

This letter is in response to your letter ruling request dated December 2, 2016 regarding the application of Georgia sales and use tax to certain charges made by [Redacted], (“Taxpayer”).

Facts as Presented by Taxpayer

Taxpayer provides equipment loans and leases to small businesses and middle market companies in a wide range of industries including retail copy shops. In most instances, retail copy shops will lease copiers and printers (the “equipment”) that will be made available to customers for self-service copying and printing. Customers using the equipment are charged only for the copies produced, customers are not charged a lease or rental fee for the equipment used to produce the copies. Taxpayer now inquires as to whether the equipment in the transaction described would qualify either for tax-free treatment exemption as a purchase made for resale, or tax-exempt treatment as manufacturing equipment under O.C.G.A. § 48-8-3.2.

Issues

1. Can a retail copy shop purchase or lease equipment tax-free for resale when the equipment will be made available to customers for self-service copying and printing?
2. Does a copy shop’s purchase or lease of the equipment qualify as an exempt transaction pursuant to the manufacturing exemptions in O.C.G.A. § 48-8-3.2?

Analysis

Georgia levies and imposes a tax (subject to certain exemptions) on the retail purchase, retail sale, rental, storage, use, or consumption of tangible personal property and on certain enumerated services.¹

Sales for Resale

“Retail sale” means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.² Therefore, a sale for resale is not a retail sale and, accordingly, not subject to sales and use tax. “Sale” means any transfer of title or possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner, or by any means of any kind of tangible personal property for a consideration.³ In Georgia, a lease or rental is a type of sale.⁴ “Lease or rental” means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration.⁵

Any person engaged in the business of leasing or renting tangible personal property to others is required to register as a dealer and is required to collect and remit the tax on gross lease or rental charges. Tangible personal property purchased exclusively for lease or rental to others may be purchased tax-free with a Certificate of Exemption.⁶

Based on the facts presented, retail copy shops charge a per page fee for any copies made using the equipment. The copy shops do not enter lease agreements with customers or otherwise transfer possession or control of the equipment to customers. Copy shop customers never receive full possession, control, or use of the equipment; instead, customers only have the limited right to use the equipment to make copies in the location and manner determined by the copy shop that is operating the machine. A customer’s use of this equipment generally does not rise to the level of a lease or rental because the customer does not receive full possession or control of the equipment for a fixed or indeterminate term for consideration.

¹ O.C.G.A. §§ 48-3-1 and 48-8-30.

² O.C.G.A. § 48-8-2(31).

³ O.C.G.A. § 48-8-2(33)(A).

⁴ O.C.G.A. § 48-8-2(33)(A).

⁵ O.C.G.A. § 48-8-2(17).

⁶ Ga. Comp. R. & Regs. r. 560-12-1-.21(1).

Manufacturing Exemptions

Georgia law provides sales and use tax exemptions specific to the manufacturing industry. Only those entities meeting the definition of a “manufacturer” qualify for these exemptions.⁷ “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, promotional use, or further manufacturing. To be considered a manufacturer, the person or business, or the location of a person or business, must be:

- i. Classified as a manufacturer under the 2007 North American Industrial Classification System Sectors 21, 31, 32, or 33; or North American Industrial Classification Systems industry code 22111 or specific code 511110; or
- ii. Generally regarded as 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.⁸

As described above, the subject equipment is purchased or leased by copy shops that are primarily engaged in providing photocopying and document copying services. These retail print shops do not fall within a qualifying North American Industrial Classification System Sector or within a qualifying North American Industrial Classification System industry code. Copy shops are typically considered business service centers and are not generally regarded as manufacturers.⁹

Rulings

1. Tangible personal property that is purchased for lease or rental to others may be purchased tax-free for resale. In this case, Taxpayer sells equipment to copy shops that charge customers for a limited use of the equipment. The copy shops do not transfer possession or control of the equipment in exchange for consideration. Given these facts, the retail copy shop is not reselling the equipment at issue and cannot purchase or lease this equipment without payment of the tax.
2. In order to qualify for the manufacturing equipment exemption, the purchaser or lessee of the equipment must be a manufacturer. Based on the facts presented, the purchasers or lessees are retail copy shops that provide document copying and business support services. These retail copy centers do not fall within a qualifying North American Industrial Classification System Sector, do not fall within a qualifying North American Industrial Classification System industry code, and are not generally regarded as manufacturers. Thus, copy shops, as described, are not manufacturers, and such shops’ purchases do not fall within the manufacturing exemptions set forth in O.C.G.A. § 48-8-3.2.

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. The facts herein are those presented by the taxpayer and the Department accepts them as true for this ruling. If the facts presented herein change, are not true, are different, or material facts have been omitted, the conclusions reached in this ruling may change. In addition, 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 ruling.

⁷ O.C.G.A. § 48-8-3.2; Ga. Comp. R. & Regs. r. 560-12-2-.62.

⁸ O.C.G.A. § 48-3-3.2(a)(10); Ga. Comp. R. & Regs. r. 560-12-2-.62(2)(j).

⁹ See “North American Industry Classification System: 561439 Other Business Service Centers (including Copy Shops).” *U.S. Census Bureau*. <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=561439&search=2017> (January 30, 2018).