

Date Issued: October 20, 2014  
Georgia Letter Ruling: LR SUT-2014-14  
Topic: Documentation Issues

This letter is in response to a request for guidance on the application of Georgia sales and uses tax on sales of welding gases and hand tools to Georgia manufacturers and agricultural producers.

### **Facts as provided by the Taxpayer**

Welding gases include but are not limited to argon, acetylene, oxygen, and carbon dioxide. Welding gases are used for two purposes: welding and cutting of metals. Gas welding involves the use of a gas-fed flame torch to heat the metal work piece and the filler material to create a weld. The gases used generally are a mixture of a fuel gas and shielding gases to create a clean, hot flame.

Fuel gases, such as acetylene, and oxygen provide the energy/burn. Depending on the materials being welded, an improper choice of a welding gas can lead to a porous and weak weld, or to excessive spatter. Shielding gases, such as argon, helium, and carbon dioxide are inert or semi-inert gases, and their purpose is to protect the weld area from atmospheric gases such as oxygen, nitrogen, and water vapor.

In a welding process that uses acetylene, carbon dioxide, and argon, a welding gun utilizes heat supplied by the combustible gas (acetylene), a filler consisting of welding wire, and the shielding gases (carbon dioxide and argon). The wire comes out through a tube in the gun. The gases come out through a hollow tube that surrounds the wire. The combustible gas (acetylene) is lit, producing flame and heat, and is applied to the area sought to be welded. The carbon dioxide and argon act as a shielding process to keep oxygen and the outside atmosphere away, thereby protecting the weld. The weld is made by the wire's melting into the metal pieces sought to be joined.

Oxygen and acetylene are used in a metal cutting process. An oxyfuel cutting torch is used in this process. Two hoses run to the torch, one supplying acetylene and the other supplying oxygen. The torch is lit, and supplied by the acetylene, the area sought to be cut is heated. Once heated to a sufficient degree, the oxygen is applied, and through a chemical reaction, the cut is made. The oxidation reaction is the power source, which generates the heat for the cut. In the metal cutting process, the welder cannot cut steel without the high temperature and the oxygen. If the oxygen were not added, the flame would not cut.

### **Issues**

1. Are fuel gases used in welding, that produce energy, and that are necessary and integral to the manufacture of tangible personal property subject to the phased-in sales and use tax exemption in O.C.G.A. § 48-8-3.2(c) and (d)(5) when sold to Georgia manufacturers (that provide valid exemption certificates) for use at a manufacturing plant in Georgia?
2. Are fuel gases used in welding, that produce energy, and that are used to repair manufacturing machinery and equipment that are necessary and integral to the manufacture of tangible personal property subject to the phased-in sales and use tax exemption in O.C.G.A. § 48-8-3.2(c) and (d)(5) when sold to Georgia manufacturers (that provide valid exemption certificates) for use at a manufacturing plant in Georgia?
3. Are fuel gases used in welding, that produce energy, and that are used in an unrelated operation (e.g., fuel gas used by a manufacturer to perform repairs for unrelated parties) at a Georgia manufacturing plant site subject to the phased-in sales and tax exemption in O.C.G.A. § 48-8-3.2(c) and (d)(5)?
4. Are shielding gases used in welding exempt from sales and use tax as industrial materials when sold to Georgia manufacturers and sold, used, stored, or consumed at a manufacturing plant in Georgia?
5. Are shielding gases used in welding exempt from sales and use tax when sold to Georgia manufacturers for use in repairing manufacturing machinery and equipment at a manufacturing plant in Georgia?

6. Are shielding gases used in welding exempt from sales and use tax when sold to Georgia manufacturers for use in repairing ancillary equipment at a manufacturing plant in Georgia?
7. Are fuel gases that produce energy used in welding in agricultural operations exempt from sales and use tax?
8. Are shielding gases used in agricultural operations exempt from sales and use taxes when sold to Georgia agricultural producers who present a valid Georgia Agricultural Tax Exemption (“GATE”) certificate?
9. Are hand tools such as hammers, screwdrivers, pliers, and hand rakes and hoes used in agricultural operations sold to Georgia agricultural producers who present a valid GATE certificate exempt from Georgia sales and use 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 on certain enumerated services.<sup>1</sup> “Retail sale” or “sale at retail” means a sale of tangible personal property or taxable services to any person other than for resale.<sup>2</sup> “Sale” means any transfer of title or possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner, by any means of any kind of tangible personal property for a consideration.<sup>3</sup> The amount subject to tax is the “sales price”. “Sales price” means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise without any deduction for the following:

- (i) The seller's cost of the property sold;
- (ii) The cost of materials used, labor, or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- (iii) Charges by the seller for any services necessary to complete the sale; and
- (iv) Delivery charges.<sup>4</sup>

All sales are deemed taxable unless the contrary is established.<sup>5</sup> The dealer making the taxable retail sale must collect the tax from the purchaser and remit the funds collected to the Department.<sup>6</sup> Any dealer who neglects, fails, or refuses to collect the tax that is imposed upon a retail sale of tangible personal property made by him, his agent, or his employee shall be liable for and shall pay the tax himself.<sup>7</sup>

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.<sup>8</sup> 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

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

<sup>2</sup> O.C.G.A. § 48-8-2(31).

<sup>3</sup> O.C.G.A. § 48-8-2(33).

<sup>4</sup> O.C.G.A. § 48-8-2(34)(A).

<sup>5</sup> O.C.G.A. § 48-8-38.

<sup>6</sup> O.C.G.A. §§ 48-8-2 & 48-8-30(b)(1). See also O.C.G.A. §§ 48-8-87, 48-8-104, 48-8-113, 48-8-141, 48-8-204, and 48-8-246 (providing that the various local sales and use taxes shall be exclusively administered and collected by the commissioner and that such administration and collection shall be accomplished in the same manner as state sales and use tax).

<sup>7</sup> O.C.G.A. § 48-8-35.

<sup>8</sup> Ga. Comp. R. & Regs. r. 560-12-1-.18.

avored; 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.<sup>9</sup>

Although exemptions are strictly construed, O.C.G.A. § 48-8-38 provides that a seller can relieve itself of the burden of proving that a particular sale is not taxable by taking from the purchaser a certificate stating that the property is purchased for resale or is otherwise tax exempt. Effective March 5, 2013, § 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 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.

### Manufacturing Exemptions

Effective January 1, 2013, O.C.G.A. § 48-8-3.2(b) provides that “[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.” In addition, O.C.G.A. § 48-8-3.2(c) provides that:

the sale, use, storage, or consumption of energy which is necessary and integral to the manufacture of tangible personal property at a manufacturing plant in this state shall be exempt from all sales and use taxation except for the sales and use tax for educational purposes levied pursuant to Part 2 of Article 3 of this chapter and Article VIII, Section VI, Paragraph IV of the Constitution and except for local sales and use taxes for educational purposes authorized by or pursuant to local constitutional amendment. This exemption shall be phased in over a four-year period . . .

The one percent Special District Transportation Sales and Use Tax (often referred to as TSPLOST) does not apply to energy used in the manufacturing or processing of tangible goods primarily for resale; energy used in manufacturing is fully exempt from this particular tax without a phase-in period.<sup>10</sup>

The following definitions are applicable to the manufacturing exemptions contained in O.C.G.A. § 48-8-3.2:

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<sup>9</sup> *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 when interpreting tax exemptions all doubts must be resolved in favor of the taxing authority).

<sup>10</sup> O.C.G.A. § 48-8-241(d)(4).

- “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.
- “Energy” means natural or artificial gas, oil, gasoline, electricity, solid fuel, wood, waste, ice, steam, water, and other materials necessary and integral for heat, light, power, refrigeration, climate control, processing, or any other use in any phase of the manufacture of tangible personal property. The term excludes energy purchased by a manufacturer that is primarily engaged in producing electricity for resale.
- “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.
- “Manufacture of tangible personal property,” used synonymously with the term 'manufacturing,' means a manufacturing operation, series of continuous manufacturing operations, or series of integrated manufacturing operations engaged in at a manufacturing plant or among manufacturing plants to change, process, transform, or convert industrial materials by physical or chemical means into articles of tangible personal property for sale, for promotional use, or for further manufacturing that have a different form, configuration, utility, composition, or character. The term includes, but is not limited to, the storage, preparation, or treatment of industrial materials; assembly of finished units of tangible personal property to form a new unit or units of tangible personal property; movement of industrial materials and work in process from one manufacturing operation to another; temporary storage between two points in a continuous manufacturing operation; random and sample testing that occurs at a manufacturing plant; and a packaging operation that occurs at a manufacturing plant.
- “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:
  - (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 a manufacturer.
- “Manufacturing plant” means any facility, site, or other area where a manufacturer engages in the manufacture of tangible personal property.

#### Agricultural Exemptions

Effective January 1, 2013, agricultural production inputs, energy used in agriculture, and agricultural machinery and equipment are exempt from sales and use tax when purchased by a qualified agriculture producer.<sup>11</sup>

“Energy used in agriculture” means fuels used for agricultural purposes, other than fuels subject to prepaid state tax as defined in Code Section 48-8-2. The term includes, but is not limited to, off-road diesel, propane, butane, electricity, natural gas, wood, wood products, or wood by-products; liquefied petroleum gas or other fuel used in structures in which broilers, pullets, or other poultry are raised, in which swine are raised, in which dairy animals are

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<sup>11</sup> O.C.G.A. § 48-8-3.3.

raised or milked or where dairy products are stored on a farm, in which agricultural products are stored, and in which plants, seedlings, nursery stock, or floral products are raised primarily for the purposes of making sales of such plants, seedlings, nursery stock, or floral products for resale; electricity or other fuel for the operation of an irrigation system which is used on a farm exclusively for the irrigation of agricultural products; and electricity or other fuel used in the drying, cooking, or further processing of raw agricultural products, including, but not limited to, food processing of raw agricultural products.<sup>12</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; in hatching and breeding of poultry and the breeding of livestock and equine; in production, processing, and storage of fluid milk for sale; in drying, ripening, cooking, further processing, or storage of agricultural products, including, but not limited to, orchard crops; in production of livestock and equine for sale; by a producer of poultry, eggs, fluid milk, equine, or livestock for sale; for the purpose of harvesting agricultural products to be used on the farm by that producer as feed for poultry, equine, or livestock; directly in tilling the soil or in animal husbandry when the machinery is incorporated for the first time or as additional machinery for the first time into a new or an existing farm unit engaged in tilling the soil or in animal husbandry in this state; directly in tilling the soil or in animal husbandry when the machinery is bought to replace machinery in an existing farm unit already engaged in tilling the soil or in animal husbandry in this state; machinery and equipment used exclusively for irrigation of agricultural products, including, but not limited to, fruit, vegetable, and nut crops; and machinery and equipment used to cool agricultural products in storage facilities.<sup>13</sup>

Hand tools are exempt machinery and equipment when used in a qualifying agricultural operation.<sup>14</sup>

Qualified agriculture producer means producers of agricultural products who meet certain statutory criteria.<sup>15</sup> To make exempt purchases, qualified agriculture producers must apply to the Commissioner of Agriculture to request the GATE certificate that contains an exemption number.

### **Rulings**

Effective March 5, 2013, O.C.G.A. § 48-8-38 requires a retail seller to collect sales tax unless the seller “in good faith” takes 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.
1. A seller may make exempt sales (subject to the four-year phase-in period) of fuel gases that are necessary and integral to the manufacture of tangible personal property to a manufacturer who provides a properly completed certificate of exemption that is accepted in good faith by the seller.

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<sup>12</sup> O.C.G.A. § 48-8-3.3(a)(4).

<sup>13</sup> O.C.G.A. § 48-8-3.3(a)(1)(A).

<sup>14</sup> Georgia Department of Revenue Informational Bulletin SUT 2013-01-28, Exemption Certificates for Agriculture.

<sup>15</sup> O.C.G.A. § 48-8-3.3(a)(5).

2. A seller may make exempt sales (subject to the four-year phase-in period) of fuel gases that are used to repair manufacturing machinery and equipment that are necessary and integral to the manufacture of tangible personal property to a manufacturer who provides a properly completed certificate of exemption that is accepted in good faith by the seller.
3. If the seller has knowledge that fuel gases will be used in an unrelated operation (e.g. used by a manufacture to perform repairs for unrelated parties, seller must charge tax on the sale of such fuel gases.
4. A seller may make exempt sales of inert and semi-inert gases (i.e., shielding gases) that are sold, used, stored, or consumed at a manufacturing plant in Georgia to a manufacturer who provides a properly completed certificate of exemption that is accepted in good faith by the seller.
5. A seller may make exempt sales of shielding gases used to repair manufacturing machinery and equipment at a manufacturing plant in Georgia to a manufacturer who provides a properly completed certificate of exemption that is accepted in good faith by the seller.
6. A seller may make exempt sales of shielding gases to a manufacturer who provides a valid exemption certificate that is accepted in good faith by the seller.
7. A seller may make exempt sales of fuel gases that produce energy to an agricultural producer who provides a valid GATE certificate that is accepted in good faith by the seller.
8. A seller may make exempt sales of shielding gases that protect the weld area to an agricultural producer who provides a valid GATE certificate that the seller accepts in good faith.
9. A seller may make exempt sales of hand tools to an agricultural producer who provides a valid GATE certificate that is accepted in good faith by the seller.

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.