

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

Facts as Provided by Taxpayer¹

Taxpayer is a manufacturer and supplier.

Taxpayer purchases sodium hypochlorite for drinking water disinfectant. The potable water produced (as a result of the disinfectant) is used in restrooms, kitchens, and showers. Additionally, Taxpayer purchases the following items for the hydration of its employees:

- Bottled water
- Gatorade
- Sqwincher pops
- Ice
- Portable coolers²
- Disposable cups

These items are stored and used throughout the plant, and they are used and consumed by visitors to the facility as well as the plant’s approximately [Redacted] hourly and salaried employees. Employees and visitors may use these items at their discretion. Although Taxpayer does not restrict or mandate use of these items, Taxpayer does educate employees regarding heat stress and the importance of staying hydrated. Moreover, Taxpayer displays the temperature and heat index at the front entrance to the plant.

Issue

What is the proper application of sales and use tax to Taxpayer’s purchase of the listed items?

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, certain enumerated services, and utilities.³ O.C.G.A. § 48-8-3.2 provides a sales and use tax exemption for the sale, use, or storage of machinery and equipment necessary and integral to the manufacture of tangible personal property.⁴ This exemption also applies to leases and rentals of such machinery and equipment.⁵

In order to qualify for this exemption, the property purchased or leased must:

1. Have the character of machinery or equipment, or of repair or replacement parts to 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 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.⁶

In this exemption, “equipment” means tangible personal property other than machinery, industrial materials, and energy. Equipment includes durable devices and apparatuses that are generally designed for long-term continuous or repetitive use as well as consumable supplies. Examples of equipment include cones, pallets, hand tools, and safety

¹ Taxpayer provided information by e-mail on September 1, 2016, and October 19, 2016. Additional information is available on Taxpayer’s website: [Redacted] (Last visited October 26, 2016).

² Taxpayer purchases and rents water coolers.

³ O.C.G.A. §§ 48-8-1, 48-8-2(31)(A), 48-8-30.

⁴ O.C.G.A. § 48-8-3.2, Ga. Comp. R. & Regs. r. 560-12-2-.62(1).

⁵ Ga. Comp. R. & Regs. r. 560-12-2-.62(3)(b).

⁶ Ga. Comp. R. & Regs. r. 560-12-2-.62(3)(a).

devices.⁷ As used in this definition, “consumable supplies” means tangible personal property, other than machinery, industrial materials, packaging supplies, and energy, 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.⁸

In determining whether items are used, consumed or expended during the manufacture of tangible personal property, the Department is guided by the following definition of “manufacture of tangible personal property” as follows:

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.⁹

If property has the character of machinery or equipment and is used at a manufacturing plant, the property must also be necessary and integral to manufacturing. When determining whether machinery or equipment is necessary and integral to the manufacture of tangible personal property, the Department evaluates the facts and circumstances of each case.¹⁰ Machinery or equipment that does not qualify as “necessary and integral” to manufacturing includes that which is not operated under the control of the manufacturer’s employees.¹¹ Machinery or equipment that qualifies as “necessary and integral” to manufacturing includes that which is “used to provide safety for the employees working at a manufacturing plant...including but not limited to safety machinery and equipment required by federal or state law, gloves, ear plugs, face masks, protective eyewear, hard hats or helmets, or breathing apparatuses.”¹²

The items at issue include tangible personal property that may be consumed, such as sodium hypochlorite for water potability purposes, and drinks, cups, and other items for hydration purposes, as well as tangible personal property that is designed for long-term continuous or repetitive use, such as water coolers. These items, however, are not used, consumed, or expended during the manufacture of tangible personal property, nor are these items used in, on, or in conjunction with manufacturing machinery or equipment. The products are not used in changing, processing, transforming, or converting industrial materials into articles of tangible personal property for sale, for promotional use, or further manufacturing. Rather, the items are provided by Taxpayer to employees and visitors for their comfort and convenience. Because the above-listed items are used in non-manufacturing functions, the items at issue do not have the character of equipment and are not necessary and integral to manufacturing. Since the items in question do not fall within the scope of the manufacturing exemption, the purchase or rental of such items is subject sales and use tax.¹³

⁷ Ga. Comp. R. & Regs. r. 560-12-2-.62(2)(c).

⁸ Ga. Comp. R. & Regs. r. 560-12-2-.62(2)(a).

⁹ O.C.G.A. § 48-8-3.2(a)(9), Ga. Comp. R. & Regs. r. 560-12-2-.62(2)(i) (for clarity purposes, the definition as stated above omits the final sentence of the complete definition contained in the statute. The definition of “manufacture of tangible personal property” can be found in its entirety at O.C.G.A. § 48-8-3.2(a)(9)). “Manufacture of tangible personal property” is used synonymously with the term “manufacturing.” “Manufacturing plant” means any facility, site, or other area where a manufacturer engages in the manufacture of tangible personal property. O.C.G.A. § 48-8-3.2(a)(11), Ga. Comp. R. & Regs. r. 560-12-2-.62(2)(k). “Manufacturer” means 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 business, or the location, 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. O.C.G.A. § 48-8-3.2(a)(10), Ga. Comp. R. & Regs. r. 560-12-2-.62(2)(j).

¹⁰ Ga. Comp. R. & Regs. r. 560-12-2-.62(3)(d).

¹¹ Ga. Comp. R. & Regs. r. 560-12-2-.62(3)(d)(1)(vi).

¹² Ga. Comp. R. & Regs. r. 560-12-2-.62(3)(d)(2)(vi).

¹³ See Ga. Comp. R. & Regs. r. 560-12-2-.104(4)(b)(1)(ii) (bottled water, coolers, or other containers purchased by a business that provides the water for no charge to its employees or customers is subject to sales and use tax).

Ruling

Taxpayer purchases and/or rents sodium hypochlorite to make water potable, and bottled water, Gatorade, Sqwincher pops, ice, portable coolers, and disposable cups for employees and visitors to remain hydrated. These items do not have the character of equipment as defined by the manufacturing exemption and in addition are not necessary and integral to manufacturing. Thus, the purchase or rental of the subject items is not exempt from state and local sales and use tax.

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.