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Georgia Letter Ruling SUT No. 2012-08-23-01 Withdrawal from Inventory

This letter is in response to your request for a letter ruling on the application of O.C.G.A. § 48-8-39 to flooring samples.

### **Facts**

Taxpayer has a manufacturing facility in Georgia where it manufactures laminate flooring.

The manufactured product is sold to end users in a case. Sample pieces, are displayed in stores, and much smaller samples are available for customers to take with them.

Taxpayer argues that the methodology for computing tax on carpet samples should be applied to other flooring industry samples. Taxpayer asks the Department to consider amending O.C.G.A. §48-8-39(b) to include the wording “floorcovering” in place of “carpet.”

### **Issue**

Does the methodology contained in O.C.G.A. §48-8-39(b) for calculating use tax due on self-manufactured carpet samples apply to other types of floor coverings?

### **Analysis**

Georgia sales tax is imposed on the retail purchase, retail sale, rental, storage, use, or consumption of tangible personal property and on the services described in this article.<sup>1</sup> Use tax is generally imposed on the first instance of use, consumption, distribution, or storage within this state of tangible personal property purchased at retail outside this state.<sup>2</sup>

If a person who engages in the business of processing, manufacturing, or converting industrial materials into articles of tangible personal property for sale, whether as custom-made or stock

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<sup>1</sup> O.C.G.A. § 48-8-30(a).

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

items, makes any use of the article of tangible personal property other than retaining, demonstrating, or displaying it for sale, the use shall be deemed a retail sale as of the time the article is first used by such person and its fair market value at the time shall be deemed the sales price of the article.<sup>3</sup> However, pursuant to O.C.G.A. § 48-8-39(b), the fair market value used to calculate the use tax remitted on a carpet sample is discounted depending upon whether the carpet sample use is residential or commercial.<sup>4</sup> The Georgia Code does not specifically provide a discounted fair market value rate for other types of floor coverings.

The Georgia constitution states that "the General Assembly shall have the power to make all laws not inconsistent with this Constitution, and not repugnant to the Constitution of the United States, which it shall deem necessary and proper for the welfare of the state."<sup>5</sup> The Department of Revenue's function is to "administer and enforce the revenue laws of this state and such other laws as may be specifically assigned by law to the department or to the commissioner."<sup>6</sup> Thus, the General Assembly makes the laws, and the Department administers and enforces those laws.

By defining the fair market value of carpet samples to be either 21.9 percent or one percent of the total raw material cost of the sample, the General Assembly has effectively provided a partial exemption for such samples, and when the General Assembly enacts a sales tax exemption, that exemption is strictly construed, and will not be granted unless the relevant statute clearly and distinctly shows that such was the plain and unambiguous intention of the General Assembly.<sup>7</sup> The standards for reviewing taxation statutes are well-settled:

Taxation is the rule, and exemption from taxation [is] the exception. And exemptions are made, not to favor the individual owners of property, but in the advancement of the interests of the whole people. Exemption, being the exception to the general rule, is not favored; but every exemption, to be valid, must be expressed in clear and unambiguous terms, and, when found to exist, the enactment which it is given will not be enlarged by construction, but, on the contrary, will be strictly construed.<sup>8</sup>

## **Rulings**

The General Assembly's intention in O.C.G.A. §48-8-39 is clear and distinct in that the discounted fair market value rate for calculating the amount of use tax to be remitted is only applicable to carpet samples. The relevant exemption does not apply to all floor coverings, and it

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<sup>3</sup> O.C.G.A. § 48-8-39(b)(1)(A).

<sup>4</sup> "The fair market value of any carpet sample shall be equal to 21.9 percent of the total raw material cost of the sample, except that the fair market value of a sample of carpet that is manufactured exclusively for commercial use shall be equal to 1 percent of the total raw material cost of the sample." O.C.G.A. §48-8-39(b).

<sup>5</sup> GA Const. art. III, § VI, par. I.

<sup>6</sup> O.C.G.A. § 48-2-1.

<sup>7</sup> Ga. Comp. R. & Regs. r. 560-12-1-.18.

<sup>8</sup> *GA Dep't. of Rev. v. Owens Corning*, 283 Ga. 489 (2008); *see also Southwire Company v. Chilivis*, 139 Ga. App. 329 (1976) (explaining that in interpreting tax exemptions all doubts must be resolved in favor of the taxing authority).

is up to the General Assembly to decide whether, when, and to what extent the tax treatment of self-manufactured carpet samples should be expanded to other floor coverings.

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.