

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

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

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560-12-2-.109 Film Producers or Film Production Companies

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(1) Film Producers or Film Production Companies are primarily engaged in the production of feature films, training films, series, pilots, movies for television, commercials, music videos or sound recordings. 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 approved by the Georgia Film and Videotape Office of the Department of Industry and Trade 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 beyond Georgia's local or regional market. 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.

(f) "Production Services" means services purchased for use exclusively in qualified production activities in Georgia, including but not limited to, digital or tape editing, film processing, transfers of film or tape or digital format, sound mixing, computer graphics services, special effects services, animation services and script production.

(g) "Qualified Production Activities" means the production or post-production 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 applies 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, sound 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 submit an application to the commissioner with the designation as a certified film producer or certified film production company.

4. The application shall not be valid without prior written approval by the Georgia Film and Videotape Office of the 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 purchasers or lessees 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 (pre-production through final shoot day), federal employer's identification number, business address, telephone and fax numbers, description of the property anticipated to be purchased, including the sales price or rental or lease amount payable, and a copy of written approval 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 services 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 activity in Georgia is exempt from Georgia sales and use tax. Such equipment shall include, but is not limited to:

- (i) Camera equipment, supplies and accessories;
- (ii) Motion picture film and videotape stock;
- (iii) Digital discs and masters;
- (iv) Lighting equipment, including 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 equipment;
- (xiv) Costumes, wardrobes and materials to construct them, including shoes and hairpieces;
- (xv) Props, including materials and equipment to fabricate or construct props;
- (xvi) Scenery, including materials to fabricate or construct scenery;
- (xvii) Design equipment;
- (xviii) Heating and air conditioning equipment that is not a part of the realty and is used on the set;
- (xviii) Drafting equipment;
- (xix) Special effects supplies and equipment;
- (xx) Photographic film;
- (xxi) Animation equipment;
- (xxii) Computer graphics and images;
- (xxiii) Video and sound recording equipment;
- (xxiv) Motor vehicle rentals and leases that are directly used in film production services; and
- (xxv) Equipment and supplies for dubbing, mixing, editing and cutting.

2. Production or post production services when sold to a certified film producer or certified film production company and used exclusively in connection with a qualified film production activity in Georgia are services exempt from Georgia sales and use tax. Such services shall include, but is 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 purchase(s) or lease(s) fails to meet the requirements for this exemption, the dealer will be liable for tax, penalty and interest on the purchase(s) or lease(s).

(5) Sales.

(a) Charges for services rendered by a film producer or film production company are exempt when performing production or post-production work on a motion picture master under the direction of another producer or production or post production company. Post-production 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. Authority O.C.G.A. §§ 48-2-12, 48-8-3(24), 48-8-3(73) and 48-8-3(30).