

## **560-12-2-.112 Energy Efficient Product Sales Tax Holiday.**

(1) **Purpose.** The purpose of this Rule is to provide guidance regarding the sale of energy 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) "Energy Efficient Product" means any dishwasher, clothes washer, air conditioner, ceiling fan, fluorescent light bulb, dehumidifier, programmable thermostat, refrigerator, door, or window, the energy efficiency of which has been designated by the United States Environmental Protection Agency ("EPA") and the United States Department of Energy ("DOE") as meeting or exceeding each such agency's requirements or which have been designated as meeting or exceeding such requirements under each such agency's Energy Star program and has a sales price of \$1,500.00 or less per product. Further, the product must be purchased for noncommercial home or personal use. Product(s) designated by the EPA or DOE as meeting or exceeding their requirements under each agency's Energy Star program should have an Energy Star label affixed to the product or product packaging.

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

(3) The exemption for Energy Efficient Products applies to Georgia state and local sales and use tax. Energy Efficient Products eligible for exemption are only those products specifically listed in subparagraph (3)(a) of this Rule.

(a) The Energy Efficient Products eligible for the exemption are as follows: dishwasher, clothes washer, air conditioner, ceiling fan, fluorescent light bulb, dehumidifier, programmable thermostat, refrigerator, door, or window. For purposes of the exemption, skylights will be considered windows.

(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 Energy Star label, such as television sets or furnaces.

### **(4) General Exemption Exclusions.**

(a) The exemption does not apply to any product 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 energy efficient products during the exemption period by any heating and air conditioning retail dealer or other retail dealer will qualify for the exemption.

### **(5) Examples.**

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

1. A customer purchases an air conditioner from a retail dealer. The air conditioner carries the Energy Star label and has a sales price of \$1,550.00. The purchase does not qualify for the exemption because the customer's sales price exceeds \$1,500.00.

2. A customer purchases a refrigerator for \$1,500.00 and a clothes washer for \$1,200.00 in a single transaction. Both products carry the Energy Star label. Both products qualify for the exemption since the sales price of each energy efficient product is equal to or less than \$1,500.00.

3. A contractor enters into a contract to furnish and install an air conditioner for a customer for a total \$1,800.00. The contract itemizes charges for the air conditioner and installation services, with \$1,400.00 shown for the air conditioner and \$400.00 for installation services. The air conditioner carries the Energy Star label. The exemption would not apply to this transaction, as the contractor is not a retail dealer and is thus, considered the consumer of the tangible personal property in the performance of a real property construction contract.

4. A customer enters into a contract with a home improvement store to furnish and install a door for \$1,000.00. The contract itemizes charges for the door and installation services, with \$500.00 shown for the door and \$500.00 for installation services. The door carries the Energy Star label. The exemption would not apply to this transaction, as the home improvement store is considered to be a contractor and deemed to be the consumer of tangible personal property (i.e., the door) in the performance of a real property construction contract.

5. A customer purchases 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 a real property construction contract with the home improvement store. The door and windows carry the Energy Star label. The door and windows would qualify for the exemption since the sales price of each energy 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 the customer was not entering 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 energy 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 ceiling fans that carry the Energy Star label. The first ceiling fan has a sale price of \$135.00 and the second ceiling fan is free. Both

ceiling fans will qualify for the exemption because the first ceiling fan does not exceed the \$1,500.00 exemption limitation.

2. A refrigerator is purchased for \$1,600.00 and a dishwasher is purchased for half price (\$300.00) in a single transaction. Both products carry the Energy Star label. The dishwasher will qualify for the exemption, but Georgia state and local sales tax will be due on the refrigerator. In this example, 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 on energy efficient products during the exemption period is illustrated by the following examples:

1. Discounts offered by dealers at the time of sale and which are taken by the customer at the time of sale affect the sales price of the product. For example, if a dealer sells a clothes washer, which carries the Energy Star 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 would apply because the actual sales price of the clothes washer 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 determining whether the product qualifies for the exemption. For example, if a dealer offers a reduction in sales price of \$100.00 through a store coupon for a refrigerator, which carries the Energy Star label, and has a sales price of \$1,600.00, the exemption would apply 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 determining whether the product qualifies for the exemption. For example, if a customer gives the dealer a manufacturer's coupon for \$100.00 for a refrigerator, which carries the Energy Star label, and has a sales price of \$1,600.00, the exemption would not apply.

4. Rebates generally occur after the sale, thus the amount of the rebate does not affect the sales price of the purchased product. For example, a clothes washer, which carries the Energy Star label, is purchased for \$1,600.00, with a manufacturer's rebate for \$100.00. The exemption would not apply because the sales price is in excess of \$1,500.00.

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

1. A customer purchases an energy efficient product during the exemption period, but later exchanges the product for 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 an energy 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 an energy efficient product during the exemption period that was purchased before the exemption period for the purpose of obtaining a refund or adjustment of the previously collected sales tax. The refund or adjustment of sales tax on such transactions is not allowed because the tax was due on the product at the time of purchase.

(d) **Gift certificates and gift cards.** Energy 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. Energy 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 an energy efficient product in order to qualify the product for the exemption.

(e) **Layaways.** A layaway sale is 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 end of the payment period, receives the merchandise. For the purposes of this exemption, an energy efficient product will qualify for the exemption when final payment on the layaway is made by, and the product is given to the customer during the exemption period. The application of the exemption to a layaway of an energy efficient product purchased during the exemption period is illustrated by the following examples:

1. A refrigerator with a sales price of \$750.00 is placed on layaway during the exemption period. The refrigerator carries the Energy Star label. The customer retrieves the refrigerator and makes final payment after the exemption period. The exemption does not apply.

2. A clothes washer with a sales price of \$1,100.00 is placed on layaway before the exemption period. The clothes washer carries the Energy Star label. The customer makes the final payment and retrieves the clothes washer out of layaway on a date during the exemption period. The exemption would apply because the clothes washer was paid for and retrieved from layaway during the exemption period.

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

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

2. The customer orders and pays for the energy 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 considered 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 order. If the dealer delays shipment of an order because of a backlog, or because stock is currently unavailable, the order is still for immediate shipment.

(g) **Out of stock sales.** A purchase where a customer orders and pays for the energy 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.** Energy efficient product purchased during the exemption period with the use of 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 energy 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 sold as a part of a retail sale of an energy efficient product are included, in certain instances, when determining the sales price of an energy efficient product. The following examples illustrate the application of the Rule to the exemption:

1. **Installation Charges.** A clothes washer, which carries the Energy Star 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 would qualify for the exemption because the sales price of the clothes washer 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 would not qualify for the exemption and Georgia state and local tax would be 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 exempt and taxable purchases, the shipping charges will be presumed to apply to the exempt energy efficient product. For example: a refrigerator carrying the Energy Star label is purchased for \$1,499.00 and a delivery or shipping charge is made for \$50.00. The purchase would qualify for the exemption since the refrigerator is an energy efficient product and is qualified for the exemption. A clothes washer carrying the Energy Star label and clothes dryer is purchased for \$1,100.00 and \$900.00 respectively, with a shipping or delivery charge of \$75.00. Since one of the products 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 clothes washer carrying the Energy Star label is purchased for \$1,495.00 and a \$50.00 charge is made for an optional maintenance contract or extended warranty at the time of sale and is separately stated on the seller's invoice. The purchase would qualify for the exemption because the sales price of the clothes washer is less than \$1,500.00 and the amount charged for the optional maintenance contract or warranty was separately stated on the seller's invoice. However, if any charge for an optional maintenance contract or warranty were not separately stated on the seller's invoice, the purchase would not qualify for the exemption because the sales price would exceed \$1,500.00.

(j) **Preorder sales.** The preorder of an energy efficient product may qualify for exemption if payment occurs during the exemption period.

(7) **Records.** Dealers are not required to obtain an exemption certificate on sales of energy 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 an energy efficient product that would qualify 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.

Authority O.C.G.A. Secs. 48-2-12, 48-8-3. **History.** Original Rule entitled "Energy Efficient Product Sales Tax Holiday" adopted. F. Sept. 9, 2005; eff. Sept. 29, 2005. **Repealed:** New Rule of same title adopted. F. July 7, 2006; eff. July 27, 2006.