

Georgia Letter Ruling: LR SUT-2017-06  
Dated: February 24, 2017  
Topic: Manufacturing Exemptions

This letter is in response to your request for guidance on the application of Georgia sales and use tax to copier machine leases by [Redacted] (“Taxpayer”).

### **Facts Presented by Taxpayer**

Taxpayer is in the leasing business. As part of that business, it leases copier machines to other businesses, including printing and design companies. Some of those lessees are classified under North American Industry Classification System Sector 32 which includes printing and related support activities. Consequently, such lessees claim to be engaged in manufacturing and have a manufacturing exemption.

### **Issues**

1. Is a printer a manufacturer who can qualify for the sales and use tax manufacturing exemption?
2. Would a copier purchased or leased by a printer qualify for the sales and use tax manufacturing exemption?

### **Analysis**

Georgia levies and imposes a tax (subject to certain exemptions) on the retail purchase, retail sale, storage, use, or consumption of tangible personal property and certain enumerated services.<sup>1</sup> “Retail sale” means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.<sup>2</sup> Thus, a lease of tangible personal property is generally a taxable sale unless an exemption applies.

#### *Manufacturing Exemption*

Georgia law provides a sales and use tax exemption for the sale, use, or storage of machinery or equipment which is necessary and integral to the manufacture of tangible personal property.<sup>3</sup> To be considered manufacturing machinery or equipment under the exemption, the purchased or leased property must (1) have the character of machinery or equipment, (2) be used at a manufacturing plant, and (3) be necessary and integral to the manufacture of tangible personal property for sale, for promotional use, or further manufacturing.<sup>4</sup>

For determining the character of the property, “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, such hand tools, molds, dies, waxes, jigs, patterns, and conveyors.<sup>5</sup> In this context, “machinery” is an assemblage of parts that transmits force, motion, and energy one to the other in a predetermined manner to accomplish a specific objective.<sup>6</sup> Based on the facts presented, it appears that some of the copiers leased by Taxpayer could be machinery or equipment.

A “manufacturing plant” is any facility, site, or other area where a manufacturer engages in the manufacture of tangible personal property.<sup>7</sup> A “manufacturer” is 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 must be classified as a manufacturer under the 2007 North American Industry Classification System Sectors 21, 31, 32, or 33, or North American Industrial Classification System industry code 22111 or specific code 511110, or generally regarded as

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<sup>1</sup> O.C.G.A. §§ 48-8-1, 48-8-2(31)(A), and 48-8-30(a).

<sup>2</sup> O.C.G.A. § 48-8-2(31).

<sup>3</sup> O.C.G.A. § 48-8-3.2(b).

<sup>4</sup> Ga. Comp. R. & Regs. r. 560-12-2-.62(3)(a).

<sup>5</sup> O.C.G.A. § 48-8-3.2(a)(3).

<sup>6</sup> O.C.G.A. § 48-8-3.2(a)(7).

<sup>7</sup> O.C.G.A. § 48-8-3.2(a)(11).

being a manufacturer.<sup>8</sup> The term “manufacture of tangible personal property” means a manufacturing operation engaged in at a manufacturing plant 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.<sup>9</sup> It is reasonable to conclude that those lessees who fall under North American Industry Classification System Sector 32 would be manufacturers if they are engaged in the manufacture of tangible personal property at a manufacturing plant.

An evaluation of the third prong of the exemption, whether machinery or equipment is necessary and integral to the manufacture of tangible personal property, is based on the facts and circumstances presented by each lessee. Usually, machinery or equipment qualifies as necessary and integral to the manufacture of tangible personal property if it is used at a manufacturing plant to mix, measure, clean, or otherwise treat, prepare, or store industrial materials for further manufacturing or if it is used to test or protect the quality of the manufactured product. Conversely, machinery or equipment does not qualify as necessary and integral to the manufacture of tangible personal property if it is used as administrative machinery or equipment, including copiers, facsimile machines, and office supplies.<sup>10</sup>

For machinery or equipment that has multiple purposes, some purposes necessary and integral to the manufacture of tangible personal property and some purposes not necessary and integral to the manufacture of tangible personal property, the substantial purpose of such machinery or equipment will prevail for purposes of determining the eligibility for exemption.<sup>11</sup> The substantial purpose of machinery or equipment can be the purpose for which that machinery or equipment is used more than one-third of the time of the total amount of time that the item is in use.<sup>12</sup>

Here, based on the limited facts presented, it is possible that a copier leased by Taxpayer could be equipment used in a manufacturing plant and that such equipment is necessary and integral to the manufacture of tangible personal property. For example, in cases where printing and design companies are leasing the equipment to change, process, or convert industrial materials into articles of tangible personal property for sale or further manufacturing, the lease of the equipment may be exempt. Conversely, if a manufacturer or other business is using a copier as an administrative tool, the lease of the equipment would subject to tax.

#### *Proof of Exemption*

All sales of a retailer are subject to sales and use tax unless the contrary is established. The burden of proving that a sale of tangible personal property is not a taxable sale is on the seller unless that seller takes, in good faith, from the purchaser a certificate stating that the property is tax exempt.<sup>13</sup>

In order for the seller to accept a properly completed certificate in good faith and be relieved of the burden of proof, the certificate must meet the following criteria:

- (1) Be fully completed, including, but not limited to, the name, address, sales tax number, and signature of the taxpayer when required;
- (2) Be in a form appropriate for the type of exemption claimed;
- (3) Claim an exemption that is statutorily available on the date of the transaction in the jurisdiction where the transaction is sourced;

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<sup>8</sup> O.C.G.A. § 48-8-3.2(a)(10).

<sup>9</sup> O.C.G.A. § 48-8-3.2(a)(7). Research and development activities are not considered the manufacture of tangible personal property. Ga. Comp. R. & Regs. r. 560-12-2-.62(3)(a).

<sup>10</sup> Ga. Comp. R. & Regs. r. 560-12-2-.62(3)(d)(1)(v). Additionally, machinery or equipment does not qualify as necessary and integral to the manufacture of tangible personal property if it is not operated under the control of the manufacturer’s employees or other persons under the manufacturer’s direction and control. Ga. Comp. R. & Regs. r. 560-12-2-.62(3)(d)(1)(vi).

<sup>11</sup> O.C.G.A. § 48-8-3.2(d).

<sup>12</sup> O.C.G.A. § 48-8-3.2(a)(16). Alternatively, the substantial purpose of machinery or equipment may be measured, instead of in time, in terms of other applicable criteria, such as the number of items produced.

<sup>13</sup> O.C.G.A. § 48-8-38(a).

- (4) Claim an exemption that could be applicable to the item being purchased; and
- (5) Claim an exemption that is reasonable for the purchaser's type of business.<sup>14</sup>

Accordingly, any person making a sale or lease of machinery or equipment that is necessary and integral to the manufacture of tangible personal property must collect sales tax unless such person, in good faith, accepts from the purchaser or lessee a properly completed Form ST-5M Certificate of Exemption.<sup>15</sup>

Given the facts, accepting a Certificate in good faith requires the Taxpayer to review the Certificate for completeness and accuracy. Taxpayer should ensure that a purchase qualifies for the exemption based on the NAICS code provided on the Certificate. Moreover, Taxpayer should consider the characteristics of copier being leased, the nature of the business of the lessee, and the other attributes of the lease to draw a reasonable conclusion as to whether the transaction qualifies for the manufacturing exemption.

### **Rulings**

1. A printer might be a manufacturer that qualifies for the sales and use tax manufacturing exemption, provided that the printer is engaged at a manufacturing plant in the manufacture of tangible personal property for sale or further manufacturing.
2. The purchase or lease of a copier machine by a printer may qualify for the sales and use tax manufacturing exemption depending on the facts and circumstances of the transaction. A copier machine has the character of machinery or equipment and may be purchased or leased tax exempt if it will be used at a manufacturing plant and will be necessary and integral to the manufacture of tangible personal property. The purchase or lease of a copier machine by a manufacturer for administrative use is not tax exempt.

Taxpayer, as a lessor, has the burden of proving that the lease of a copier is not a taxable sale unless Taxpayer takes, in good faith, from the lessee a certificate stating that the transaction is tax exempt. To satisfy this burden, Taxpayer should review a Form ST-5M Certificate of Exemption for completeness as well as consider whether the manufacturing exemption could be applicable to the item being leased and whether the manufacturing exemption is reasonable for the lessee's type of business.

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.

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<sup>14</sup> O.C.G.A. § 48-8-38(b).

<sup>15</sup> Ga. Comp. R. & Regs. r. 560-12-2-.62(6)(a).