

This letter is in response to your request for guidance on the application of Georgia's sales and use tax to sales and leases of compressed gas cylinders, dewars, micro bulk tanks, and bulk tanks when sold to a Georgia manufacturer for use or storage at a manufacturing plant in Georgia.

### **Facts as Presented by Taxpayer**

[Redacted] ("Taxpayer") is a distributor of industrial, medical, and specialty compressed gases. Taxpayer makes frequent sales to manufacturers. The gases sold by Taxpayer, depending on the end use by the customer, may qualify for state sales and use tax exemptions. Customers may purchase gases with or without the purchase of a cylinder. If the customer does not choose to purchase the cylinder, they will rent/lease the cylinder from Taxpayer. After the customer uses or consumes the contents of the rented/leased cylinder, dewar, or tank, the customer returns the empty unit to Taxpayer.

Taxpayer uses different cylinders and tanks depending on the product sold, volume required, and pressures needed by the customer. A gas cylinder is a vessel used to maintain gases above atmospheric pressure. Cylinders are designed and constructed to automatically effect the temperature and pressure changes necessary for the safe extraction of the particular product from the cylinder. The useful lives of cylinders are decades, but the assets require testing every five or ten years depending on the cylinder and service type.

### **Issues**

1. Does the sale (including rentals/leases) of compressed gas cylinders (including dewars, micro bulk tanks, and bulk tanks) qualify for exemption under O.C.G.A. § 48-8-3.2 if the compressed gases contained within the cylinders are exempt as either energy, industrial materials, or consumable supplies under O.C.G.A. § 48-8-3.2?
2. How does Taxpayer satisfy the burden of proving that sales are exempt from tax?

### **Analysis**

All retail purchases and sales of tangible personal property are taxable except to the extent prohibited by the Constitutions of the United States and of Georgia and except to the extent that specific exemptions are provided by statute.<sup>1</sup> "Retail sale" or a "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.<sup>2</sup>

O.C.G.A § 48-8-3.2 provides a sales and use tax exemption for sales of machinery or equipment used in a manufacturing plant that is necessary and integral to the manufacture of tangible personal property.<sup>3</sup> The term "sale" includes leases and rentals.<sup>4</sup> In order to qualify for the manufacturing machinery and equipment exemption in O.C.G.A § 48-8-3.2, the cylinders at issue must:

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<sup>3</sup> O.C.G.A § 48-8-3.2.

<sup>4</sup> O.C.G.A § 48-8-2(33)(A).

1. Have the character of machinery or equipment at the time of sale or lease, or consist of components which, when assembled, will have the character of machinery or equipment;
2. Be used in a manufacturing plant; and
3. Be necessary and integral to the manufacture of tangible personal property for sale or further manufacturing.<sup>5</sup>

“Equipment’ means tangible personal property, other than machinery, industrial materials, and energy. The term ‘equipment’ includes durable devices and apparatuses that are generally designed for long-term continuous or repetitive use. The term also includes consumable supplies.”<sup>6</sup> Cylinder tanks are equipment, thereby satisfying the first prong of the test above.

According to the facts presented by Taxpayer, the cylinder tanks at issue (including dewars, micro bulk tanks, and bulk tanks) are used to control, regulate, and safely expel the gases they contain. Thus, to the extent that cylinder tanks at issue are used at a manufacturing plant to hold compressed gases that are exempt under O.C.G.A. § 48-8-3.2 (i.e., to contain gas that is necessary and integral to manufacturing), then the tanks themselves are necessary and integral to the manufacture of tangible personal property for sale. Having met the three prongs of the above test, the cylinder tanks are exempt as equipment under O.C.G.A. § 48-8-3.2.

Taxpayer, as the seller, bears the burden of proving that the sale is exempt from tax. “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.”<sup>7</sup>

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.<sup>8</sup>

Dealers must maintain records to support purchases and sales for a period of no less than three years.<sup>9</sup>

### **Rulings**

1. The sale (including rentals/leases) of compressed gas cylinders (including dewars, micro bulk tanks, and bulk tanks) qualifies for exemption under O.C.G.A. § 48-8-3.2 if the compressed gases contained within the cylinders are exempt as either energy, industrial materials, or consumable supplies under O.C.G.A. § 48-8-3.2

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<sup>5</sup> Ga. Comp. R. & Regs. r. 560-12-2-.62(3)(a).

<sup>6</sup> Ga. Comp. R. & Regs. r. 560-12-2-.62(2)(c).

<sup>7</sup> O.C.G.A. § 48-8-38(a).

<sup>8</sup> O.C.G.A. § 48-8-38(b).

<sup>9</sup> O.C.G.A. § 48-8-52(a)(1)(D).

2. Taxpayer satisfies the burden of proving that sales (including rentals/leases) are exempt from tax when Taxpayer accepts from the purchaser a certificate of exemption that is fully completed, in a form appropriate for the type of exemption claimed, claiming an exemption that was statutorily available on the date of the transaction and in the jurisdiction where the sale is sourced, claiming an exemption applicable to the purchase, and claiming an exemption reasonable for the purchaser's type of business. For audit purposes, Taxpayer must maintain books and records to support purchases and sales for a period of at least three years.

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, this ruling may become invalid. Subsequent statutory or administrative rule changes or judicial interpretations of the statutes or rules upon which this ruling is based may subject similar future transactions to different tax treatment than that expressed in this ruling.