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Georgia Letter Ruling SUT No. 2013-06-18-01 Water Treatment

This letter is in response to your request for guidance on the sales tax consequences of purchases of machinery and equipment involved in waste management.

Facts

Taxpayer partners with municipalities to design, construct and manage solid waste landfills in Georgia. The municipality owns the landfill and fulfills all zoning and permitting requirements. Taxpayer contracts with the municipalities to manage the landfills after construction for the life of the landfill. In addition, Taxpayer provides waste collection and disposal services throughout Georgia. Taxpayer does not recover gas from its landfill operations in Georgia to sell to customers, nor does Taxpayer use burning as part of its landfill management services.

Issue

Do the materials and/or equipment purchased by Taxpayer to construct and/or operate a solid waste disposal landfill qualify for the exemption from Georgia sales and use tax for machinery and equipment primarily used for the reduction or elimination of air or water pollution?

Analysis

Georgia levies and imposes a tax (subject to certain exemptions) on the retail purchase, retail sale, storage, use, or consumption of tangible personal property and on certain enumerated services.¹ Every purchaser of tangible personal property at retail in Georgia is liable for tax on the purchase at a rate of 4 percent of the sales price of the purchase plus any applicable local sales taxes. The dealer making the taxable sale must collect the tax from the purchaser and remit the tax to the Department.² Thus, unless a specific exemption applies, the sale/purchase of tangible personal property is subject to tax.

¹ O.C.G.A. §§ 48-8-1 and 48-8-30(a).

² O.C.G.A. § 48-8-30(b)(1).

The sale of machinery and equipment that is primarily used for reducing or eliminating air or water pollution is exempt from Georgia sales and use tax.³ Machinery or equipment that is bought to replace or upgrade existing exempt machinery or equipment is likewise exempt.⁴ In order to qualify for this exemption, the machinery, equipment, or replacement parts must be installed into taxpayer's facilities.⁵ A similar exemption exists for machinery and equipment used to burn or recycle wasteful industrial materials that contribute to air or water pollution.⁶

A purchaser of exempt pollution control machinery must obtain a certificate of exemption (Form ST-M8) from the Commissioner of the Georgia Department of Revenue, certifying that the purchaser is entitled to the pollution control tax exemption.⁷ Failure to obtain and retain this documentation can create future sales tax liability regardless of the machinery's tax-exempt status.⁸ The exemption is limited to the ultimate owner of the pollution control machinery and does not extend to contractors or other third parties.⁹

Ruling

Machinery, equipment, and replacement parts that reduce or eliminate air or water pollution are exempt from the tax when purchased, owned, and used by Taxpayer to manage and operate solid waste landfills in Georgia and the purchaser has obtained the proper certificate of exemption (Form ST-M8). Qualifying machinery, equipment, and replacement parts must be installed into the landfill facilities, and must be certified as exempt by the Department of Revenue.

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

³ O.C.G.A. § 48-8-3(36)(A).

⁴ *Id.*

⁵ Ga. Comp. R. & Regs. r. 560-12-2-.87 and *Eimco BSP Services Company v. Chilivis*, 244 SE.2d 829 (Ga. 1978).

⁶ O.C.G.A. § 48-8-3(37).

⁷ Ga. Comp. R. & Regs. r. 560-12-2-.87.

⁸ O.C.G.A. § 48-8-38; § 48-8-42; Ga. Comp. R. & Regs. r. 560-12-1-.08(1).

⁹ Ga. Comp. R. & Regs. r. 560-12-2-.87(4)(6)(a)(7).