

Georgia Letter Ruling Number: LR SUT-2018-06
Topic: Restaurants
Date Issued: July 26, 2018

This letter is in response to your request for guidance on the application of Georgia sales and use tax to the purchase of restaurant equipment.

Facts Presented by Taxpayer

[Redacted] (“Taxpayer”) is a restaurant. Taxpayer purchased equipment when the business opened in 2016. The startup equipment that Taxpayer purchased includes ice makers, refrigerators, freezers, work tables, ranges, sinks, pots, pans, cooking utensils, shelves, cleaning supplies, chairs, and tables. These items are used to prepare food for customers and to furnish the restaurant.

Issue

Is Taxpayer’s purchase of equipment and furniture exempt from Georgia sales and use tax?

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.¹

A “retail sale” is a sale of tangible personal property for any purpose other than for resale.² Consequently, purchases of tangible personal property for resale are excluded from the definition of “retail sale” and are not subject to sales and use tax. However, purchases of tangible personal property for one’s own use are retail purchases that are subject to the tax unless an exemption applies.

Tangible personal property used by a restaurant is not purchased for resale and, as such, is subject to sales and use tax.³ In this case, Taxpayer purchased items for use in the operation of its restaurant: to prepare food and accommodate customers. The items did not become a part of a meal sold to customers. The purchase of equipment and furniture was not for resale and, thus, was subject to sales and use tax unless an exemption applies.

Sales and use tax is broadly imposed on all retail purchases of tangible personal property, and all purchases are presumed taxable unless the contrary is established.⁴ Exemptions from taxation are strictly construed, and an exemption will not be granted unless the relevant provision clearly and distinctly shows that such was the plain and unambiguous intention of the General Assembly.⁵ Georgia law provides an exemption for manufacturers to make tax exempt purchases of equipment necessary and integral to the manufacture of tangible personal property in a manufacturing plant.⁶ However, restaurants are statutorily excluded from being considered manufacturers for purposes of this exemption.⁷ As such, Taxpayer cannot claim that purchases are tax exempt pursuant to the manufacturing exemption.

¹ O.C.G.A. §§ 48-8-1 and 48-8-30(a).

² O.C.G.A. § 48-8-2(31).

³ Ga. Comp. R. & Regs. r. 560-12-2-.115(6)(e) (providing rule and list of examples).

⁴ O.C.G.A. §§ 48-8-1, 48-8-30(a), and 48-8-38.

⁵ Ga. Comp. R. & Regs. r. 560-12-1-.18.

⁶ O.C.G.A. § 48-8-3.2; Ga. Comp. R. & Regs. r. 560-12-2-.62.

⁷ O.C.G.A. § 48-8-3.2(a)(10); Ga. Comp. R. & Regs. r. 560-12-2-.62(2)(j).

Ruling

Tangible personal property used or consumed by a restaurant is not purchased for resale and, consequently, is subject to sales and use tax. Georgia law provides a sales and use tax exemption for manufacturers making qualifying purchases, but Taxpayer, as a restaurant, cannot claim the benefits of the manufacturing exemption. Therefore, Taxpayer must pay tax on all purchases of the subject equipment and furniture.

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.