

Date Issued: October 11, 2016
Georgia Letter Ruling: LR SUT-2016-20
Topic: Manufacturing

This letter is in response to your request for guidance on the application of Georgia sales and use exemptions extended to manufacturers.

Facts Presented by Taxpayer

Taxpayer is a dismantling/demolition service provider. Using cutting torches, skid steers, and track hoes, Taxpayer removes obsolete scrap from the customer's site and prepares the removed scrap for sale to steel mills or local scrap yards. Taxpayer does not receive monetary compensation for his demolition services. Taxpayer's only income is generated by the sale of recovered scrap. North American Industry Classification System (NAICS) code 423930, Metal Scrap and Waste Merchant Wholesalers, best represents Taxpayer's activities.

Issue

Is Taxpayer a manufacturer for purposes of Georgia's sales and use tax exemptions?

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.¹ Exemptions apply to the sale, use, or storage of machinery and equipment that are necessary and integral to the manufacture of tangible personal property and the sale, use, storage, or consumption of industrial materials and packaging supplies. To qualify for such exemption, machinery, equipment, industrial materials, or supplies must be used in the manufacture of tangible personal property. In other words, the machinery, equipment, industrial materials, or supplies must be used by a manufacturer.²

O.C.G.A. § 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:

"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 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.³

Having an NAICS code of 423930, Taxpayer is not classified as a manufacturer under the 2007 North American Industrial Classification System. With the majority of Taxpayer's income derived from the sale of scrap metal and waste, Taxpayer would not generally be regarded as a manufacturer. Accordingly, Taxpayer does not meet the statutory definition of a manufacturer.

¹ O.C.G.A. § 48-8-30.

² O.C.G.A. § 48-8-3.2.

³ O.C.G.A. § 48-8-3.2(a)(10).

Ruling

Because Taxpayer is not classified as a manufacturer under the 2007 North American Industrial Classification System and Taxpayer is primarily engaged in the sale of scrap metal and waste, Taxpayer is not a manufacturer under O.C.G.A. § 48-8-3.2 and, thus, does not qualify for the sales and use tax exemptions applicable to manufacturers.

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.