



Douglas J. MacGinnitie  
Commissioner

State of Georgia  
**Department of Revenue**  
Administrative Division – Office of Tax Policy  
1800 Century Blvd., Suite 15107  
Atlanta, Georgia 30345-3205  
(404) 417-6649

Frank M. O'Connell  
Director

June 13, 2013

Re: Request for Declaratory Ruling dated April 26, 2013

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

### **Facts**

Taxpayer offers products ranging from vaccines and pharmaceuticals to state of the art equipment and software. Taxpayer sells products for small animals, large animals, equine, animal equipment, personal care items, food, clothing etc. Because of recent changes to Georgia's sales and use tax exemptions for the agricultural industry, Taxpayer is requesting guidance as to the appropriate taxation of various veterinary items and cleaning supplies.

### **Issue**

How is tax appropriately applied to items sold by Taxpayer when the Taxpayer accepts in good faith a purchaser's GATE certificate?

### **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 purchase at the rate of 4 percent of the sales price of the purchase, plus any

---

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

applicable local sales taxes.<sup>2</sup> All sales are deemed taxable unless the contrary is established.<sup>3</sup> In order to claim exemption, the seller ordinarily obtains an exemption certificate from the purchaser showing that the purchaser is exempt from the tax.<sup>4</sup>

The sales and use taxes levied or imposed by this article shall not apply to sales to, or use by, a qualified agriculture producer of agricultural production inputs, energy used in agriculture, and agricultural machinery and equipment.<sup>5</sup> A dealer can make exempt sales of agricultural machinery and equipment to a qualified agricultural producer providing a valid Georgia Agriculture Tax Exemption (GATE) certificate issued by the Georgia Department of Agriculture.

"Agricultural production inputs" means

- seed;
- seedlings;
- plants grown from seed, cuttings, or liners;
- fertilizers;
- insecticides;
- livestock and poultry feeds, drugs, and instruments used for the administration of such drugs;
- fencing products and materials used to produce agricultural products;
- fungicides;
- rodenticides;
- herbicides;
- defoliant;
- soil fumigants; plant growth regulating chemicals;
- desiccants, including, but not limited to, shavings and sawdust from wood, peanut hulls, fuller's earth, straw, and hay;
- feed for animals, including, but not limited to, livestock, fish, equine, hogs, or poultry; sugar used as food for honeybees kept for the commercial production of honey, beeswax, and honeybees;
- cattle, hogs, sheep, equine, poultry, or bees when sold for breeding purposes;
- ice or other refrigerants, including, but not limited to, nitrogen, carbon dioxide, ammonia, and propylene glycol used in the processing for market or the chilling of agricultural products in storage facilities, rooms, compartments, or delivery trucks;
- materials, containers, crates, boxes, labels, sacks, bags, or bottles used for packaging agricultural products when the product is either sold in the containers, sacks, bags, or bottles directly to the consumer or when such use is incidental to the sale of the product for resale;

---

<sup>2</sup> Tangible personal property is defined as personal property "which may be seen, weighted, measured, felt, or touched, or is in any other manner perceptible to the senses." State v. Cherokee Brick & Tile Co., 79 S.E.2d 322 (1953).

<sup>3</sup> O.C.G.A. § 48-8-38.

<sup>4</sup> O.C.G.A. § 48-8-38; Ga. Comp. R. & Regs. r. 560-12-1-.08(1).

<sup>5</sup> O.C.G.A. § 48-8-3.3(b).

- and containers, plastic, canvas, and other fabrics used in the care and raising of agricultural products or canvas used in covering feed bins, silos, greenhouses, and other similar storage structures.<sup>6</sup>

“Agricultural machinery and equipment” means machinery and equipment used in the production of agricultural products, including, but not limited to, machinery and equipment used in the production of poultry and eggs for sale, including, but not limited to, equipment used in the cleaning or maintenance of poultry houses and the surrounding premises....<sup>7</sup> Machinery and equipment used to repair or maintain agricultural machinery and equipment is qualifying agricultural machinery and equipment and exempt from Georgia sales and use tax. “Agricultural machinery and equipment” also means . . . any repair, replacement, or component parts installed on agricultural machinery and equipment.<sup>8</sup> Repair, replacement, and component parts installed on machinery and equipment used to repair or maintain agricultural machinery and equipment is exempt from Georgia sales and use tax.

Consumable supplies are subject to tax with the exception of employee safety equipment, which is tax exempt even if typically considered a consumable supply.<sup>9</sup>

The previous and the amended versions of O.C.G.A. § 48-8-38 both state that the seller bears the burden of proving that a retail sale is not subject to sales tax. Prior to March 5, 2013, sellers met the burden of proving that a sale was not subject to sales tax by accepting a properly completed certificate of exemption or obtaining the relevant data from the purchaser within 90 days subsequent to the date of the sale. The amendment changes the manner in which sellers meet this burden. Effective March 5, 2013, O.C.G.A. § 48-8-38 requires retail sellers to collect sales tax unless they “in good faith” take from the purchaser a properly completed certificate of exemption.

A seller takes a properly completed certificate in good faith if the certificate is:

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

The amendment’s good faith requirement applies to all exempt sales, including sales exempt under the GATE program. The amendment does not change the exemption certificate acceptable

---

<sup>6</sup> O.C.G.A. § 48-8-3.3(a)(3).

<sup>7</sup> O.C.G.A. § 48-8-3.3(a)(1)(A).

<sup>8</sup> O.C.G.A. § 48-8-3.3(a)(1)(B).

<sup>9</sup> Informational Bulletin SUT 2013-01-28.

under the GATE program: The GATE certificate remains the only form of agriculture exemption certificate acceptable for purchases under this program.

*Record Keeping for Audit Purposes*

All dealers must keep and preserve: (a) suitable records of sales and purchases; (b) books of account necessary to compute the tax due; and (c) other information required by the Commissioner.<sup>10</sup>

Regulations require that the following records be kept:

- a daily record of all cash and credit sales, including any type of financing or installment plan in use, and amounts of taxes collected;
- a record of the amount of all merchandise purchased, including all bills of lading, invoices, and copies of purchase orders;
- a record of all deductions and exemptions claimed in filing sales or use tax returns, including exemption and resale certificates;
- a record of all tangible personal property used or consumed in the conduct of the business; and
- a true and complete inventory of the stock on hand and its value, taken at least once yearly.<sup>11</sup>

Dealers must retain records for three years.<sup>12</sup> However, if an assessment has been made and an appeal to the Commissioner or a court is pending, books and records relating to the period covered by the assessment must be preserved until the final disposition of the appeal.<sup>13</sup>

**Ruling**

Effective March 5, 2013, O.C.G.A. § 48-8-38 requires retail sellers to collect sales tax unless they “in good faith” take from the purchaser a GATE certificate or other appropriate and properly completed certificate of exemption.

Although the Department of Revenue is unable to address each specific item, sales of agricultural production inputs, energy used in agriculture, and agricultural machinery and equipment are exempt from Georgia sales and use tax when Taxpayer accepts a valid GATE certificate in good faith. Taxpayer must retain records to support its sales for a period of no less than three years.

---

<sup>10</sup> O.C.G.A. § 48-8-52; Ga. Comp. R. & Regs. r. 560-12-1-.15.

<sup>11</sup> Ga. Comp. R. & Regs. r. 560-12-1-.23(1)(a) to Ga. Comp. R. & Regs. r. 560-12-1-.23(1)(e).

<sup>12</sup> O.C.G.A. § 48-8-52(a); Ga. Comp. R. & Regs. r.560-12-1-.15.

<sup>13</sup> O.C.G.A. § 48-8-52(a); Ga. Comp. R. & Regs. r. 560-12-1-.15; Ga. Comp. R. & Regs. r. 560-12-1-.23(1); Ga. Comp. R. & Regs. r. 560-12-1-.23(3).

June 13, 2013

Page 5 of 5

### **Conclusion**

The opinions expressed in this ruling are based upon the information contained in your request and limited to the specific transactions, facts, 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.