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Georgia Letter Ruling No. 2013-10-04-01 Documentation Issues

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

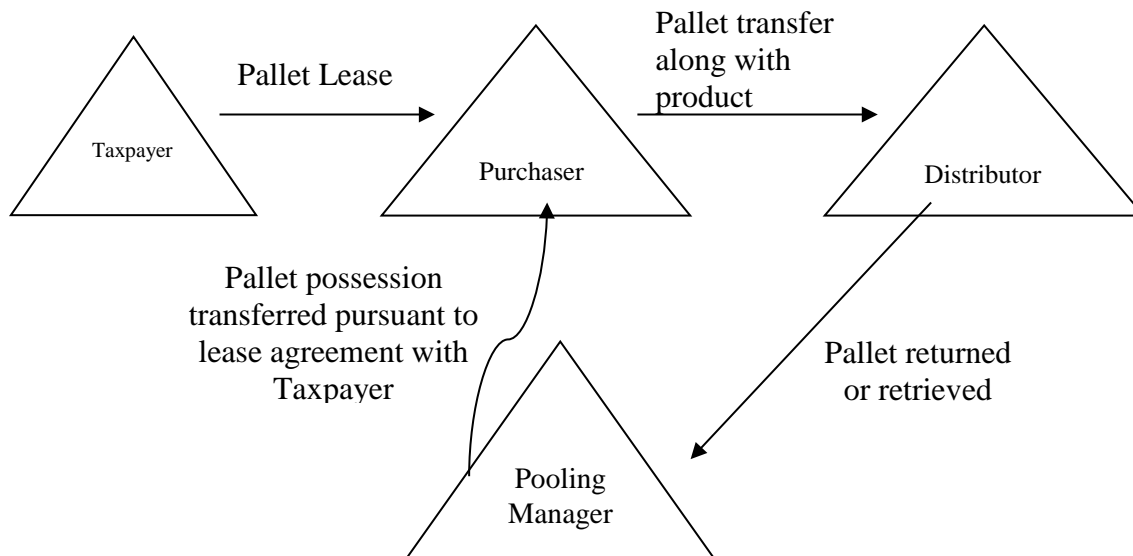
Facts

Taxpayer is in the business of leasing pallets to manufacturers and distributors (“Purchasers”) who use the pallets to package and ship their products to customers (or “distributors”). A pallet issued by Taxpayer may either be wooden or plastic. Both wooden and plastic pallets serve the same purpose and consist of a frame with open slats along the bottom for purposes of being lifted by a forklift. The pallets also consist of parallel deck boards, with space in between them, attached to the top of the frame whereby products are placed. Manufactured items are placed onto the pallets and secured with the use of load formers, corner posts, and stretch or shrink wrap. The combination of these packaging materials encompasses the products and pallet jointly and restrains the products from moving downward or side-to-side. These assembled pieces – the manufactured products and the pallet packaging materials – are sold to third party customers as one “unit load”.

The pallets that Taxpayer leases to Purchasers serve identical functions from the Purchasers’ perspective as those that may be purchased from other pallet vendors.¹ Likewise, the price of the manufactured goods ultimately purchased by any distributor remains constant regardless of whether a Purchaser employs a leased pallet from Taxpayer or a purchased pallet from another pallet vendor to deliver the respective products. After receipt of the goods by the distributor, the Purchaser relinquishes all responsibility for and possession of the pallet. Arrangements are then made between an authorized collection and repair manager (or “pooling manager”) and the distributor to recover the used pallet.

¹ Taxpayer retains title at all times to the pallets that it leases, as the Purchaser never has title.

The following is a cursory visual depiction of the transactions related to the lease of Taxpayer pallets.



In sum, Purchasers in various industries lease pallets from Taxpayer to use as packaging materials for the sale or shipment of the Purchasers' products to distributors or consumers. Once the Purchaser delivers the loaded goods to the distributor, the Purchaser no longer has possession or subsequent control of the pallets. Arrangements are then made between the distributor and a pooling manager to retrieve the used pallet. In all instances distributors are barred from returning the pallet to anyone other than the pooling managers.

Issue

Is Taxpayer required to collect and remit sales tax on the sale described above?

Analysis

Georgia imposes sales tax on the retail purchase, retail sale, rental, storage, use, or consumption of tangible personal property and on certain services.² "Retail sale" or a "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.³ 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.⁴ Any dealer who neglects, fails, or refuses to collect the tax upon a retail sale of taxable tangible personal shall be liable for and shall pay the tax himself.⁵

Packaging Material Exemption

Effective until January 1, 2013, O.C.G.A. § 48-8-3(35)(A) provided the following sales tax exemption for industrial and packaging materials:

The sale, use, storage, or consumption of: (i) industrial materials for future processing, manufacture, or conversion into articles of tangible personal property for resale when the

² O.C.G.A. § 48-8-30(a).

³ O.C.G.A. § 48-8-2(31).

⁴ O.C.G.A. § 48-8-3(33).

⁵ O.C.G.A. § 48-8-35.

industrial materials become a component part of the finished product; (ii) industrial materials other than machinery and machinery repair parts that are coated upon or impregnated into the product at any stage of its processing, manufacture, or conversion; or (iii) *materials, containers, labels, sacks, or bags used for packaging tangible personal property for shipment or sale. To qualify for the packaging exemption, the items shall be used solely for packaging and shall not be purchased for reuse.*⁶ (emphasis added).

However, effective January 1, 2013, the following sales and use tax exemption became effective:

The sale, use, consumption, or storage of materials, containers, labels, sacks, or bags used for packaging tangible personal property for shipment or sale. To qualify for the packaging exemption, the items shall be used solely for packaging and shall not be purchased for reuse. The packaging exemption shall not include materials purchased at a retail establishment for consumer use.⁷

The exemption(s) quoted above do not include reusable items.

In addition, a specific exemption for “packaging supplies” purchased/used by manufacturers became effective January 1, 2013.⁸ “Packaging supplies” means materials, including, but not limited to, containers, labels, sacks, boxes, wraps, fillers, cones, cores, pallets, or bags, used in a packaging operation solely for packaging tangible personal property.⁹ “Packaging operation” means:

bagging, boxing, crating, canning, containerizing, cutting, measuring, weighing, wrapping, labeling, palletizing, or other similar processes necessary to prepare or package manufactured products in a manner suitable for sale or delivery to customers as finished goods or suitable for the transport of work in process at or among manufacturing plants for further manufacturing, and the movement of such finished goods or work in process to a storage or distribution area at a manufacturing plant.¹⁰

Manufacturing Machinery and Equipment Exemption

Effective January 1, 2009, an exemption was provided to manufacturers for “[m]achinery or equipment which is necessary and integral to the manufacture of tangible personal property . . .”¹¹ The manufacture of tangible personal property commences as industrial materials are received at a manufacturing plant, and concludes once the packaging operation is complete and the tangible personal property is ready for sale or shipment.¹² Depending on the particular facts, this particular exemption *could* apply to pallets.

Effective January 1, 2013, an exemption was provided to manufacturers for “[t]he sale, use, or storage of machinery or equipment which is necessary and integral to the manufacture of tangible personal property and the sale, use, storage, or consumption of industrial materials or packaging supplies shall be exempt from all sales and use taxation.”¹³ “Packaging supplies” means materials, including, but not limited to, containers, labels, sacks, boxes, wraps, fillers, cones, cores, pallets, or bags, used in a packaging operation solely for packaging tangible personal property.¹⁴ The January 1, 2013 exemption for “packaging supplies” used by a manufacturer does not differentiate between reusable packaging supplies and single-use packaging supplies; thus, reusable packaging supplies, such as the pallets described above, are within the scope of this exemption provided to manufacturers.

⁶ O.C.G.A. § 48-8-3(35)(A).

⁷ O.C.G.A. § 48-8-3(94).

⁸ O.C.G.A. § 48-8-3.2.

⁹ O.C.G.A. § 48-8-3.2(a)(13).

¹⁰ O.C.G.A. § 48-8-3.2(a)(12).

¹¹ O.C.G.A. § 48-8-3(34).

¹² Ga. Comp. R. & Regs. r. 560-12-1-.62(5).

¹³ O.C.G.A. § 48-8-3.2(b).

¹⁴ O.C.G.A. § 48-8-3.2(a)(13).

Exemptions from taxation are strictly construed, and an exemption will not be granted unless the relevant statute clearly and distinctly shows that such was the plain and unambiguous intention of the General Assembly.¹⁵ Georgia case law provides that “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.¹⁶

Thus, as discussed in the Department’s 2010 letter, the Department generally considers the purchase and lease of reusable pallets that are used to ship product to customers to be taxable. However, the January 1, 2013 exemption for “packaging supplies” *used by a manufacturer* does not differentiate between reusable packaging supplies and single-use packaging supplies; thus, reusable packaging supplies, such as the pallets described above, are within the scope of this exemption provided to manufacturers. Use by other than a manufacturer of returnable pallets will generally remain taxable.

Exemption Certificates

From January 1, 2011 through March 4, 2013, O.C.G.A. § 48-8-38 provides in relevant part as follows:

- (a) All gross sales of a retailer are subject to the tax imposed by this article until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale unless such person takes from the purchaser a certificate stating that the property is purchased for resale or is otherwise exempt.
- (b) The certificate relieves the seller from the burden of proof as provided in subsection (a) of this Code section if the seller acquires from the purchaser a properly completed certificate.
- (c) The certificate shall include such information as is determined by the commissioner and is signed by the purchaser if it is a paper exemption certificate.
...
- (f) The department shall relieve a seller of the tax otherwise applicable if the seller obtains a fully completed exemption certificate approved by the Streamlined Sales Tax Governing Board, the department, or the Multistate Tax Commission or captures the relevant data elements required under the Streamlined Sales and Use Tax Agreement within 90 days subsequent to the date of sale . . .
- (g) The department shall relieve a seller of the tax otherwise applicable if the seller obtains a blanket exemption certificate from a purchaser with which the seller has a recurring business relationship.

Use of the verb "shall" denotes a mandatory intent on the part of the legislature.¹⁷ Thus, for the periods of January 1, 2011 through March 4, 2013, the Department of Revenue must relieve a seller of the tax otherwise due if the seller obtains a fully completed exemption certificate.

¹⁵ Ga. Comp. R. & Regs. r. 560-12-1-.18.

¹⁶ *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 that in interpreting tax exemptions all doubts must be resolved in favor of the taxing authority); *Amoena Corp. v. Strickland*, 248 Ga. 496, 500 (Ga. 1981) and *Southwire Co. v. Chilivis*, 139 Ga. App. 329, 332 (Ga. Ct. App. 1976) (tax exemptions are to be strictly construed against the taxpayer and doubts resolved in favor of taxability).

¹⁷ *Hancock County Bd. of Tax Assessors v. Dickens*, 208 Ga. App. 742 (1993) (citing *Lang v. State*, 168 Ga. App. 693, 695 (1983) and *Hardison v. Fayssoux*, 168 Ga. App. 398, 399 (1983)).

Effective March 5, 2013, a good faith burden is imposed on sellers accepting exemption certificates. O.C.G.A. § 48-8-38 now provides as follows:

(a) All gross sales of a retailer are subject to the tax imposed by this article until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail shall be upon the person who makes the sale unless such person, in good faith, takes from the purchaser a certificate stating that the property is purchased for resale or is otherwise tax exempt.

(b) The certificate relieves the seller from the burden of proof as provided in subsection (a) of this Code section if the seller acquires from the purchaser a properly completed certificate *taken in good faith*. A properly completed certificate taken in good faith means a seller shall obtain a certificate:

- (1) That is fully completed, including, but not limited to, the name, address, sales tax number, and signature of the taxpayer when required;
- (2) In a form appropriate for the type of exemption claimed;
- (3) Claiming an exemption that was statutorily available on the date of the transaction in the jurisdiction where the transaction is sourced;
- (4) Claiming an exemption that could be applicable to the item being purchased; and
- (5) Claiming an exemption that is reasonable for the purchaser's type of business.

(c) The certificate relieves the seller from the burden of proof on sales for resale as provided in subsection (a) of this Code section if the seller acquires from the purchaser a properly completed certificate, taken in good faith, from a purchaser who:

- (1) Is engaged in the business of selling tangible personal property;
- (2) Has a valid sales tax registration number at the time of purchase and has listed his or her sales tax number on the certificate; and
- (3) At the time of purchasing the tangible personal property, the seller has no reason to believe that the purchaser does not intend to resell it in his or her regular course of business. (emphasis added).

The good faith standard that became effective March 5, 2013 can only be analyzed on a case-by-case basis. The exemption certificate itself, the item being sold (or leased), and the purchaser or lessee's type of business are all relevant when determining whether a dealer exercised good faith.

Ruling

With respect to transactions taking place after January 1, 2009, if Taxpayer accepts a fully completed exemption certificate from a manufacturer, Taxpayer will be relieved of liability relating to such transactions.¹⁸ Note, however, effective March 5, 2013, all sellers must exercise good faith when accepting exemption certificates.¹⁹

In general, with respect to transactions occurring on or after March 5, 2013, to be relieved of liability Taxpayer must ensure that any certificate it accepts:

- (1) Is fully completed, including, but not limited to, the name, address, sales tax number, and signature of the taxpayer when required;
- (2) Is in a form appropriate for the type of exemption claimed;
- (3) Claims an exemption that was statutorily available on the date of the transaction in the jurisdiction where the transaction is sourced;
- (4) Claims an exemption that could be applicable to the item being purchased; and

¹⁸ Returnable/reusable pallets leased to distributors do not fall within the scope of the exemption contained in O.C.G.A. § 48-8-3(94) and previously in O.C.G.A. § 48-8-3(35)(A) because these exemptions expressly exclude reusable items.

¹⁹ Pursuant to O.C.G.A. § 48-8-38(b), sellers were also required to exercise good faith when accepting exemption certificates before January 1, 2011.

(5) Claims an exemption that is reasonable for the purchaser's type of business.

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.