



Bart L. Graham
Commissioner

State of Georgia
Department of Revenue

Suite 15300
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NOTICE
Number ST-2008-1

RE: Adoption of new Rule 560-12-2-.114 "Water Efficient Products Sales Tax Holiday."

TO ALL INTERESTED PERSONS AND PARTIES:

In compliance with O.C.G.A. § 50-13-4, the Georgia Department of Revenue gives notice that it proposes to amend Chapter 560-12-2 of the Rules and Regulations of the State of Georgia by adopting new Rule 560-12-2-.114, entitled "Water Efficient Products Sales Tax Holiday." Attached with this notice are an exact copy and synopsis of the proposed Rule. The proposed Rule is being adopted under the authority of O.C.G.A. §§ 48-2-12 and 48-8-3(82).

The Department of Revenue shall consider the adoption of the above referenced Rule at 10:00 a.m. on August 13, 2008 in Suite 15200 of the Department's headquarters at 1800 Century Blvd., NE Atlanta, GA 30345-3205.

The Department must receive all comments regarding the above-referenced proposed Rule from interested persons and parties no later than 10:00 a.m. August 13, 2008. Written comments must be sent to: Commissioner, Georgia Department of Revenue, 1800 Century Blvd., NE, Suite 15300, Atlanta, GA 30345-3205. Electronic comments must be sent to regcomments@dor.ga.gov. Facsimile comments must be sent to (404) 417-2293. Please reference "Notice Number ST-2008-1" on all comments.

Dated: July 2nd, 2008

Bart L. Graham
Commissioner
Georgia Department of Revenue

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE SALES AND USE TAX DIVISION

CHAPTER 560-12-2 SUBSTANTIVE RULES AND REGULATIONS

560-12-2-.114 "Water Efficient Products Sales Tax Holiday"

The purpose of proposed rule 560-12-2-.114 is to provide guidance regarding the administration of O.C.G.A. § 48-8-3(82), which provides for an exemption from state and local Georgia sales and use tax on the purchase of certain water efficient products.

Subparagraph (1) of the proposed rule explains the rule's purpose.

Subparagraph (2) of the proposed rule provides for definitions of the terms "exemption period" and "water efficient product."

Subparagraph (3) of the proposed rule provides that the exemption applies to both Georgia state and local sales and use tax. It also specifies the type of products that will be eligible for the exemption.

Subparagraph (4) of the proposed rule lists general exclusions from the exemption.

Subparagraph (5) of the proposed rule provides examples of the application of the exemption.

Subparagraph (6) of the proposed rule provides general rules and examples for certain specific transactions, including: buy one get one free; discounts, coupons, and rebates; exchanges; gift certificates and gift cards; layaways, mail, telephone, email, and Internet sales; out of stock sales; rain checks; services that are part of the sale; and preorder sales.

Subparagraph (7) of the proposed rule provides record keeping requirements for a dealer that makes sales of products eligible for the exemption.

Subparagraph (8) of the proposed rule provides guidance on refunds for the purchase of products eligible for the exemption.

Subparagraph (9) of the proposed rule relates to reporting requirements for sales of water efficient products during the exemption period.

**RULES
OF
DEPARTMENT OF REVENUE
SALES AND USE TAX DIVISION**

**CHAPTER 560-12-2
SUBSTANTIVE RULES AND REGULATIONS**

560-12-2-.114. Water Efficient Products Sales Tax Holiday

(1) Purpose. The purpose of this Rule is to provide guidance regarding the sale of water efficient products exempt from Georgia sales and use tax in accordance with O.C.G.A. § 48-8-3(82).

(2) Definitions. For purposes of qualifying for the exemption provided for by O.C.G.A. § 48-8-3(82), and as used in this Rule, the following definitions and explanation of terms apply:

(a) "Exemption period" means the time period for the water efficient product sales tax holiday as provided for under O.C.G.A. § 48-8-3(82).

(b) "Water efficient product" means any product used for the conservation or efficient use of water which has been designated by the United States Environmental Protection Agency (EPA) as meeting or exceeding such agency's water saving efficiency requirements or which has been designated as meeting or exceeding such requirements under such agency's Water Sense program. Qualifying products must have a sales price of \$1500 or less per product. Further, products must be purchased for noncommercial home or personal use. Products designated by the EPA as meeting or exceeding their requirements under the agency's Water Sense Program should have a Water Sense label affixed to the product or product packaging.

(3) The exemption for water efficient products applies to Georgia

state and local sales and use tax. Water efficient products eligible for exemption include only those products specifically listed in subparagraph (3)(a) of this Rule.

(a) The water efficient products eligible for the exemption are as follows: Bathroom sink faucets and faucet accessories (such as aerators), showerheads, high-efficiency toilets, high-efficiency urinals, and weather or sensor-based irrigation controllers.

(b) The exemption from sales and use tax does not apply to any product unless the product is specifically named and listed in subparagraph (3)(a), including other products that may carry the Water Sense label.

(4) General Exemption Exclusions.

(a) The exemption does not apply to any product purchased for resale or for use in a trade or business.

(b) The exemption does not apply to any product rented or leased.

(c) The exemption does not apply to sales by or to a contractor or retail dealer performing a real property construction contract as a contractor. However, sales of water efficient products during the exemption period by any retail dealer will qualify for the exemption.

(5) Examples.

(a) The application of the exemption to water efficient products during the exemption period is illustrated by the following examples:

1. A customer purchases an irrigation controller from a retail dealer. The controller carries the Water Sense label and has a sales price of \$1,550.00. The purchase does not qualify for the exemption because the product's sales price exceeds \$1,500.00.

2. A customer purchases a toilet for \$800.00 and a urinal for \$750.00 in a single transaction. Both products carry the Water Sense label. Both products qualify for the exemption since the sales price of each water efficient product is equal to or less than \$1,500.00.

3. A contractor enters into a contract to furnish and install a toilet for a customer for a total contract price of \$1,000.00. The contract separately states charges for the toilet and installation services, with \$800.00 shown for the toilet and \$200.00 shown for installation services. The toilet carries the Water Sense label. The exemption does not apply to this transaction, because the contractor is not a retail dealer. Instead, the contractor is deemed to be the consumer of the tangible personal property (i.e., the toilet) used in the performance of a real property construction contract.

4. A customer purchases a faucet for \$500.00 and five showerheads 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 a real property construction contract with the home improvement store. The faucet and showerheads carry the Water Sense label. The faucet and showerheads qualify for the exemption since the sales price of each water efficient product is equal to or less than \$1,500.00 and the customer took possession of the products at the time of purchase and did not enter into a real property construction contract, as was the case in the previous example.

(6) Transaction Rules.

(a) "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 water efficient products, the purchase will qualify for the exemption when all other conditions of the exemption are met. However, if a dealer offers a "buy one, get one for a reduced price"

or "buy one product, get another product for a reduced price," the two prices cannot be averaged to qualify both products for the exemption. The following examples illustrate the application of the Rule to the exemption:

1. A dealer offers "buy one, get one free" on bathroom faucets that carry the Water Sense label. The first faucet has a sale price of \$135.00 and the second faucet is free. Both faucets qualify for the exemption because the price does not exceed the \$1,500.00 exemption limitation.

2. An irrigation controller is purchased for \$1,600.00 and a second irrigation controller is purchased for half price (\$800.00) in a single transaction. Both products carry the Water Sense label. The second controller will qualify for the exemption, but Georgia state and local sales tax will be due on the first controller because the sales price of the products may not be averaged in order to qualify for the exemption.

(b) Discounts, coupons, and rebates. The application of the exemption to discounts, coupons and rebates extended to water efficient products during the exemption period is illustrated by the following examples:

1. Discounts that are offered by dealers at the time of sale and taken by the customer at the time of sale affect the sales price of the product. For example, if a dealer sells a toilet, which carries the Water Sense label and has a sales price of \$1,600.00, and offers to discount the product 10 percent at the time of sale, the exemption applies because the actual sales price of the toilet is \$1,440.00.

2. Store coupons offered by a dealer and used at the time of sale to reduce the sales price of a product do affect the sales price of the product for purposes of determining whether the product qualifies for the exemption. For example, if a dealer offers a store coupon in the amount of \$100.00 for an eligible \$1600.00 bathroom faucet, the exemption applies to the purchase because the dealer's actual

sales price to the customer is \$1,500.00.

3. Manufacturers' coupons used to pay for products do not affect the sales price of the products for purposes of determining whether the product qualifies for the exemption. For example, if a customer gives the dealer a manufacturer's coupon for \$100.00 for an irrigation controller, which carries the Water Sense label and has a sales price of \$1,600.00, the exemption does not apply. The sales price did not change; the dealer will ultimately receive the full sales price because the manufacturer will remit payment of \$100.00 and the customer will remit payment in the amount of \$1,500.00.

4. Rebates generally occur after the sale; thus, the amount of a rebate does not affect the sales price of a purchased product. For example, a toilet that carries the Water Sense label is purchased for \$1,600.00. There is a manufacturer's rebate for \$100.00. The exemption does not apply because the sales price is in excess of \$1,500.00.

(c) Exchanges. The application of the exemption to an exchange of a water efficient product purchased during the exemption period is illustrated by the following examples:

1. A customer purchases a water efficient product during the exemption period, but later exchanges the product for the same product with a different size, color, or other feature. No additional tax is due even though the exchange is made after the exemption period.

2. A customer purchases a water efficient product during the exemption period. After the exemption period has ended, the customer returns the product and receives credit on the purchase of a different product. Georgia state and local sales tax is due on the total sales price of the newly purchased product.

3. A customer returns a water efficient product during the

exemption period that was purchased prior to the exemption period for the purpose of obtaining a refund or adjustment of the previously collected sales tax. No refund or adjustment of sales tax on such transactions is allowed because the tax was due on the product at the time of purchase.

(d) Gift certificates and gift cards. Water efficient products purchased during the exemption period using a gift certificate or gift card will qualify for the exemption from sales tax, regardless of when the gift certificate or gift card was purchased. Water efficient products 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. A gift certificate or gift card cannot be used to reduce the selling price of a water efficient product in order to qualify the product for the exemption.

(e) Layaways. A layaway sale is a transaction in which merchandise is 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 receives the merchandise when the full balance has been paid. For the purposes of this exemption, a water efficient product will qualify for the exemption when a customer remits final payment of any outstanding balance and takes delivery of the merchandise during the exemption period. The application of the exemption to a layaway of a water efficient product purchased during the exemption period is illustrated by the following examples:

1. A showerhead with a sales price of \$750.00 is placed on layaway during the exemption period. The showerhead carries the Water Sense label. The customer retrieves the showerhead and makes final payment after the exemption period. The exemption does not apply.
2. A urinal with a sales price of \$1,100.00 is placed on layaway before the exemption period. The urinal carries the Water Sense label. The customer makes the final payment and retrieves the

urinal out of layaway during the exemption period. The exemption applies because the customer made the final payment and retrieved the urinal from layaway during the exemption period.

(f) Mail, telephone, e-mail, and Internet sales. The sale of a water efficient product may qualify for exemption when sold through the mail, telephone, e-mail, or Internet if:

1. The water efficient product is both paid for and delivered to the customer during the exemption period; or

2. The customer orders and pays for the water efficient product and the dealer accepts the order during the exemption period for immediate shipment, even if delivery is made after the exemption period. An order is deemed to be for immediate shipment when the customer does not request delayed shipment. The dealer must accept an order during the exemption period even if delivery is not made during the exemption period. Actions to fill an order include placement of an "in date" stamp on a mail order or assignment of an "order number" to a telephone, email, or Internet order. If the dealer delays shipment of an order because of a backlog, or because stock is currently unavailable, the order is still deemed to be for immediate shipment.

(g) Out of stock sales. A purchase where a customer orders and pays for the water efficient product and the dealer accepts the order during the exemption period will be eligible for the exemption, even if delivery is made after the exemption period.

(h) Rain checks. Water efficient products purchased during the exemption period using a previously issued rain check will qualify for the exemption. However, a rain check that is issued during the exemption period will not qualify an otherwise eligible water efficient product for the exemption if purchased after the exemption period.

(i) Charges for services that are part of a sale. Charges for

services that are a part of a retail sale of a water efficient product are included, in certain instances, when determining the sales price of a water efficient product. The following examples illustrate the application of the Rule to the exemption:

1. **Installation Charges.** A toilet, which carries the Water Sense label, is purchased from a dealer for \$1,495.00 and a \$75.00 charge is made for installation services at the time of sale. The \$75.00 charge for installation services is separately stated on the seller's invoice. The purchase qualifies for the exemption because the sales price of the toilet is less than \$1,500.00 and the installation services were separately stated on the seller's invoice. However, if the installation services were not separately stated on the seller's invoice, the purchase does not qualify for the exemption and Georgia state and local tax is due based on the total charge of \$1,570.00.

2. **Shipping and delivery charges.** The taxation of shipping and delivery charges will depend upon the taxability of the product being sold. On transactions that include both exempt and taxable purchases, the shipping charges will be presumed to apply to the exempt water efficient product. For example: a toilet carrying the Water Sense label is purchased for \$1,499.00 with a delivery or shipping charge of \$50.00. The purchase qualifies for the exemption since the toilet is a water efficient product with a purchase price of less than \$1,500.00. Because the product is exempt, the delivery or shipping charges are also exempt. An irrigation controller carrying the Water Sense label and a kitchen faucet are purchased for \$1,100.00 and \$900.00 respectively, with a shipping or delivery charge of \$75.00. Since one of the products (the irrigation controller) qualifies for the exemption, the shipping or delivery charge will not be taxable.

3. **Optional Maintenance Contracts and Warranties.** The taxation of any charges for optional maintenance contracts or warranties will depend upon the taxability of the product being sold. For example: a customer purchases an irrigation controller carrying

the Water Sense label for \$1,495.00 and an optional maintenance contract or extended warranty for \$50.00. The items are purchased together and the charges are separately stated on the seller's invoice. The purchase qualifies for the exemption because the sales price of the irrigation controller is less than \$1,500.00 because the amount charged for the optional maintenance contract or warranty was separately stated on the seller's invoice. However, if the charge for an optional maintenance contract or warranty is not separately stated on the seller's invoice, the purchase does not qualify for the exemption because the combined sales price of \$1,545.00 exceeds \$1,500.00.

(j) Preorder sales. The preorder of a water efficient product qualifies for the exemption if final payment occurs during the exemption period.

(7) Records. Dealers are not required to obtain an exemption certificate on sales of water efficient products during the exemption period. However, the dealer's records should clearly identify the type of product sold, the date on which the product was sold, the sales price of all products, and any sales tax charged.

(8) Refunds and Receipts. For the period of 30 calendar days following the last day of the exemption period, when a customer returns a water efficient product that qualified for the exemption, no refund of tax may be given unless the customer provides a receipt or seller's invoice showing tax was paid, or the dealer has sufficient documentation to show that sales tax was paid on the specific product.

(9) Reporting Exempt Sales. No special reporting procedures are necessary to report exempt sales on qualified products made during the exemption period. Exempt sales are to be reported in Part C of the Return (Form ST-3) on Line A and the applicable Local Taxes Line or on Line 2 of the EZ Return (Form ST-3EZ). Taxable sales and exempt transactions should be reported as currently required by law.

Chapter 560-12-2

Substantive Rules and Regulations

Authority O.C.G.A. §§ 48-2-12 and 48-8-3(82).

Proposed