by the seller; or

3. added to the bill by the customer pursuant to a statement printed on a menu, sign, advertisement, or brochure indicating that tips, gratuities, or service charges are mandatory.

(b) Notwithstanding subparagraph (a)2, when a tip, gratuity, or service charge is added unilaterally to the bill by the seller, the amount added is optional and not subject to tax when the seller clearly and conspicuously states on the bill, menu, or signage located in an area visible to customers that tips, gratuities, and service charges are optional and may be removed from the bill at the customer's discretion.

(6) **Purchases by restaurants.**

(a) **Food packaging.** Single-use food packaging used to contain food that is transferred to the customer is exempt from sales and use tax pursuant to O.C.G.A. § 48-8-3(94).

(b) **Items for sale.** A retailer may purchase food items and other items of tangible personal property for resale without payment of sales and use tax and hold such property for sale at retail in the regular course of business. A toy sold as a component part of a meal may be purchased tax free as an item for resale.

(c) **Single-use items provided with meals sold.** The following single-use items that are provided or made available to restaurant customers without charge are a component part of a meal sold to the customer and may be purchased tax free for resale: straws, swizzle sticks, stirrers, napkins, doilies, forks, sporks, knives, spoons, toothpicks, chopsticks, tray liners, and pre-moistened disposable cloths.

Example 1: A restaurant places ketchup bottles on dining tables for customers' use. The restaurant may purchase the ketchup tax free for resale.

Example 2: A restaurant puts ketchup packets in bags containing "to go" meals sold to customers and makes ketchup packets available on its self-service island. It also provides ketchup in a dispenser on the self-service island. The restaurant may purchase tax free for resale all of the ketchup in this example.

Example 3: A restaurant provides peanuts or tortilla chips and salsa as a complement to the sale of other food or beverage items. The restaurant may purchase the peanuts, chips, and salsa tax free for resale.

(e) **Items used or consumed by the restaurant.**

1. Tangible personal property used or consumed by a restaurant is not purchased for resale and as such is subject to tax. Such taxable property includes but is not limited to complimentary meals furnished to employees or customers; tables, tents, chairs, bars, linens, cloth napkins, silverware, glassware, chinaware, serving utensils, table covers, and reusable containers; ice used to chill food or beverages before serving; floral arrangements; and single-use items that are not a component part of a meal sold to a customer. Examples of taxable single-use items include paper towels, plastic serving utensils, aluminum foil used for cooking or storage, toilet paper, plastic wrap, crayons provided for customers' on-premises entertainment, paper placemats, and paper menus.

2. Condiments and single-use items served as a component part of a complimentary meal are considered used or consumed by the restaurant and as such are subject to tax.

3. Single-use containers used to transport complimentary meals are exempt from sales and use tax pursuant to O.C.G.A. § 48-8-3(94).

(f) Duty to keep records. Tangible personal property purchased for resale may be subject to tax unless the retailer can identify, by reasonable and verifiable standards from its books and records that are kept in the regular course of business for any purpose, including nontax purposes, that such property has been resold or is designated for resale.

(a) Charges by the seller for any services that are necessary to complete the sale of taxable tangible personal property are taxable, even if such charges are separately itemized.

Example 1: A caterer requires customers purchasing alcohol to purchase bartender and ID checking services. The bartender and ID checking service charges are taxable.

Example 2: A caterer charges a fuel surcharge when delivering food. The fuel surcharge is taxable.

(b) Charges by the seller for any services that are not necessary to complete the sale of taxable tangible personal property are not subject to sales or use tax if separately itemized.

Example 1: A caterer provides coat checking as an optional add-on service to a catered event. The coat checking service is separately itemized on the customer's bill. The service is not taxable.

Example 2: Assume the same scenario as Example 1, but the charge is not separately itemized and is instead included in the total catering charge. The coat checking service is taxable.

Rule 560-12-2-.116 Refunds under the Tourism Development Act

(1) **Purpose.** This Rule addresses the refund of sales tax under the Tourism Development Act ("the Act") as passed in 2013.

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

(a) "Agreement" means an agreement for a Tourism Attraction Project between the Department of Community Affairs and an Approved Company pursuant to O.C.G.A. § 48-8-275.

(b) "Annual Sales and Use Tax" means remitted state sales and use taxes and remitted local sales and use taxes, subject to Paragraph (3)(g), that were generated by sales to the general public at the Approved Tourism Attraction during the calendar year immediately preceding the date of filing the Sales and Use Tax Refund claim.

(c) "Approved Company" means the entity that has submitted an application to undertake a Tourism Attraction Project that has been approved pursuant to O.C.G.A. § 48-8-274. For each Tourism Attraction Project, only one company may be approved under the Act.

of a new Tourism Attraction Project;

(ii) The costs of acquiring real property or rights in real property and any costs incidental thereto;

(iii) All costs for construction materials and equipment installed at the new Tourism Attraction Project;

(iv) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition, construction, equipping, and installation of a new Tourism Attraction Project which is not paid by the vendor, supplier, deliveryman, or contractor or otherwise provided;

(v) All costs of architectural and engineering services, including but not limited to estimates, plans and specifications, preliminary investigations, and supervision of construction and installation, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping, and installation of a new Tourism Attraction Project;

(vi) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, and installation of a new Tourism Attraction Project;

(vii) All costs required for the installation of utilities, including but not limited to water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and off-site construction of utility extensions if paid for by the Approved Company; and

(viii) All other costs comparable with those described in this subparagraph; or

2. For existing Tourism Attractions, any Approved Costs otherwise specified in Subparagraph 1 for new Tourism Attractions; provided, however, that such costs are limited to the expansion only of an existing Tourism Attraction and not the renovation of an existing Tourism Attraction.

estate to an existing Tourism Attraction for the purpose of increasing its size, scope, or visitor capacity.

(g) "Incremental Sales and Use Tax" means remitted state sales and use taxes and remitted local sales and use taxes, subject to Paragraph (3)(g), that were generated by sales to the general public at the Approved Tourism Attraction from the date on which construction of the expansion Project is completed through the end of the calendar year immediately preceding the date of filing the Incremental Sales and Use Tax Refund claim, less the remitted state sales and use taxes and remitted local sales and use taxes, subject to Paragraph (3)(g), that were generated by sales to the general public at the Approved Tourism Attraction during the 12-month period preceding the commencement of construction of the expansion Project that corresponds to the time period for which post-expansion sales tax was collected. Refer to Form ST-12 Tourism for examples demonstrating the calculation of Incremental Sales and Use Tax.

(h) "Incremental Sales and Use Tax Refund" means the amount equal to the lesser of the Incremental Sales and Use Tax or 2.5 percent of the total of all Approved Costs incurred at any time prior to January 1 of the year during which the claim for the Incremental Sales and Use Tax Refund is filed.

(i) "Local Sales and Use Tax" means any sales and use tax, excluding the sales tax for educational purposes levied pursuant to Part 2 of Article 3 of Title 48, Chapter 8 of the Official Code of Georgia and Article VIII, Section VI, Paragraph IV of the Georgia Constitution, that is levied and imposed in an area consisting of less than the entire state, however authorized.

(j) "Renovation" means the restoration, rebuilding, redesign, repair, or replacement of worn elements so that the functionality, quality, or attractiveness of buildings or structures is equivalent to a former state.

(k) "Sales and Use Tax Refund" means the amount equal to the lesser of the Annual Sales and Use Tax or 2.5 percent of the total of all Approved Costs incurred at any time prior to January 1 of the year during which the claim for the Sales and Use Tax Refund is filed.

(l) "State tax incentive" means a tax credit allowed under Chapter 7 of Title 48 or a state sales tax exemption allowed under Chapter 8, Article 1 of Title 48.

tourists to the State of Georgia; or a Georgia crafts and products center. The term excludes enterprises that are primarily devoted to the retail sale of goods, shopping centers, restaurants, or movie theaters.

(n) "Tourism Attraction Project" or "Project" means the construction or expansion of a Tourism Attraction and includes the real estate acquisition, including the acquisition of real estate by a leasehold interest with a minimum term of 30 years; the construction and equipping of a Tourism Attraction; the construction and installation of improvements to facilities necessary or desirable for the acquisition, construction, and installation of a Tourism Attraction, including but not limited to surveys; installation of utilities, which may include water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and off-site construction of utility extensions if paid for by the Approved Company. The term does not include the renovation of an existing Tourism Attraction.

(3) Refund claims.

(a) In the discretion of the commissioner of economic development and the commissioner of community affairs, in consideration of the execution of the Agreement and subject to the Approved Company's compliance with the terms of the Agreement, an Approved Company will be granted a Sales and Use Tax Refund for new Projects or an Incremental Sales and Use Tax Refund for expansions of existing Tourism Attractions.

(b) The Approved Company is not obligated to refund or otherwise return any amount of this Sales and Use Tax Refund to the persons from whom the sales and use tax was collected.

(c) The term of the Agreement granting a refund under the Act is ten years, commencing on the date the Tourism Attraction opens for business and begins to collect sales and use taxes or, for an expansion, the date construction is complete.

(d) For each calendar year or partial calendar year occurring during the term of the Agreement, an Approved Company must file with the Department of Revenue a properly completed Claim §for Refund (Form ST-12 Tourism) by March 31 of the following year.

(e) No Sales and Use Tax Refund will be granted to an Approved Company that is during a tax year simultaneously receiving any other state tax incentive associated with any one Tourism Attraction Project. A Sales and Use Tax Refund granted to an Approved

(g) By resolution and at the discretion of the county and city, if any, where the Tourism Attraction Project is to be located, the local sales and use tax may be refunded under the same terms and conditions as any refund of state sales and use taxes.

(h) Interest will not accrue on refunds made under the Tourism Development Act.

(4) Compliance with the terms of the Agreement. Receipt of a refund is conditioned upon compliance with the Agreement between the Approved Company and the commissioner of economic development and the commissioner of community affairs. In the event an Approved Company fails to abide by the terms of the Agreement, then such Agreement is void and all sales and use tax proceeds that were refunded are immediately due and payable to the state.

(5) Transfer of rights, duties, and obligations to successor company. An Approved Company may, in the discretion of the Governor, transfer its rights, duties, and obligations under the Agreement to a successor company if the successor company meets the qualifications of an Approved Company; and, upon such approval by the Governor, such successor Approved Company is authorized to receive the Sales and Use Tax Refunds for the remaining duration of the Agreement if it abides by the terms of the Agreement.

Rule 560-12-2-.117 High-Technology Data Center Equipment

(1) **Purpose**. This Rule addresses the sales and use tax exemption in O.C.G.A. § 48-8-3(68.1) for certain high-technology data center equipment.

(2) **Definitions**. For purposes of this Rule, the following definitions apply:

(a) "Exemption Start Date," used synonymously with the term "Investment Start Date," means the date on or after July 1, 2018, chosen by the High-Technology Data Center and indicated on its Certificate of Exemption application, which begins the seven-year period during which the Minimum Investment Threshold must be met.

(b) "High-Technology Data Center" means a single legal entity's facility, campus of facilities, or array of interconnected facilities in this state that is developed to power, cool, secure, and connect its own equipment or the computer equipment of High-Technology Data Center Customers and that has an investment budget plan which meets the High-Technology Data Center Minimum Investment

licensee, or end user of a High-Technology Data Center that is a party to a contract that is for an initial term of at least 36 months and that is for data center services with the High-Technology Data Center.

1. A client, tenant, licensee, or end user of a High-Technology Data Center is a High-Technology Data Center Customer only while such client, tenant, licensee, or end user is a party to a qualifying contract.

2. The initial term of the contract may begin before the effective date of this exemption.

3. If a qualifying contract is extended for any consecutive term after the initial term, the customer remains a High-Technology Data Center Customer during such term.

(d) "High-Technology Data Center Equipment"

1. Subject to the exclusion in paragraph (2)(d)2., High-Technology Data Center Equipment means

(i) Computer equipment, as defined in O.C.G.A. § 48-8-3(68), of a High-Technology Data Center or such equipment of a High-Technology Data Center Customer that is used or deployed in the High-Technology Data Center; and

(ii) The High-Technology Data Center's or High-Technology Data Center Customer's materials, components, machinery, hardware, software, or equipment, including but not limited to, emergency backup generators, air handling units, cooling towers, energy storage or energy efficiency technology, switches, power distribution units, switching gear, peripheral computer devices, routers, batteries, wiring, cabling, or conduit, which equipment or materials are used to:

(I) Create, manage, facilitate, or maintain the physical and digital environments for computer equipment in the High-Technology Data Center;

(II) Protect the High-Technology Data Center Equipment from physical, environmental, or digital threats; or

2. This term shall not include Real Property, as defined in this Rule.

(e) "High-Technology Data Center Minimum Investment Threshold," used synonymously with the term "Minimum Investment Threshold," means creating and maintaining an average of 20 New Quality Jobs at the High-Technology Data Center during the Investment Period and making the qualifying aggregate expenditures during the Investment Period, as described in paragraph (4).

(f) "Investment Period" means the seven-year period, chosen by the High-Technology Data Center, during which the Minimum Investment Threshold must be met.

1. The Investment Period begins on the Investment Start Date.

2. The Investment Period ends seven consecutive years after the Investment Start Date on the same month and date as the Investment Start Date.

3. The Investment Period may be any consecutive seven-year period that begins on or after July 1, 2018 and ends on or before December 31, 2028.

(g) "New Quality Job" means a new quality job, as defined in O.C.G.A. § 48-7-40.17(a)(2), that is created and maintained at the High-Technology Data Center.

(h) "Real Property" means land, any buildings thereon, and any fixtures attached thereto. Fixtures are tangible personal property that has been installed or attached to land or to any building thereon and that is intended to remain permanently in its place. A consideration for whether tangible property is a fixture is whether its removal would cause significant damage to such property or to the real property to which it is attached.

(3) **Scope of Exemption**.

(a) The purchase and use of High-Technology Data Center Equipment to be incorporated or used in a High-Technology Data Center are exempt from state and local sales and use tax, subject to the following conditions:

1. The purchaser must be a High-Technology Data Center or a High-Technology Data Center Customer;

4. If the purchaser is a High-Technology Data Center Customer, the High-Technology Data Center Customer must obtain a Certificate of Exemption.

(b) This exemption is effective from July 1, 2018, through and including December 31, 2028. Purchases must be made within these effective dates to qualify for exemption.

(4) **Minimum Investment Threshold**.

(a) To meet the High-Technology Data Center's Minimum Investment Threshold:

1. An average of 20 New Quality Jobs must be created and maintained at the High-Technology Data Center during the Investment Period; and

2. The High-Technology Data Center must make the required amount of qualifying aggregate expenditures, as set forth in paragraph (4)(c), during the Investment Period.

(b) To determine the average number of New Quality Jobs created and maintained during the Investment Period, a High-Technology Data Center must determine the number of New Quality Jobs created or maintained at the High-Technology Data Center in each month during the Investment Period, add the monthly numbers, and divide the sum by the number of months in the Investment Period.

(c) The aggregate expenditure requirement is based on the population of the county in which the High-Technology Data Center is located as reported in the United States decennial census of 2010. If county population data from a more recent United States decennial census is available as of the Investment Start Date, county population shall be based upon such data. The aggregate expenditure requirement is

1. $250 million for High-Technology Data Centers located in a county in this state having a population greater than 50,000;

2. $150 million for High-Technology Data Centers located in a county in this state having a population greater than 30,000 and less than 50,001; and

3. $100 million for High-Technology Data Centers located in a county in this state having a population less than 30,001.

real property is not exempt under this Rule.

(i) If such an expenditure is made pursuant to a lease, the term of which extends before or after the Investment Period, the expenditure amount that may be used for purposes of satisfying the expenditure requirement shall be determined by dividing the total amount to be paid pursuant to the lease by the number of calendar years in the lease term and then multiplying that quotient by the number of calendar years in the lease term that are during the Investment Period.

2. Expenditures by the High-Technology Data Center and its High-Technology Data Center Customers may count for purposes of satisfying the expenditure requirement.

3. A High-Technology Data Center may not count the purchase or lease of the same High-Technology Data Center Equipment more than once. For example, if a High-Technology Data Center purchases High-Technology Data Center Equipment and subsequently leases it to a High-Technology Data Center Customer, only one transaction, either the original purchase or the subsequent lease, may count for purposes of satisfying the Minimum Investment Threshold.

(5) **Certificates of Exemption**.

(a) Application Process.

1. Any High-Technology Data Center or High-Technology Data Center Customer desiring to secure the benefits of the exemption provided by O.C.G.A. § 48-8-3(68.1) must file an application for a certificate of exemption.

2. Applications must be filed electronically with the Department on or after January 1, 2019.

3. A High-Technology Data Center's application may request the High-Technology Data Center's legal name, mailing address, facility location, Investment Start Date, Georgia income tax filing and payment history, the value of the center's title or interest in real property owned in this state, a limited waiver of confidentiality for the administration of this exemption, documentation sufficient to show the likelihood of satisfying

its registered High-Technology Data Center, a copy of the lease agreement with its corresponding High-Technology Data Center, and any other information required by the Department for the determination of the claim for exemption.

(i) The Department will not issue a Certificate of Exemption to a High-Technology Data Center Customer until a Certificate of Exemption has been issued to its corresponding High-Technology Data Center.

5. This application requirement is applicable to holders of direct payment permits granted under Regulation 560-12-1-.16.

(b) Issuance of Certificate.

1. Upon approval of the application, including a determination that a High-Technology Data Center will more likely than not meet the Minimum Investment Threshold, the Department will issue a Certificate of Exemption to such High-Technology Data Center.

2. A Certificate of Exemption is issued for the exclusive use of a qualifying applicant but may be transferrable upon the sale of the High-Technology Data Center and the approval of the commissioner.

(c) Bond.

1. As a condition precedent to the issuance of a Certificate of Exemption, the Department, in the Commissioner's discretion, may require a good and valid bond with a surety company authorized to do business in this state.

2. In determining whether to require a bond and the value of such bond, the Commissioner will consider factors, including, but not limited to, the value of the data center's title or interest in real property owned in this state as of the application date and the data center's Georgia tax filing and payment history.

3. If required, the bond shall be in an amount fixed by the Department, not to exceed $20 million.

5. Such bond shall be released when the High-Technology Data Center timely meets the Minimum Investment Threshold.

(d) Revocation.

1. A Certificate of Exemption issued pursuant to this exemption to a High-Technology Data Center is subject to revocation if the Department determines that such certificate holder has not complied with the provisions of the exemption, including, but not limited to, the following:

(i) During the Investment Period, it is determined that the High-Technology Data Center is not likely to meet the applicable Minimum Investment Threshold;

(ii) At the conclusion of the Investment Period, the High-Technology Data Center failed to meet the applicable Minimum Investment Threshold;

(iii) The High-Technology Data Center does not file the Annual Report as required in paragraph (7), below, with the Department; or

(iv) The High-Technology Data Center claims any credit authorized under O.C.G.A. §§ 48-7-40 through 48-7-40.33 or O.C.G.A. § 36-62-5.1 on its tax return during any year in which the High-Technology Data Center claims the benefit of this exemption.

2. A Certificate of Exemption issued pursuant to this exemption to a High-Technology Data Center Customer is subject to revocation if the Department determines that such certificate holder has not complied with the provisions of the exemption, including, but not limited to, the following:

(i) The Certificate of Exemption of its High-Technology Data Center is revoked; or

(ii) The High-Technology Data Center Customer is not, or is no longer, a party to a contract that is for an initial term of at least 36 months and that is for data center services with the High-Technology Data Center.

3. If it is determined that there are grounds for revocation, the Department will send written notice to the certificate holder. The notice will include the grounds for revocation, the

Exemption that such Certificate of Exemption is no longer valid. The certificate holder must maintain records of notifications of revocation sent to vendors.

5. It is unlawful for any person to attempt to evade sales and use taxes by using a certificate of exemption obtained through fraud or by using a certificate of exemption to which a purchaser is not entitled.

6. If a High-Technology Data Center's Certificate of Exemption is revoked, the center will be liable for all tax exempted or refunded under this exemption on its purchases, plus interest as computed under O.C.G.A. § 48-2-40. If tax and interest is not paid within 90 days of the revocation of the Certificate of Exemption, penalties shall accrue pursuant to O.C.G.A. § 48-8-66.

7. If a High-Technology Data Center Customer's Certificate of Exemption is revoked, the customer and its corresponding High-Technology Data Center will be liable, as provided below, for all tax exempted or refunded under this exemption on the customer's purchases, plus interest as computed under O.C.G.A. § 48-2-40. If tax and interest is not paid within 90 days of the revocation of the Certificate of Exemption, penalties shall accrue pursuant to O.C.G.A. § 48-8-66.

   (i) If a High-Technology Data Center Customer's Certificate of Exemption is revoked solely because its corresponding High-Technology Data Center's Certificate of Exemption is revoked, the High-Technology Data Center Customer is not required to repay the tax exempted or refunded under this exemption on the customer's purchases. The customer's corresponding High-Technology Data Center is required to repay such tax.

   (ii) If a High-Technology Data Center Customer Certificate of Exemption is revoked because the certificate holder does not meet the definition of High-Technology Data Center Customer, the purported customer is required to repay the tax exempted or refunded under this exemption for periods when the purported customer did not meet the definition of High-Technology Data Center Customer.

corresponding High-Technology Data Center is required to repay the tax exempted or refunded for periods when the customer met the definition of a High-Technology Data Center Customer.

8. Nothing in this Rule prohibits the reinstatement or reissuance of a Certificate of Exemption to a qualified High-Technology Data Center or High-Technology Data Center Customer.

(e) All Certificates of Exemption issued pursuant to this exemption expire on December 31, 2028, by operation of law.

(6) **Claiming the Benefit of the Exemption.**

(a) Any person making a sale or lease of High-Technology Data Center Equipment must collect the sales and use tax unless the purchaser furnishes such seller with a valid and complete Certificate of Exemption.

(b) A High-Technology Data Center Equipment supplier is relieved from the collection of sales and use tax on the sale or lease of High-Technology Data Center Equipment if the supplier takes a Certificate of Exemption from a certificate holder in good faith.

(c) Refund Claims.

1. Subject to paragraph (6)(c)5. of this Rule and other applicable laws, a refund claim may be filed for taxes paid on purchases qualifying for this exemption for any period on or after July 1, 2018, during which the High-Technology Data Center or High-Technology Data Center Customer had not yet applied for and received its Certificate of Exemption from the Department.

2. Claimants must submit refund claims electronically.

3. As a condition precedent to the issuance of a refund, the claimant must apply for and receive its Certificate of Exemption.

4. As provided by O.C.G.A. § 48-2-35.1, refunds issued pursuant to this exemption shall not bear interest.

5. A refund claim may be filed by the taxpayer at any time within three years after the date of the payment of the tax to

preserve all books and records as long as needed to support such claim.

(7) **Annual Report**.

(a) All High-Technology Data Centers must submit an annual report electronically to the Department.

1. The annual report must be submitted by April 30 of each year if the High-Technology Data Center claimed or will claim the benefit of the exemption for purchases in the prior calendar year.

2. The annual reporting requirement does not end at the expiration of the Investment Period. The annual report is required for every year in which the High-Technology Data Center claims the benefit of exemption set forth in this Rule.

(b) Every High-Technology Data Center's annual report must include the following:

1. The amount of tax exempted or refunded under this exemption on purchases by High-Technology Data Centers during the preceding calendar year;

2. A list of High-Technology Data Center Customers and the amount of tax exempted or refunded under this exemption on purchases by each High-Technology Data Center Customer during the preceding calendar year;

3. The number of New Quality Jobs created or maintained at the High-Technology Data Center on a monthly basis during the preceding calendar year;

4. The total amount of High-Technology Data Center's employee payroll during the preceding calendar year; and

5. The total amount of qualifying aggregate expenditures made since the Investment Start Date that the High-Technology Data Center counts for purposes of satisfying the expenditure requirement of its Minimum Investment Threshold. This amount does not need to be reported after the High-Technology Data Center submits its Investment Report at the conclusion of the Investment Period.

(c) A High-Technology Data Center's failure to submit a complete and accurate annual report is grounds for the revocation of the High-

Department.

(b) The report must detail the following:

1. The expenditures incurred that count toward its Minimum Investment Threshold, including the expenditure date, vendor, and description of each purchase;

2. The average number of New Quality Jobs created and maintained during the Investment Period, including a description of each position, wage, and work hours; and

3. Any other information that the commissioner may reasonably require to determine whether the High-Technology Data Center has met the Minimum Investment Threshold.

(c) If it is determined that a High-Technology Data Center failed to meet its Minimum Investment Threshold, such High-Technology Data Center must repay all taxes exempted or refunded pursuant to its Certificate of Exemption and all taxes exempted or refunded pursuant to the Certificates of Exemption of its High-Technology Data Center Customers.

1. Interest will be due at the rate specified in O.C.G.A. § 48-2-40 computed from the date such taxes would have been due but for this exemption.

2. Such repayment of taxes and interest must be made within 90 days after notification of such failure.

3. Such repayment will be calculated notwithstanding otherwise applicable periods of limitation for assessment.

(9) **Impact on Certain Income Tax Credits.**

(a) A High-Technology Data Center is not entitled to claim any credit authorized under O.C.G.A. §§ 48-7-40 through 48-7-40.33 or O.C.G.A. § 36-62-5.1 on its tax return during any calendar year in which it claims the benefit of the exemption set forth in this Rule.

(b) If a determination is made by the Department that the High-Technology Data Center must repay all taxes exempted or refunded pursuant this exemption, such High-Technology Data Center may, notwithstanding otherwise applicable periods of limitation, file amended income tax returns claiming any credit to which it would have been entitled under O.C.G.A. §§ 48-7-40 through 48-7-40.33