

Date Issued: July 14, 2014
Georgia Letter Ruling: LR SUT-2014-04
Topic: Agriculture

This letter is in response to your request for guidance related to the appropriate application of Georgia sales and use tax to purchases made by a farm.

Facts as presented by Taxpayer

Taxpayer is a poultry processor with locations in Georgia. Historically, Taxpayer qualified for certain Georgia sales and use tax exemptions as a manufacturer. Taxpayer has now received a Georgia Agriculture Tax Exemption (“GATE”) certificate, and qualifies for the sales and use tax exemptions extended to agricultural producers.

Refrigerated Trailers

During production, refrigerated trailers are used to transport chicken between plants. Refrigerated trailers are also used to store chicken during the production process.

Sanitizing Chemicals

Sanitizing chemicals are sprayed on processing equipment at the end of the work day. The chemicals are not removed, which results in chicken coming into contact with these chemicals the following day when the process begins. The “primary purpose” of the sanitizing chemicals is to clean the equipment and any contact with the chicken during the production process is incidental.

Issues

1. During the period of January 1, 2009 through December 31, 2012, were refrigerated trailers used to transport and store chicken exempt from the tax as qualifying manufacturing machinery and equipment?
2. As of January 1, 2013, do the sales and use tax exemptions for manufacturers contained in O.C.G.A. § 48-8-3.2 exempt refrigerated trailers used to transport and store chicken from the tax?
3. Are refrigerated trailers used by a qualified agriculture producer exempt from the tax?
4. Are chemicals used to sanitize manufacturing machinery and equipment exempt from the tax?
5. Are chemicals used to sanitize agricultural machinery and equipment exempt from the tax?

Analysis

Georgia levies and imposes a tax (subject to certain specific exemptions) on the retail purchase, retail sale, storage, use, or consumption of tangible personal property and certain enumerated services.¹

Manufacturing Exemptions

“The 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.”² While specific exemptions apply to the sale, use, or storage of machinery and equipment necessary and integral to the manufacture of tangible personal property, industrial materials, and packaging supplies, these exemptions did not historically extend to consumable supplies used by a manufacturer.

¹ O.C.G.A. §§ 48-8-1 and 48-8-30(a).

² O.C.G.A. § 48-8-3.2(b), effective 1/1/2013.

O.C.G.A. § 40-2-20 requires that every owner of a motor vehicle, including a tractor or motorcycle, or a trailer must register the vehicle and obtain a license to operate it for the 12 month period until the next registration period. Refrigerated trailers must be registered for operation on public highways. Motor vehicles that are required to be registered for operation on public highways do not qualify as manufacturing machinery and equipment necessary and integral to the manufacture of tangible personal property at any time.³ Because refrigerated trailers must be registered for operation on public highways, these trailers are not manufacturing machinery and equipment at any time.

“Consumable supplies” means tangible personal property, other than machinery, equipment, and industrial materials, that is consumed or expended during the manufacture of tangible personal property. The term includes, but is not limited to, water treatment chemicals for use in, on, or in conjunction with machinery or equipment and items that are readily disposable. The term excludes packaging supplies and energy.⁴ Sanitizing chemicals are used and consumed in the sanitizing process and thus are consumable supplies.

“Equipment” means tangible personal property other than machinery and industrial materials. The term includes durable devices and apparatuses that are generally designed for long-term continuous or repetitive use. Effective July 1, 2014 the term also includes consumable supplies.⁵ Consequently, beginning July 1, 2014, sanitizing chemicals used to sanitize manufacturing machinery and equipment are exempt from the tax when purchased by a qualifying manufacturer.

“Industrial materials” means 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. The term also means 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. The term includes raw materials.⁶ Sanitizing chemicals do not become a component part of the finished product, and any contact with chicken during processing is purely incidental. Accordingly, sanitizing chemicals are not industrial materials.

Agricultural Exemptions

“The sales and use taxes levied or imposed . . . 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.”⁷ Specific exemptions apply to sales to, or use by, a qualified agriculture producer of agricultural production inputs, energy used in agriculture, and agricultural machinery and equipment. The exemption does not extend to consumable supplies.

A qualified agriculture producer means a person defined as such by the Georgia Department of Agriculture.⁸ Taxpayer has received a GATE certificate from the Georgia Department of Agriculture making Taxpayer a qualified agriculture producer.

“Agricultural machinery and equipment” means machinery and equipment used in the production of agricultural products, including, but not limited to . . . trailers used to transport agricultural products; . . .⁹ Trailers used to transport agricultural products are “agricultural machinery and equipment”.

³ Ga. Comp. R. & Regs. r. 560-12-2-.62, effective 1/1/2009 and 1/1/2013.

⁴ O.C.G.A. § 48-8-3.2(a) (1). Pursuant to House Bill 900, signed by Governor Deal on April 15, 2014, effective July 1, 2014 consumable supplies are manufacturing equipment.

⁵ Id.

⁶ O.C.G.A. § 48-8-3.2(a) (5).

⁷ O.C.G.A. § 48-8-3.3(b).

⁸ Ga. Comp. R. & Regs. r. 560-12-2-.03(2) (n).

⁹ O.C.G.A. § 48-8-3.3(a)(1)(A)(B).

“Agricultural production inputs” means:

[S]eed; 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; 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.¹⁰

Chemicals used to sanitize agricultural machinery and equipment are not qualifying agricultural inputs.

“Consumable supplies” means tangible personal property, other than machinery, equipment, agricultural production inputs, and energy, that is readily disposable, or is immediately consumed or expended during an agricultural operation.¹¹ Because they are readily disposable and immediately consumed, sanitizing chemicals are consumable supplies.

¹⁰ O.C.G.A. § 48-8-3.3(3).

¹¹ Ga. Comp. R. & Regs. r. 560-12-2-.03.

Dealers Performing both Manufacturing and Agricultural Operations

“A dealer that performs both manufacturing and agricultural operations at a single place of business may avail itself of the exemptions under either O.C.G.A. § 48-8-3.2 or O.C.G.A. § 48-8-3.3, but not both, for that place of business in any one calendar year.”¹² Taxpayer may thus take advantage of either the manufacturing exemptions or agricultural exemptions, but not both, for any one location in any one calendar year.

Rulings

Refrigerated trailers must be registered for operation on public highways and thus are not qualifying manufacturing machinery at any time. Before July 1, 2014, consumable supplies did not fall within the scope of the exemptions for manufacturers. Thus, if Taxpayer elects to take advantage of the manufacturer exemptions in O.C.G.A. § 48-8-3.2, Taxpayer’s purchases before July 1, 2014 of refrigerated trailers and sanitizing chemicals are subject to the tax. However, beginning July 1, 2014, sanitizing chemicals purchased by a manufacturer are qualifying manufacturing equipment and exempt from the tax.

While Georgia’s agricultural sales and use tax exemptions include non-motorized trailers used to transport agricultural products, the exemption does not extend to consumable supplies. Thus, if Taxpayer elects to take advantage of the agricultural exemptions and not the manufacturing exemptions, Taxpayer may purchase refrigerated trailers used to transport agricultural products exempt from the tax. Taxpayer is liable for the tax on all purchases of consumable supplies including sanitizing chemicals used to clean agricultural machinery and equipment.

Taxpayer may take advantage of either the manufacturing exemptions or the agricultural exemptions, but not both, for any one location in any one calendar year.

1. During the period of January 1, 2009 through December 31, 2012, Georgia’s manufacturing exemptions did not extend to motor vehicles for which registration was required for operation on public highways. For sales and use tax purposes, refrigerated trailers used to transport and store chicken are motor vehicles that require registration for operation on public highways and, thus, such trailers did not qualify as exempt manufacturing machinery and equipment. Consequently, Taxpayer is liable for the tax on any purchases of refrigerated trailers made during that time period.
2. The exemptions for manufacturers contained in O.C.G.A. § 48-8-3.2 that became effective January 1, 2013 do not include refrigerated trailers used to transport and store chicken and, thus, manufacturers may not purchase such equipment exempt from sales and use tax.
3. Since January 1, 2013, refrigerated trailers are agricultural machinery and equipment when used by a qualified agricultural producer to transport agricultural products and are exempt. As a qualified agricultural producer, Taxpayer may purchase refrigerated trailers without payment of the tax.

¹² Ga. Comp. R. & Regs. r. 560-12-2-.62(7).

4. Before July 1, 2014, Georgia's manufacturing exemptions did not extend to consumable supplies such as chemicals used to sanitize manufacturing machinery and equipment. Thus, Taxpayer's purchases before that date of chemicals used to sanitize manufacturing machinery and equipment are subject to the tax. However, effective July 1, 2014 consumable supplies are exempt from the tax as qualifying manufacturing equipment and, thus, if in any given year Taxpayer elects to take advantage of the exemptions for manufacturers contained in O.C.G.A. § 48-8-3.2 instead of the exemptions for agriculture producers contained in O.C.G.A. § 48-8-3.3, Taxpayer may purchase chemicals used to sanitize manufacturing machinery exempt from the tax.
5. Georgia's agricultural exemptions do not extend to consumable supplies including chemicals used to sanitize agricultural machinery and equipment. Thus, in any year in which Taxpayer takes advantage of the agricultural exemptions rather than the manufacturing exemptions, Taxpayer is liable for the tax on its purchases of chemicals used to sanitize agricultural machinery and equipment.

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