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RE: Sales and use tax letter ruling request dated June 6, 2012

This letter is in response to your request for guidance on the sales tax consequences of tangible personal property purchased for the manufacture and installment of cabinets at home construction sites.

### **Facts**

Taxpayer is a manufacturer and distributor of cabinets for the remodeling and new home construction markets. Taxpayer has manufacturing facilities as well as a sales office in the State of Georgia. The sales office arranges lump-sum contracts with Taxpayer's construction clients to arrange for the purchase and installation of cabinets in new home construction. After installation at the construction sites, the cabinets immediately convert from tangible personal property into real property.

Taxpayer does not build the cabinets at the home construction sites in Georgia. Instead, the company manufactures the cabinet's parts outside Georgia and assembles them both instate and out-of-state. Component materials to manufacture the cabinet parts are purchased outside Georgia, and sales tax is paid either at the time of purchase or instate at the time of consumption.

### **Issue**

Should Taxpayer remit sales tax to Georgia immediately upon purchase of materials used to construct cabinets or upon consumption of the materials in Georgia?

### **Analysis**

Georgia levies and imposes sales tax (subject to certain specific exemptions) on the retail purchase, retail sale, storage, use, or consumption of tangible personal property and on certain enumerated services.<sup>1</sup> Every purchaser of tangible personal property at retail in Georgia is liable for a tax on the

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

purchase at the rate of 4 percent of the sales price of the purchase, plus any applicable local sales taxes.<sup>2</sup>

The dealer making the taxable sale must collect the tax from the purchaser and remit the tax to the Department.<sup>3</sup> “Retail sale” or “sale at retail” means a sale of tangible personal property 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, by any means of any kind of tangible personal property for a consideration.<sup>5</sup> Each dealer must add the amount of the tax to the sale price or charge, and any dealer who neglects, fails, or refuses to collect the tax shall be liable for and shall pay the tax himself.<sup>6</sup>

In addition to the sales tax, described above, which is imposed on retail sales, Georgia also imposes tax on the storage, use, or consumption of tangible personal property if Georgia sales tax was not paid on the purchase of the particular property.<sup>7</sup> Generally, this tax is referred to as “use tax.” O.C.G.A. § 48-8-30(c)(1) specifically provides that “[u]pon the first instance of use, consumption, distribution, or storage within this state of tangible personal property purchased at retail outside this state, the owner or user of the property shall . . . be liable for a [State] tax at the rate of 4 percent of the cost price . . .”<sup>8</sup> In addition, the local use tax rate will also be due upon the first instance of use, consumption, distribution, or storage of such tangible personal property in a local jurisdiction. Because local county tax rates vary by county, the local county tax rate is dependent upon in which county the tangible personal property was used, consumed, distributed, or stored.<sup>9</sup> Thus, when a person purchases tangible personal property outside Georgia and subsequently brings the property into Georgia, that person is liable for Georgia state and local use tax. The relevant sales tax statutes must not be construed to require a duplication in the payment of the tax, and thus the tax imposed by O.C.G.A. § 48-8-30(c) shall be subject to a credit for like taxes previously paid in another state.<sup>10</sup>

Each person who contracts to furnish tangible personal property and perform services under the contract within Georgia is deemed to be the consumer of the tangible personal property and is required to pay sales tax at the time of purchase.<sup>11</sup> Any person so contracting who fails to pay the sales tax at the time of the purchase or at the time the sale is consummated outside the limits of this state shall be liable for the payment of the sales or use tax.<sup>12</sup>

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

<sup>3</sup> *Id.*

<sup>4</sup> O.C.G.A. § 48-8-2(6)(A).

<sup>5</sup> O.C.G.A. § 48-8-2(8)(A).

<sup>6</sup> O.C.G.A. § 48-8-35.

<sup>7</sup> See generally O.C.G.A. § 48-8-30.

<sup>8</sup> If the item was purchased outside Georgia and used outside Georgia for more than six months, the owner of the property is then liable for tax at the rate of four percent of the cost price or fair market value of the property, whichever is less. O.C.G.A. § 48-8-30(c)(2).

<sup>9</sup> The MARTA Act of 1965 and O.C.G.A. §§ 48-8-1, 48-8-80, 48-8-100, 48-8-110, 48-8-140, 48-8-200, & 48-8-240.

<sup>10</sup> O.C.G.A. §§ 48-8-30(c)(3) and 48-8-42. Local taxes are also subject to a credit for previously paid local taxes.

<sup>11</sup> O.C.G.A. § 48-8-63(b); Comp. R. & Regs. r. 560-12-2-.26(1).

<sup>12</sup> O.C.G.A. § 48-8-63(b).

### **Ruling**

Based on the specific facts (e.g., the manner in which and degree to which the personalty is attached to and becomes a part of the realty) and documents evidencing both the form of the transaction and the parties' intent regarding the transaction, Taxpayer is a real property contractor in the transaction at issue and owes sales tax on everything it purchases to fulfill its contractual obligations in Georgia. Taxpayer contracts to furnish tangible personal property and perform services under the contract within Georgia and, thus, is deemed under O.C.G.A. § 48-8-63(b) to be the consumer of the tangible personal property and is required to pay sales tax at the time of purchase of any construction materials purchased in Georgia. If Taxpayer does not pay the tax at the time of purchase or at the time the sale is consummated outside the limits of this state, Taxpayer is liable for the payment of use tax.<sup>13</sup>

### **Conclusion**

The opinions expressed in this ruling are based upon the information contained in your request and are limited to the specific transactions, and taxpayer in question. Should any circumstances regarding the transactions change or differ materially in any manner than originally represented, then this ruling may become invalid. In addition, please be advised that any 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 those expressed in this response.

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<sup>13</sup> Georgia allows a credit against state use tax due for state sales tax previously paid to another state and a credit against local use tax due for previously paid local sales tax.