

Date Issued: September 24, 2014
Georgia Letter Ruling: LR SUT-2014-10
Topic: Manufacturing

This letter is in response to your request for guidance on the application of Georgia sales and use tax to landfill waste processing operations.

Facts as Presented by Taxpayer

Taxpayer is in the business of collecting, disposing, recycling and processing of solid waste materials. As part of its business, it owns and operates landfills in Georgia.

Landfills are comprised of a series of specially constructed “cells” that are designed and excavated to certain specifications. There are various functions and processes that take place at the landfills. New landfill cells are constructed in a specific manner to conform to Federal and State regulatory requirements. The cells have composite liner systems made up of reinforced geo-synthetic materials and re-compacted clay to create a barrier neither leachate nor landfill gas can penetrate. The liners are covered with a granular blanket (usually aggregate) as well as perforated collection pipe. Waste is then delivered to the landfills and deposited in the cells in specific areas and to specific depths. Compactors, bulldozers, wheel loaders and tractors (yellow iron) are the heavy machinery used in the cells to spread, crush, and compact the waste. This equipment is used to accelerate decomposition and produce landfill gas. Factors that accelerate the conversion of waste into gas include moisture, temperature, pressure, and oxygen. The correct moisture levels must be maintained in the cell in order to promote decomposition of the waste. The landfills compact waste in order to decrease the amount of oxygen present in the waste and to increase its temperature. Doing so stimulates the decomposition and gas production process. Once a cell is at capacity, it is capped and operations are then moved to a new cell and the process is repeated.

Leachate is wastewater that is generated by landfills when rainfall and other naturally occurring sources of water seep through the waste deposited in the landfill. If measures are not taken to abate, control and remove leachate, it will contaminate the groundwater supply. Landfills use a variety of pumps, pipes, equipment, and supplies to abate, monitor and control the leachate they create in their operations. As leachate percolates through waste mass, it hits the granular blanket and then is directed to perforated collection pipes that are routed to an area where it is pumped through a fore main and out to a storage tank or treatment plant, depending on the facility. The liner and leachate collection systems are purchased and installed primarily to bring the landfill into compliance with pollution control laws or regulations by capturing, controlling and redirecting leachate, thus preventing the water pollutant created by the landfill’s operations from entering the groundwater. Taxpayer may use a leachate recirculation system. This system spreads the leachate collected from the landfill back onto the active working face (the current area the waste is deposited in) which diverts current leachate from having to be treated. The leachate recirculation system also helps increase the production of methane gas.

An additional environmental measure taken is the daily cover materials (such as sand, soil, panels of tarpaulin or paper mill sludge), which are spread over the active face of the landfill. This prevents solid waste from blowing away, minimizes odor, controls the entry of water into the cell and prevents run-off from contaminating nearby water.

In addition, as the waste is compacted and decomposes in the landfill cells, landfill gas is produced. Landfill gas is a combination of methane, CO₂ and various impurities. Methane, however, is the largest component of the gas. A complex landfill gas management system is installed at each landfill to direct, collect, monitor, and remove landfill gas throughout the landfill’s life. A network of pipelines, pumps and meters are installed at various levels within the cell (horizontal wells), including the bottom-most layer. The horizontal wells are protected by spreading tire chips or gravel over the piping. Gas is either sold or, when not able to be sold, destroyed through the use of a flare, reducing the amount and type of air

pollution. Lastly, in order to power its landfill operations, Taxpayer uses fuel and electricity to operate the yellow iron, the leachate system, and the landfill gas management system.

There are safety issues associated with the uncontrolled release of landfill gas—specifically, possible explosion and asphyxiation hazards and issues related to odors emanating from the landfill as well as low-level chemical emissions.¹ The New Source Performance Standards and Emissions Guidelines (NSPS/EG) requires a gas collection and control system design plan for landfills that meet certain criteria presented on the next page. The NSPS rule specifies the criteria the collection and control systems must meet.²

All landfill management services, gas production, and gas sales activities are conducted by the same legal entity with 98% of the entity's income derived from tipping fees (charges for trash to be dumped at the landfill) and 2% of the entity's income derived from sales of landfill gases. Taxpayer's North American Industry Classification System ("NAICS") code is 562000 Waste Management and Remediation Services.

Issues

1. Based on its operations described above, including its sales of landfill gas, is Taxpayer a "manufacturer" for purposes of sales tax exemptions for manufacturers contained in O.C.G.A. § 48-8-3.2?
2. If Taxpayer's purchases do not qualify for the manufacturing exemptions, do the purchases still qualify for the pollution control exemption contained in O.C.G.A. § 48-8-3(36)?

Analysis

Sales and use tax is imposed on the retail purchase, retail sale, rental, storage, use, or consumption of tangible personal property and on certain specific services.³

Manufacturing Machinery and Equipment

Effective January 1, 2013, exemptions apply to the sale, use, or storage of machinery and equipment that are necessary and integral to the manufacture of tangible personal property, industrial materials, and packaging supplies.⁴

Georgia code section 48-8-3.2(a) and Ga. Comp. R. & Regs. r. 560-12-32-.62(2)(j) substantially define the term "manufacturer" in the same manner:

(10) "Manufacturer" means a person or business, or a location of a person or business, that is engaged in the manufacture of tangible personal property for sale or further manufacturing. To be considered a manufacturer, the person or business, or the location of a person or business, must be:

¹ <http://www.atsdr.cdc.gov/hac/landfill/html/ch3.html>, March 11, 2014.

² <http://www.atsdr.cdc.gov/hac/landfill/html/ch5.html>, March 14, 2014.

³ O.C.G.A. § 48-8-30.

⁴ O.C.G.A. § 48-8-3.2(b), effective 1/1/2013.

- (A) Classified as a manufacturer under the 2007 North American Industrial Classification System Sectors 21, 31, 32, or 33, or North American Industrial Classification System industry code 22111 or specific code 511110; or
- (B) Generally regarded as being a manufacturer.

Businesses that are primarily engaged in providing personal or professional services or in the operation of retail outlets, generally including, but not limited to, grocery stores, pharmacies, bakeries, or restaurants, are not considered manufacturers.⁵

Taxpayer is not classified as a manufacturer under the 2007 North American Industrial Classification System Sectors 21, 31, 32, or 33, or North American Industrial Classification System industry code 22111 or specific code 511110. In addition, because Taxpayer is primarily engaged in the provision of waste management and remediation services Taxpayer is not generally regarded as a manufacturer. Thus, Taxpayer is not a manufacturer for purposes of Georgia's sales and use tax exemptions.

Machinery and Equipment Reducing or Eliminating Air or Water Pollution

Pollution is a substance or substances that make land, water, air, etc., dirty and not safe or suitable to use.⁶ O.C.G.A. § 48-8-3(36) provides the following sales and use tax exemption for machinery and equipment primarily used to reduce or eliminate air or water pollution:

- (A) The sale of machinery and equipment and any repair, replacement, or component parts for such machinery and equipment which is used for the primary purpose of reducing or eliminating air or water pollution;
- (B) Any person making a sale of machinery and equipment or repair, replacement, or component parts for such machinery and equipment for the purposes specified in this paragraph shall collect the tax imposed on the sale by this article unless the purchaser furnishes him with a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the machinery and equipment or repair, replacement, or component parts for such machinery and equipment without paying the tax;

(Emphasis added)

Gas management systems are installed at landfills for several reasons, including compliance with various government regulations, mitigating odor problems, and controlling the release of landfill gases that could pose safety and health concerns if left unmanaged.⁷ For these reasons, gas management systems installed at landfills have a primary purpose of reducing or eliminating air or water pollution. Accordingly, Taxpayer's purchase of gas management systems installed at landfills located in this state may qualify for the sales and use tax exemption found in O.C.G.A. § 48-8-3(36).

The exemptions provided by O.C.G.A. § 48-8-3.2 and O.C.G.A. § 48-8-3(36) are separate, distinct, and independent of one another. Thus, purchases made by Taxpayer that do not qualify for exemption under O.C.G.A. § 48-8-3.2 may qualify for exemption under O.C.G.A. § 48-8-3(36).

⁵ O.C.G.A. § 48-8-3.2(10)(A)(B).

⁶ <http://www.merriam-webster.com/dictionary/pollution?show=0&t=1394825659>. March 14, 2014.

⁷ <http://www.atsdr.cdc.gov/hac/landfill/html/ch5.html>. March 10, 2014.

Rulings

As a business primarily engaged in the provision of waste management and remediation services, Taxpayer is not considered a manufacturer for purposes of Georgia's sales and use tax exemptions. Gas management systems installed at landfills have a primary purpose of reducing or eliminating air or water pollution; accordingly, Taxpayer's purchase of these systems may qualify for the sales and use tax exemption found in O.C.G.A. § 48-8-3(36) when the system purchased will be installed into a landfill located in this state.

The exemptions provided by O.C.G.A. § 48-8-3.2 and O.C.G.A. § 48-8-3(36) are separate, distinct, and independent of one another. Thus, purchases made by Taxpayer that do not qualify for exemption under O.C.G.A. § 48-8-3.2 may qualify for exemption under O.C.G.A. § 48-8-3(36).

1. Taxpayer is not a manufacturer and does not qualify for the sales and use tax exemption found in O.C.G.A. § 48-8-3.2.
2. Certain items included in Taxpayer's gas management and leachate recirculation systems installed at landfills located in this state likely qualify for the sales and use tax exemption found in O.C.G.A. § 48-8-3(36).

The opinions expressed in this ruling are based upon the information contained in the 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.