

Date Issued: November 3, 2015  
Georgia Letter Ruling: LR SUT-2015-16  
Topic: Manufacturing

This letter is in response to your request for guidance on the application of Georgia sales and use tax to certain purchases made by Taxpayer.

### **Facts as Presented by Taxpayer**

Taxpayer provides services for retailers removing used pallets from retailers, sorting the pallets, and selling them to pallet recyclers. Taxpayer does not alter the pallets in any way. Taxpayer recently purchased a pallet sortation machine for its facility to automate the pallet sortation process. The cost of the sortation machine was \$xx.00, resulting in a sales tax liability of \$yy.00.

Taxpayer is not considered a manufacturer in its own right under OCGA 48-8-3.2. Taxpayer's NAICS code is 541614 indicating that it provides process, physical distribution, and logistics consulting services. Taxpayer generates a majority of its revenue from the sale of used and/or broken unmarked pallets to pallet recycling companies. Taxpayer believes that it is an integral part of the manufacturing process as its sortation process must be done prior to the manufacturing and repair of the pallets. The pallet repair companies specialize in just pallet repair, and if Taxpayer were not involved, the pallet recycling manufacturers would have to perform the sortation process themselves, and would in turn need the pallet sortation machine. The recyclers are not able to perform the sortation on their own as they are not equipped to be onsite at the retailers to handle the significant pallet volume.

### **Issue**

Is Taxpayer's purchase of the pallet sortation machine exempt from sales and use tax under O.C.G.A. § 48-8-3.2?

### **Analysis**

Georgia levies and imposes a tax (subject to certain specific exemptions) on the retail purchase, retail sale, storage, use, or consumption of tangible personal property, certain enumerated services, and utilities.<sup>1</sup> Every purchaser of tangible personal property at retail in this state shall be liable for a tax on the purchase at the rate of 4 percent of the sales price of the purchase.<sup>2</sup>

O.C.G.A. § 48-8-3.2 provides sales and use tax exemptions 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.

A "manufacturer" is a person or business, or a location of a person or business that is engaged in the manufacture of tangible personal property for sale or further processing.<sup>3</sup> To be considered a manufacturer, the person or business, or the location of a person or business, must be classified as a manufacturer under the 2007 North American Industrial Classification System ("NAICS") Sectors 21, 31, 32, or 33; or NAICS industry code 22111 or specific code 511110 or generally regarded as a manufacturer.<sup>4</sup> 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.<sup>5</sup>

"Manufacture of tangible personal property," used synonymously with the term "manufacturing," means a

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<sup>1</sup> O.C.G.A. §§ 48-8-1, -30(a).

<sup>2</sup> O.C.G.A. §§ 48-8-1, -2(31)(A), -30.

<sup>3</sup> O.C.G.A. § 48-8-3.2(a)(10); Ga. Comp. R. & Regs. r. 560-12-2-.62(2)(j).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

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 for further manufacturing that have a different form, configuration, utility, composition, or character.<sup>6</sup> 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.<sup>7</sup>

In the present case, Taxpayer is not a manufacturer for purposes of Georgia's sales and use tax exemptions. Taxpayer is not classified as a manufacturer under the 2007 North American Industrial Classification System because Taxpayer's NAICS code is 541614, which is not included in the listed of qualifying NAICS codes.

In addition, Taxpayer is not generally regarded as a manufacturer because manufacturing means engaging in operations that change, process, transform, or convert industrial materials by physical or chemical means into articles of tangible personal property that have a different form, configuration, utility, composition, or character. While machinery or equipment used to sort materials for further manufacturing might qualify for the manufacturing machinery and equipment exemption contained in O.C.G.A. § 48-8-3.2, merely sorting pallets by color, type, and condition does not change, process, transform, or convert the shipping platforms into a different form, configuration, utility, composition, or character. Thus, such sorting activity does not make Taxpayer a manufacturer as contemplated by O.C.G.A. § 48-8-3.2.

### **Ruling**

Because Taxpayer is not a manufacturer, Taxpayer's purchase of its pallet sortation machine is not exempt from sales and use tax under O.C.G.A. 48-8-3.2.

The opinions expressed in this ruling are based upon the information contained in your request and limited to the specific transactions, facts, circumstances, and taxpayer in question. Should the circumstances regarding the transactions change, or differ materially from those represented, then this ruling may become invalid. In addition, please be advised that subsequent statutory or administrative rule changes or judicial interpretations of the Statutes or Rules upon which this advice is based may subject similar future transactions to a different tax treatment than that expressed in this response.

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<sup>6</sup> O.C.G.A. § 48-8-3.2(a)(9); Ga. Comp. R. & Regs. r. 560-12-2-.62(2)(i).

<sup>7</sup> *Id.*