



# Georgia Department of Audits and Accounts

## Performance Audit Division

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### Why we did this review

This follow-up review was conducted to determine the extent to which the Georgia Department of Agriculture (GDA) and the General Assembly addressed recommendations presented in our October 2017 performance audit (Report #16-10).

The 2017 performance audit assessed the effectiveness and efficiency of controls in place to ensure the requirements of the Georgia Agricultural Tax Exemption (GATE) Program were met. The audit addressed the application and approval processes for determining eligibility for GATE, monitoring of GATE cardholders to ensure proper use of the exemption, and the economic impact of GATE.

### About GATE

In Georgia, agricultural inputs have been exempt from sales and use tax since the 1960s. The earliest exemptions include: fertilizer, seed, and livestock; other items were added over time. In January 2013, the GATE law (O.C.G.A §48-8-3.3) combined all previously existing agricultural exemptions into a single code section, expanded the types of items eligible to be purchased tax-free, and established eligibility criteria.

GDA determines eligibility for GATE through an application and review process. Those meeting the requirements are issued a GATE card, which must be presented to retailers at the time of purchase to receive the exemption. As of February 2019, approximately 24,000 individuals and/or businesses had active GATE cards.

## Follow-Up Review

### GATE Program

### Legislative actions address several audit recommendations

#### What we found

The General Assembly passed House Bill 886 during the 2018 legislative session that revised the Georgia Agricultural Tax Exemption (GATE) law and addressed several recommendations in our 2017 performance audit of GATE. Changes in the GATE law resulted in several improvements to controls that help ensure GATE card applicants meet eligibility requirements and approved cardholders make qualifying purchases. The Georgia Department of Agriculture (GDA) also took action in areas not covered by the law changes and is in the process of developing internal guidance to address certain recommendations.

**GATE Card Eligibility:** As recommended, GDA improved the GATE online application by adding functionality that limits users' options based on previous responses (conditional logic) and eliminated the requirement that GDA verify an applicant's lawful presence in the U.S. prior to granting eligibility. In addition, GDA updated the application to align with changes to the income requirement brought about by HB 886. According to GDA, GATE program staff are currently in the process of developing new guidance for staff to use in application and eligibility review processes.

**Card Renewals:** The original audit found that though cardholders were required to renew their GATE cards annually, there was no corresponding eligibility review to ensure changes in income and other circumstances did not cause a cardholder to become ineligible. Revisions to the law now require GATE cards to be renewed every three years, with staggered renewal dates. In addition, GDA stated that cardholders will be required to submit all application materials again at renewal.

*Sharing of Audit Results:* As noted in the original report, GDA's eligibility determination and enforcement efforts were hampered by the Department of Revenue's (DOR) inability to share confidential tax information, including the results of its GATE cardholder audits. Changes in the GATE law now authorize GDA and DOR to share information, including confidential information, to enforce the rules and regulations of GATE. GDA and DOR confirmed that they communicate regularly and exchange information as needed in order to enforce program rules.

*GATE Card:* GDA made changes to the physical appearance of the GATE card, which may help to deter GATE card misuse. However, GDA did not revise the content of the card to include the cardholder's industry/industries, as recommended. The original audit cited the risk that, without this information, cardholders could purchase goods tax-exempt that do not pertain to their particular agricultural industries.

*GATE Website:* GDA took several actions to improve the website's usefulness and the relevancy of its contents. GDA did so by creating more user-friendly documents for applicants and existing cardholders, and simplifying the online tool retailers use to check the status of GATE cards. Revisions to the GATE law also require GDA to provide all applicants and cardholders with informational material explaining proper GATE card use and penalties of misuse, as well as provide GATE program contact information. GDA has fulfilled this requirement by sending letters and documents to cardholders and applicants describing the application and renewal processes, as well as changes to program rules resulting from the revised law.

*Economic Impact:* The estimated value of foregone tax revenue resulting from GATE was \$300 million at the time of the audit, but the benefits of GATE had not been determined. To help generate information necessary to evaluate the benefits of agricultural tax exemptions, the law now requires GDA to annually report on its administration and enforcement of GATE and requires applicants to obtain a valid taxpayer identification number to be eligible for GATE. However, the General Assembly did not clarify the purpose or intent of the exemption as suggested. As noted in the original report, adding a statement of purpose or intent to the GATE law would serve as the basis for evaluating the exemption's effectiveness. GDA indicated that it presented GATE activity data to the General Assembly during 2019 budget hearings, and it plans to submit the first required annual report by July 31, 2019.

*The following table summarizes the findings and recommendations in our 2017 report and actions taken to address them. A copy of the 2017 performance audit report 16-10 may be accessed at <http://www.audits.ga.gov/rsaAudits>.*

## GATE Program Follow-Up Review, June 2019

Original Findings/Recommendations	Current Status
<p><b>Improvements are needed to the GATE application and review process to increase the effectiveness and efficiency of the program.</b></p> <p>We recommended that GDA modify the GATE online application and application process related to the information captured on the application as well as how GDA verifies the information. Specifically, we recommended that GDA limit the tax forms listed on the application to those contained in statute and provide additional guidance around those federal tax forms. We also recommended that GDA allow applicants to list all agricultural industries or products relevant to their GATE usage.</p> <p>We recommended that GDA seek legal advice regarding requiring GATE applicants to verify lawful presence in the U.S. and to consider options for validating income provided as part of the application. Finally, we recommended that GDA develop written procedures on every aspect of the eligibility review process to ensure applications are evaluated consistently and conform to legal and regulatory requirements.</p>	<p><b>Partially Addressed</b> – Consistent with our recommendations, GDA took steps to improve the GATE application, though some concerns expressed in the original audit were unaddressed due to changes in eligibility requirements. And, while GDA indicated it is currently developing policies and procedures to guide application and eligibility review processes, they have not been finalized.</p> <p>Since the original audit, GDA redesigned the GATE online application, which aligns with changes in the GATE law, provides more accurate information for GATE program staff to use in making eligibility decisions, and eliminates an unnecessary requirement for applicants. These changes are discussed below.</p> <ul style="list-style-type: none"> <li>Income and industry requirements – Previously, the application allowed applicants to indicate if they produced more than one type of agricultural commodity (e.g., soybeans, cattle, hay) and attest to generating income of \$2,500 but did not specify that the income requirement applied to each commodity produced/industry. Because the revisions to the GATE law changed the income requirement to be based on <u>aggregate</u> income of <u>\$5,000</u>, applicants are now only required to disclose their <b>primary</b> industry in the application.</li> <li>Applicant tax information – Consistent with the law, the application now requires a taxpayer identification number (as discussed later in the report) and an acknowledgement by applicants that GDA can share information reported in the application with DOR for purposes that include verification of applicants' income (via tax information) prior to approving the GATE card.</li> <li>Conditional logic features – The application now has functionality to limit users' options based on previous responses (conditional logic), which reduces the risk of errors in the information reported by applicants. For example, the "type" of agricultural operation an applicant selects as their primary business (e.g., farmer/forestry producer or ag processor/farm services) determines the "category" options the applicant can select from.</li> <li>Secure and verifiable documents – Based on advice it received from the Attorney General's Office, GDA no longer requires GATE card applicants to submit secure and verifiable documents (consisting of a signed and notarized affidavit and identification such as a driver's license) verifying lawful presence in the U.S.</li> </ul> <p>Other recommended changes, such as removing the "other" option from the list of IRS tax forms listed in the application, did not occur because the GATE law now allows other tax forms to be considered during eligibility review. GDA also did not include guidance within the application on what tax years the tax forms should refer to as recommended because it thought that the guidance would vary according to the agricultural industry the applicant chooses.</p>

<b>GATE Program Follow-Up Review, June 2019</b>	
<b>Original Findings/Recommendations</b>	<b>Current Status</b>
	As discussed later, GDA stated that it is in the process of developing new policies and procedures for its application and eligibility review processes, as we recommended. Currently, GATE program staff use GDA's rules and regulations along with statute to guide program activities. GDA plans to complete the standard operating procedures by December 31, 2019.
<p><b>GDA's current renewal process for the GATE card does not ensure cardholders continue to meet eligibility requirements.</b></p> <p>We recommended that GDA establish a timeframe for requiring cardholders to resubmit an application to demonstrate their continued eligibility for GATE.</p>	<p><b>Fully Addressed</b> – Changes to the GATE law increased the timeframe for renewing the GATE card, and GDA confirmed that cardholders must submit a full application in order to renew.</p> <p>Previously, GATE cardholders were renewing each year simply by attesting that they still met eligibility requirements and paying the \$25 renewal fee. However, we noted that the renewal process did not include a full review of each cardholder's continued eligibility, citing potential income changes as a risk factor.</p> <p>The law now requires GATE cards to be renewed every three years, with staggered renewal dates. And GDA indicated that cardholders are required "to re-enter all data relevant to eligibility (qualification criteria, category, taxpayer ID, and tax forms submitted) regardless of what was previously on file."</p>
<p><b>Data sharing is needed to increase the impact of GATE cardholder audits and enforcement of program rules.</b></p> <p>We recommended that GDA consider options for obtaining access to DOR GATE audit findings, including data sharing between the two agencies via legislation change or asking applicants to consent to DOR reviewing GATE applications.</p>	<p><b>Fully Addressed</b> – Consistent with recommendations in the original audit, the GATE law now authorizes GDA and DOR to share information, including confidential information, in order to enforce the rules and regulations of the program.</p> <p>At the time of the original audit, DOR indicated that state law (O.C.G.A. §48-2-15(a)) prohibited it from sharing GATE cardholder audit results with GDA, which limited the effectiveness of DOR audits, particularly when they identified ineligible cardholders or misuse.</p> <p>Since the revision to the GATE law took effect in July 2018, we were able to confirm with DOR that it is now able to communicate audit findings to GDA if needed to ensure that cardholders found to be ineligible for GATE or misusing the GATE card are appropriately handled. The law also requires the GATE application to include an acknowledgement by applicants that GDA can share the information submitted with DOR, which allows GDA to request DOR's assistance in verifying applicant eligibility. GDA and DOR confirmed that the agencies have established a communication process for GATE review and enforcement. DOR also indicated that they were receiving cardholder lists from GDA that would allow them to identify anyone who should not have a GATE card and communicate that information back to GDA.</p>
<p><b>GDA should establish additional guidance to staff to ensure consistency in eligibility decisions and in communication with the public.</b></p> <p>We recommended that GDA clarify or interpret provisions in the GATE law related to eligibility and document policies and</p>	<p><b>Partially Addressed</b> – GDA indicated that changes to the GATE law and its revised regulations, continued coordination with DOR, and standard operating procedures currently in development are adequate to ensure GATE program staff properly implement the program and evaluate applicants. However, because the procedures will not be finalized until</p>

## GATE Program Follow-Up Review, June 2019

Original Findings/Recommendations	Current Status
<p>procedures covering all aspects of the GATE program. We recommended policies and procedures include application review, approval, and renewal; oversight of eligibility decisions; and other administrative functions relevant to GATE.</p>	<p>December 31, 2019, we could not review or evaluate the content.</p> <p>At the time of the original audit, our specific concerns about the lack of guidance for staff were:</p> <ul style="list-style-type: none"> <li>• both the GATE law and GDA regulations were silent or vague on some aspects of eligibility and additional interpretations or clarifications were needed to ensure GDA call center staff and GATE program staff fully understood the requirements;</li> <li>• the GATE program manager responsible for reviewing applications and making eligibility decisions did so without documented guidance (other than the law and GDA regulations) and, thus, was at risk of generating his own interpretations of vague requirements, particularly in the absence of a secondary review of eligibility decisions by GDA staff; and</li> <li>• GDA had not developed a list of commonly used, industry-specific items that would qualify as eligible purchases under GATE to be used as a reference tool for call center and GATE program staff.</li> </ul> <p>While the revisions to the GATE law helped to clarify the income requirement, other areas identified as vague were not addressed either in law or GDA's revised regulations. For example, without additional information, it is still unclear how agricultural landowners are to meet the income requirement to qualify for GATE. GDA provided an outline of the new standard operating procedures that includes guidance for various aspects of GATE program administration, including program eligibility, application process, appeal process and GATE advisory board, as well as the roles of the GATE program manager, compliance officers, and GDA call center support. Because the procedures are not complete, we were unable to evaluate the extent to which they address our recommendations.</p> <p>Regarding oversight, GDA indicated that any eligibility decisions requiring "approval beyond that of the GATE program manager are referred to their supervisor." The program manager currently reports to the GDA Director of Operations.</p> <p>Finally, GDA stated it does not plan to develop more specific guidance on eligible tax items as recommended. The agency's response indicated that it "works closely with the Georgia Department of Revenue to review potentially tax-exempt items under the program," which it had been doing prior to the original audit.</p>



<b>GATE Program</b> <b>Follow-Up Review, June 2019</b>	
Original Findings/Recommendations	Current Status
<p><b>GATE cards should serve as a useful tool for ensuring only eligible items are being purchased.</b></p> <p>We recommended that GDA include specific industry information on the GATE card, along with the cardholder name and expiration date, to promote greater compliance with the law.</p>	<p><b>Partially Addressed</b> – While the redesign of the GATE card and annual issuance adds some protection, the lack of industry information continues to put it at risk for misuse.</p> <p>GDA has made several physical changes to the GATE card. Instead of a printed paper version, the cards are now made of plastic which may reduce the risk of duplication and fraudulent use. GDA also made modifications to the content, now prominently displaying the current year and expiration date, which GDA thought would help retailers easily spot expired cards. In addition, though GATE eligibility covers a three-year period, GDA continues to issue new GATE cards annually.</p> <p>However, changes to the card did not address our concerns about the potential for cardholders to purchase items unrelated to their industry. We noted in the original audit that including the cardholder's agricultural industry/industries on the GATE card itself would help ensure proper card use by providing retailers more detailed information about the cardholder and the industries they were working in. Without this information, retailers are limited in their efforts to ensure legitimate purchases are being made.</p>
<p><b>Website improvements are needed to ensure applicants, cardholders, and retailers understand GATE eligibility and proper use.</b></p> <p>We recommended that GDA take steps to improve the organization and content of its website by adding more information about linked documents, removing outdated or irrelevant information, organizing the information according to intended user (applicant, retailer, etc.) and creating more user-friendly documents explaining how the program works. We also recommended that GDA send an information packet (via email or mail) to cardholders upon approval.</p>	<p><b>Fully Addressed</b> – In response to the original audit, GDA took action to improve the GATE website. In addition, the GATE law was revised to require GDA to provide informational materials to all new or renewing cardholders.</p> <p>Although the website is a primary source of information for applicants, cardholders, and retailers accepting GATE cards, at the time of the original audit we found that the website lacked information that users could easily understand and was not well-organized at the time of the original audit. For example, as noted in the audit, users were expected to rely on GDA's rules and regulations and DOR's Agriculture Exemptions Policy Bulletin to help them understand GATE, though both documents are founded on the GATE law and include similar technical language. The website also included links to documents seemingly unrelated to GATE and listed document links in a way that made it difficult to tell which documents were most useful or their relevancy to applicants and cardholders versus retailers.</p> <p>As a result of the audit, we were able to confirm that GDA's Office of Information Technology in conjunction with the Office of Communications took steps to redevelop the website by:</p> <ul style="list-style-type: none"> <li>• redesigning the website with a new logo and colors;</li> <li>• updating resources to reflect changes in the GATE law, such as program flyers, GATE regulations, and links to DOR's updated Policy Bulletin;</li> <li>• adding information on applying for and renewing GATE cards;</li> <li>• simplifying the process to conduct GATE card status checks;</li> <li>• improving the names of resource files and links; and</li> </ul>

<b>GATE Program Follow-Up Review, June 2019</b>	
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	<ul style="list-style-type: none"> <li>removing unrelated information.</li> </ul> <p>In addition, the revised GATE law states that GDA “shall provide the applicant with informational material detailing the lawful use of the tax exemption certificate,” as we recommended. During the last GATE card renewal cycle, GDA provided program information via mailed letters and documents to cardholders. The documents describe program rules as well as changes that resulted from revisions to GATE law. GDA indicated that its compliance officers also conduct various outreach efforts to present GATE information to cardholders, applicants, and retailers around the state.</p>
<p><b>GATE revenue collections exceed the estimated costs of its administration.</b></p> <p>We recommended that GDA reassess the need or purpose for an annual card fee and ensure that the fee is aligned with the cost of administering the program, as well as review the fee amount periodically. We also recommended that GDA establish a budget for GATE to ensure the full cost of administering the program is known.</p>	<p><b>Partially Addressed</b> – GDA has developed a budget for the GATE program since the original audit as recommended. However, the budget shows that fee revenue still exceeds program costs. GDA stated that because the fee amount is now set by legislation at \$150 (\$50 per year), it does not need to be evaluated.</p> <p>At the time of the audit, the GATE law stipulated that revenues generated by the collection of GATE card fees (\$20-\$25) should not exceed the cost to administer the program. However, it was unclear whether GDA was in compliance with this provision because GDA lacked a mechanism to capture all GATE-related expenditures. Our estimates of GATE expenditures found that fee revenues significantly exceeded estimated costs, but a more thorough assessment of costs was necessary to ensure all costs were being captured. As noted in the audit report, a fee that significantly exceeds the cost of services it is intended to pay for subsidizes unrelated state programs.</p> <p>GDA has developed a GATE program budget “to better understand funding needs” as recommended in the original audit. According to the budget, projected fee revenue of \$1.25 million in fiscal year 2020 exceeds estimated costs (\$950,000) by approximately \$300,000, which is similar to our findings in the original audit.</p> <p>The potential for fee revenue to exceed program costs is exacerbated by the revision to the GATE law authorizing GDA to assess a \$150 fee per three-year period for new or renewed GATE cards which, if annualized, doubles the amount of the original fee. Fees collected by GDA are remitted to the State Treasury and the General Assembly appropriates funds to GDA. Any fee revenue not appropriated to GDA remains with the treasury.</p>
<p><b>As an exemption, the costs and benefits of GATE cannot be fully evaluated.</b></p> <p>We recommended that the General Assembly consider specifying the purpose/intent of the exemption. We also recommended that the General Assembly require GDA or another entity to regularly evaluate and report on the exemption’s effectiveness (at least annually), collect more</p>	<p><b>Partially Addressed</b> – Through changes to the GATE law, the General Assembly took steps toward ensuring needed information is available to evaluate the economic impact of the agricultural tax exemptions. However, a key aspect of evaluating the effectiveness of the exemption was not addressed.</p> <p>Though valued at an estimated \$300 million, our original review found that the purpose or intent of the exemption had not been stated in law and little information had been compiled about those who were benefitting, including what benefits they were</p>

<b>GATE Program</b> <b>Follow-Up Review, June 2019</b>	
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cardholder data, and require cardholders to provide a taxpayer identification number as part of their GATE application.	<p>receiving. To address these concerns, the General Assembly revised the GATE law to require the following actions be taken by GDA and GATE card applicants:</p> <ul style="list-style-type: none"> <li>• The law requires GDA to annually report its administration and enforcement of GATE to the House Committee on Ways and Means and the Senate Finance Committee. At a minimum, GDA must report on the number of new and renewed GATE cards issued and the number of GATE cards revoked or suspended due to knowingly unlawful activity. GDA indicated that while it has not yet compiled an annual report, GATE activity data was included in the agency's budget presentation in the 2019 legislative session. GDA stated it will create and deliver the report to the required committees by July 31, 2019.</li> <li>• The law requires GATE applicants to provide a "valid state taxpayer identification number" which is to be obtained through DOR's Georgia Tax Center. As explained in the GATE application, applicants (including those located out-of-state) may use a social security number or federal employer identification number to satisfy this requirement.</li> </ul> <p>However, the General Assembly did not address our recommendation to add a statement of purpose or intent to the GATE law, which would serve as the basis for evaluating the exemption's effectiveness. And, although the application was modified to collect a taxpayer identification number, applicants are not required to provide any new demographic or descriptive information (e.g. farm size, commodities produced) as recommended. GDA stated that while a third-party programmer "created a more robust and secure database to collect cardholder information," the agency does not see the value in analyzing additional cardholder data at this time.</p>
<b>8 Findings</b>	<b>3 Fully Addressed</b>  <b>5 Partially Addressed</b>



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The Performance Audit Division was established in 1971 to conduct in-depth reviews of state-funded programs. Our reviews determine if programs are meeting goals and objectives; measure program results and effectiveness; identify alternate methods to meet goals; evaluate efficiency of resource allocation; assess compliance with laws and regulations; and provide credible management information to decision makers. For more information, contact us at (404)656-2180 or visit our website at [www.audits.ga.gov](http://www.audits.ga.gov).