

Georgia Lett Ruling Number: LR SUT-2017-14  
Topic: Sales for Resale & Retail Sale  
Date Issued: September 26, 2017

This letter is in response to your letter ruling request dated November 18, 2016, regarding the application of Georgia sales and use tax to certain purchases made by [Redacted] (“Taxpayer”).

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

Taxpayer is a marine transportation company providing inland and ocean towing services. Taxpayer is seeking a clarification on the meaning of the term “supplies” as used in the sales and use tax exemption set forth in O.C.G.A. § 48-8-3(17). Taxpayer provided that it conducts intercoastal trade and that it currently claims this exemption only for the fuel consumed by its boats. Taxpayer has paid tax on all other items used and consumed aboard its boats,<sup>1</sup> including the following: oil, filters, batteries, bulbs, groceries, gaskets, hoses, fasteners, replacement parts, tow lines, ropes, bridles, shackles, paint, safety items, and cleaning supplies. Taxpayer typically uses and/or consumes the listed items within six months of purchase, and then the items must be replenished or replaced.<sup>2</sup>

### **Issue**

Are Taxpayer’s purchases of the above-listed items and other substantially similar items subject to Georgia sales and use tax if the items are purchased for use or consumption aboard ships plying the high seas in intercoastal trade?

### **Analysis**

Georgia levies and imposes a tax (subject to certain exemptions) on the retail purchase, retail sale, rental, storage, use, or consumption of tangible personal property and on certain enumerated services.<sup>3</sup> “Retail sale” means a sale of tangible personal property or taxable service to any person other than for resale.<sup>4</sup> “Sale” means any transfer of title or possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner, or by any means of any kind of tangible personal property for a consideration.<sup>5</sup> All retail sales, uses, consumption, distribution, and storage are taxable unless specifically exempt from taxation by the Georgia Code.

The Georgia Code provides a sales and use tax exemption for sales of fuel and supplies for use or consumption aboard ships plying the high seas either (a) in intercoastal trade between Georgia ports and ports in other states or (b) in foreign commerce between Georgia ports and ports of foreign countries.<sup>6</sup> Form ST-7 (Certificate of Exemption: Ships Plying the High Seas) is used to claim this exemption.<sup>7</sup>

Part of the difficulty in properly understanding and applying the subject exemption is that the statute does not define a key term – “supplies.” The Department must turn to the basic rules of statutory construction to determine what the General Assembly intended. Specifically, the Department must “apply the fundamental rules of statutory construction that require us to construe [the] statute according to its terms, to give words their plain and ordinary meaning, and to avoid a construction that makes some language mere surplusage.”<sup>8</sup> Exemptions from taxation are strictly construed,

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<sup>1</sup> For purposes of this ruling, the terms “ship(s),” “boat(s),” and “vessel(s)” are used synonymously.

<sup>2</sup> Telephone call with Taxpayer, April 6, 2017. Some items (e.g., groceries and cleaning supplies) are completely used up, and other items (e.g., tow lines, bridles, and ropes) deteriorate quickly from use and saltwater exposure.

<sup>3</sup> O.C.G.A. §§ 48-3-1 and 48-8-30.

<sup>4</sup> O.C.G.A. § 48-8-2(31).

<sup>5</sup> O.C.G.A. § 48-8-2(33)(A).

<sup>6</sup> O.C.G.A. § 48-8-3(17). It is well established in Georgia that this exemption requires ships to not only be “plying the high seas” but also to be engaged in trade between Georgia ports and ports of other states or countries. 1954-56 Op. Att’y Gen. p. 853. Since Taxpayer provided that it satisfies this requirement, this ruling does not address the definition of intercoastal trade.

<sup>7</sup> Ga. Comp. R. & Regs. r. 560-12-3-.13.

<sup>8</sup> *City of Atlanta v. City of College Park*, 292 Ga. 741, 743-744, (Ga. 2013).

and an exemption cannot be granted unless the law clearly and distinctly shows that exemption was the plain and unambiguous intention of the General Assembly.<sup>9</sup>

To understand the meaning of “supplies,” the Department considers the dictionary definition, other Georgia sales and use tax exemptions, and the interpretation of the term in persuasive legal authority. Merriam-Webster provides that “supplies” means things (such as food, equipment, fuel, etc.) that are needed for a particular purpose and that will be used by a particular person or group.<sup>10</sup> This definition indicates that supplies are usable and disposable items.

One other Georgia sales and use tax exemption is useful in understanding the context and limited scope of the subject exemption. The General Assembly provided an exemption for the sale of replacement parts that are installed in and become an integral part of a watercrafts that are purchased by common carriers.<sup>11</sup> Because replacement parts installed in certain watercrafts are named expressly in a separate exemption, it follows that the legislature distinguishes between supplies and replacement parts.<sup>12</sup> Thus, it is apparent that the legislature intended for supplies to include items that could be used up or consumed in the short-term, rather than replacement parts that are installed for more long-term continuous use.

Although Georgia’s appellate courts have not considered the exemption at issue, a similarly-worded exemption has been reviewed by the Supreme Court of Alabama.<sup>13</sup> At issue before the Supreme Court of Alabama was whether materials used for ballasts, which become a permanent part of a ship, should be considered supplies. The Court reasoned that the statute clearly contemplates “supplies” to be used or consumed aboard ships while plying the high seas since those are the precise words in the statute. Moreover, the Court cites definitions of the word “supplies” in the maritime field that relate to use and consumption.<sup>14</sup> Accordingly, that Court concluded that items for permanent installation are not the type of purchases intended to fall within Alabama’s similarly worded exemption for supplies for use by ships plying the high seas.

In a later case, the same Court opined that the Alabama exemption’s qualifying words, “for use or consumption,” mean in part that “the tangible items must be purchased for relatively temporary use on the designated ships; that their texture or composition makes them expendable under the types of temporary use on the ship to which they are put, or reasonably unfit after such temporary use for other profitable and practical purpose. These words do not include items suitable and purchased for permanent installation on the designated ships, or for prolonged and extended service thereon, even though they become expended after such installation or extended service.”<sup>15</sup>

The wording of the relevant exemption, the definition of “supplies,” the context provided by another Georgia sales and use tax exemption, and the persuasive reasoning of the courts in another state provide guidance to the Department. By its plain language, the exemption is limited to fuel and supplies purchased “for use or consumption aboard ships plying the high seas.” The exemption does not include replacement parts or fixtures of a ship or vessel (nor does it include items that are used on land). Given the emphasis on short-term use and consumption of supplies, without more, the Department reads the subject exemption to include only items that generally are either entirely used or consumed after their initial use or those that have a short-term use or consumption life following their initial use.

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<sup>9</sup> Ga. Comp. R. & Regs. r. 560-12-1-.18.

<sup>10</sup> Supply. Merriam-Webster.com. <https://www.merriam-webster.com/dictionary/supply>. Last accessed April 4, 2017.

<sup>11</sup> O.C.G.A. § 48-8-3(33)(A).

<sup>12</sup> See *Inland Paperboard & Packaging, Inc. v. Ga. Dep’t of Revenue*, 274 Ga. App. 101 (2005) (the express mention of certain items in a later statute implies that such items were not included in a previous version).

<sup>13</sup> *Waterman S. S. Corp. v. State*, 271 Ala. 441 (1960); *State v. Lykes Bros. S. S. Co.*, 277 Ala. 178 (1964).

<sup>14</sup> *Waterman S. S. Corp.* at 443 (1960) (citing *Gibbons v. S.B. Fanny Baker*, 40 Mo. 253 (1867) (“In its ordinary acceptation, it is understood to mean those articles which a boat may find it necessary to purchase for consumption and use on the voyage.”)).

<sup>15</sup> *State v. Lykes Bros. S. S. Co.* at 181 (concluding, based on testimony as to use, that certain lumber, dunnage paper, shoring, and grain fittings fall within Alabama’s exemption).

### **Ruling**

Georgia law provides a sales and use tax exemption for sales of fuel and supplies for use or consumption aboard ships plying the high seas either (a) in intercoastal trade between Georgia ports and ports in other states or (b) in foreign commerce between Georgia ports and ports of foreign countries. Qualifying supplies must be used or consumed aboard ships that otherwise qualify for the subject exemption. In this context, supplies are items that generally are disposable, consumable, expendable, or temporary. In contrast, the term supplies typically does not extend to long-term use equipment, replacement parts, fixtures, or component parts that are permanently attached to the ship's structure.

Here, Taxpayer provided that it purchases items for its ships plying the high seas in intercoastal trade. As a matter of course, Taxpayer orders, replaces, and/or stocks, and subsequently and routinely reorders, replaces, and/or restocks certain of these items because they generally are disposable, consumable, expendable or temporary items used aboard ships. As long as these particular type items are used or consumed aboard ships plying the high seas in intercoastal trade between Georgia ports and ports in other states, then these particular items, as included as part of a more general and broad list provided by Taxpayer, fall within the subject exemption.<sup>16</sup> It is important to note that the replacement parts described by Taxpayer are only subject to the exemption if they are short-term use items as more fully described herein. Replacement parts that are installed in and become an integral part of a watercraft will not be exempt under the subject exemption, but may, in the alternative, be exempt under O.C.G.A. § 48-8-3(33)(A).

Taxpayer should use Form ST-7 (Certificate of Exemption: Ships Plying the High Seas) to make qualifying purchases without payment of tax. Taxpayer must maintain documentation to support that any purchase on which tax was not paid pursuant to O.C.G.A. § 48-8-3(17) was used aboard a ship plying the high seas in intercoastal trade as specified in the exemption.

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, this ruling may become invalid. In addition, 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 ruling.

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<sup>16</sup> The items in question listed by Taxpayer are oil, filters, batteries, bulbs, groceries, gaskets, hoses, fasteners, replacement parts, tow lines, ropes, bridles, shackles, paint, safety items, and cleaning supplies. This ruling is based on the Department's understanding of Taxpayer's use and consumption of the specified items and similar purchases.