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Georgia Letter Ruling No. 2012-12-27-01 Manufacturing

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

**Facts**

Taxpayer manufactures [a certain] industrial salt at its plant facility located in Georgia and uses electricity in the manufacturing process.

[DETAILED DESCRIPTION OF MANUFACTURING PROCESS REDACTED]

Taxpayer's manufacturing process relies on passing electricity through a solution in a series of electrochemical cells, resulting in salt being converted into [the industrial salt]. The amount of [industrial salt] produced at the facility is directly proportional to the number of electrochemical cells multiplied by the amount of current being passed through them.

**Issue**

Will Taxpayer's purchases and use of electricity as described above in the production of [industrial salt] at its Georgia manufacturing facility be fully exempt from Georgia sales and use tax as an industrial material under O.C.G.A. § 48-8-3.2(b) beginning January 1, 2013?

**Analysis**

Georgia imposes sales tax on the retail purchase, retail sale, rental, storage, use, or consumption of tangible personal property and on certain services.<sup>1</sup> "Retail sale" or a "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent and specifically includes the sale of electricity.<sup>2</sup> A "sale" is any transfer of title or possession, transfer of title and 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>3</sup>

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<sup>1</sup> O.C.G.A. § 48-8-30(a).

<sup>2</sup> O.C.G.A. § 48-8-2(31).

<sup>3</sup> O.C.G.A. § 48-8-3(33).

Effective January 1, 2013, a sales and use tax exemption will be available for "...the sale, use, storage, or consumption of industrial materials or packaging supplies..."<sup>4</sup> The term "industrial materials" is defined to include:

1. Materials for future processing, manufacture, or conversion into articles of tangible personal property for resale when the industrial materials become a component part of the finished product;
2. Materials that are coated upon or impregnated into the product at any stage of its processing, manufacture, or conversion, even though such materials do not remain a component part of the finished product for sale; and
3. Raw materials.<sup>5</sup>

Taxpayer's use of electricity described above qualifies under the second prong because the electricity is impregnated into the product during the manufacturing process. The electricity Taxpayer uses is passed through the salt brine raw material to trigger a chemical reaction converting the salt into the product that is offered for sale. Electrons from the electricity are transferred to the salt brine solution, which is then converted into [the industrial salt]. The electricity is a catalyst that comes into direct contact with and is impregnated into the product during its manufacture. Therefore, effective January 1, 2013, the electricity used in the Georgia plant in the manner described above is exempt under O.C.G.A. § 48-8-3.2(b) as an industrial material.

This application of the industrial material exemption follows from the express wording of certain changes in H.B. 386 (signed into law on April 19, 2012) and its overall intent. Before January 1, 2013, the exemption for industrial materials does not include "natural or artificial gas, oil, gasoline, electricity, solid fuel, ice, or other materials used for heat, light, power, or refrigeration in any phase of the manufacturing, processing, or converting process."<sup>6</sup> In H.B. 386, the General Assembly removed the electricity exclusion from the industrial material exemption, thus demonstrating its intent that electricity otherwise meeting the requirements as an industrial material would be fully exempt.

### **Ruling**

Effective January 1, 2013, electricity Taxpayer purchases and uses as described above in the production of [industrial salt] at its Georgia manufacturing facility will be fully exempt from Georgia sales and use tax as an industrial material under O.C.G.A. § 48-8-3.2(b). Electricity used for other purposes does not fall within the scope of the exemption in O.C.G.A. § 48-8-3.2(b).

The opinions expressed in this ruling are based upon the information contained in your request and limited to the specific transactions 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>4</sup> O.C.G.A. § 48-8-3.2(b).

<sup>5</sup> O.C.G.A. § 48-8-3.2(a)(5).

<sup>6</sup> O.C.G.A. § 48-8-3(35)(B).