

Georgia Letter Ruling: LR SUT-2018-07
Topic: Common Carrier, Exemption Documentation
Dated: July 11, 2018

This letter is in response to your request for guidance on the application of Georgia sales and use tax to certain replacement supply parts sold to trucking companies that qualify as common carriers.

Facts Presented by Taxpayer

[Redacted] (“Taxpayer”) sells parts and supplies to trucking companies located throughout the United States, including Georgia. The trucking companies are the end users and are common carriers.

As to some sales, the purchasers provide a completed ST-5. Such purchasers have a Georgia Sales and Use Tax Certificate of Registration. Taxpayer does not collect sales tax on purchases for which the purchaser provides the Form ST-5. The purchasers are common carriers that are authorized to operate in interstate commerce. The purchasers are registered with and regulated by the U.S. Department of Transportation (the “DOT”).

In particular, the purchasers provide a Form ST-5 for purchases of the following items:

Cluster Chains – The chains attach to ratchets on automobile transport trailers. The chains secure autos to the auto transport trailers. The original trucks and trailer combos are equipped with these items.

Replacement Wheel Straps – The wheel straps attach to ratchets on the auto trailers. The straps secure autos to auto transport trailers. The original truck and trailer combos are equipped with these items.

Tie Down Bars – The tool is used to tighten the built-in ratchet boxes. The tie down bar is attached to the ratchet head on the tractor through a small hole. The trailer cannot be used without this. The original truck and trailer combos are equipped with these items.

Ratchet Wheel Straps – These straps do not come with the trailer as original equipment, because typically the equipment is older. The straps help older trailers conform to evolving requests from auto manufacturers to switch from chain type tie-downs to wheel strap tie-downs.

Height Measurement Stick – The main US auto transport manufacturer, Cottrell Trailers, includes height measurement sticks with each trailer sold. This tool helps the driver verify the trailer’s height with the loaded cars. The measurement stick helps when the driver must reposition the cars on the trailer. The stick helps confirm that the cars, as loaded, are below the maximum height allowed for safe underpass clearance on the interstate system. The original truck and trailer combos are equipped with these items.

Non-Skid Paint and Lubricant Paint – Non-skid paint is used to make walking and climbing areas safe in wet weather. Lubricant paint is a form of dry-film carbon used as a lubricant where metal posts or beams slide into other metal posts and beams. Both products are included on equipment at the time of purchase. The original truck and trailer combos are equipped with this item.

Conspicuity Tape – This reflective tape is required by US DOT and is used to make trucks more visible at night. The tape is included on the original equipment and is attached to the sides of all trucks and trailers.

Flatbed Truck Products – Winch Track and Winches – Used on flatbed trailers to secure loads to the trailer as per D.O.T. requirements. Many original equipment manufacturers supply these products with new equipment, but not all.

Issues

1. Do the items described above fall within the scope of items that may be purchased exempt from tax pursuant to O.C.G.A. § 48-8-3(33)?
2. If the items described above do not fall within the scope of items that may be purchased exempt from tax pursuant to O.C.G.A. §48-8-3(33), may Taxpayer have a grace period of 60 days to adjust its accounting system before it must start charging the tax?

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 “Retail sale” means a sale of tangible personal property or taxable service to any person other than for resale.² “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 All sales, uses, consumption, distribution, and storage are taxable until specifically exempt from taxation by the Georgia Code.

The Georgia Code provides a sales and use tax exemption for the sale of replacement parts installed by carriers in aircraft, watercraft, railroad locomotives and rolling stock and motor vehicles which become an integral part of the craft, equipment, or vehicle.⁴ For sales and use taxes purposes auto hauling trailers are considered motor vehicle.⁵

Form ST-5 is used by qualifying common carriers to claim this exemption. The burden of proving that sales of these items are not taxable shall be upon Taxpayer unless Taxpayer, in good faith, takes from the purchaser a certificate stating that the property is tax exempt.

Part of the difficulty in properly understanding and applying the subject exemption is that the statute does not define a key term – “integral”. The Department must turn to the basic rules of statutory construction to determine what the General Assembly intended. Specifically, the Department must “apply the fundamental rules of statutory construction that require us to construe [the] statute according to its terms, to give words their plain and ordinary meaning, and to avoid a construction that makes some language mere surplusage.”⁶ Exemptions from taxation are strictly construed, and an exemption cannot be granted unless the law clearly and distinctly shows that exemption was the plain and unambiguous intention of the General Assembly

To understand the meaning of “integral”, the Department considers the dictionary definition, other Georgia sales and use tax exemptions, and the interpretation of the term in persuasive legal authority. Merriam-Webster provides that “integral” means “essential to completeness.” This definition provides clarity when applying the exemption to various replacement parts of different common carriers, including auto haulers. Specifically, for common carrier crafts that otherwise avail themselves of the exemption, in determining whether a replacement part becomes an integral part of the craft, the Department examines narrowly whether such a replacement part is essential to the completeness of the craft in carrying out its designed purpose and function as a common carrier vehicle.

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. § 48-8-33(A)

⁵ See O.C.G.A. §48-8-3(44) (providing a “drive out” exemption for motor vehicles and referring to O.C.G.A. §48-5-440 for the definition of “motor vehicles”, which includes vehicles designed primarily for use upon the public roads)

⁶ *City of Atlanta v. City of College Park*, 292 Ga. 741, 743-744, (Ga. 2013).

The cluster chains are included as component parts when the auto hauler is originally purchased. The chains are integral because they are essential for completeness as it relates to the auto hauler trailer as a vehicle and its purpose in carrying out its function as a transporter of automobiles or trucks (as cargo). But for the cluster chains, the auto hauler trailer, while in active service as a transporter, is unable to perform its designed function. The facts and circumstances, taken as a whole, indicate that the cluster chains do fall within the scope of the exemption in O.C.G.A. § 48-8-3(33)(A). However, it is imperative to note that because the exemption only applies to items purchased by a licensed common carrier when the items will be used principally to cross the borders of this state in transporting goods or cargo, Taxpayer must charge tax on all sales of chains, unless Taxpayer obtains in good faith a fully completed exemption certificate.⁷

The replacement wheel straps shall be given the same analysis as given for the cluster chains above. The facts and circumstances, taken as a whole, indicate that the replacement wheel straps do fall within the scope of the exemption in O.C.G.A. § 48-8-3(33)(A).

The ratchet wheel strap tie-downs do not come with the trailer as original equipment; however, they do constitute supply parts that improve the functionality of the original equipment parts they replace. As such, the ratchet wheel strap tie-downs, in place of the outgoing parts, are integral because they are essential for completeness as it relates to the auto hauler as a vehicle and its purpose in carrying out its function as a transporter of automobiles or trucks (as cargo). But for the ratchet wheel strap tie-downs, the auto hauler, while in active service as a transporter, is unable to perform its designed function. The facts and circumstances, taken as a whole, indicate that the ratchet wheel strap tie-downs do fall within the scope of the exemption in O.C.G.A. § 48-8-3(33)(A).

The tie down bars are not component parts, but rather are independent tools that are used while the auto hauler is stationary, not while the auto hauler carries out its function as a transporter of automobiles or trucks. As such, the tie down bars never become an integral part of an auto hauler. Moreover, it is immaterial as to whether or not a tie down bar is included when the auto hauler is originally purchased. The facts and circumstances, taken as a whole, indicate that the tie down bars do not fall within the scope of the exemption in O.C.G.A. § 48-8-3(33)(A).

The height measurement sticks shall be given the same analysis as given for the tie down bars above. The facts and circumstances, taken as a whole, indicate that the height measurement sticks do not fall within the scope of the exemption in O.C.G.A. § 48-8-3(33)(A).

The loading ramps are component parts affixed to the auto hauler trailer that do come with the auto hauler trailer as original equipment. However, the loading ramps are not essential for completeness as it relates to the auto hauler as a vehicle and its purpose in carrying out its function as a transporter of automobiles or trucks (as cargo). Without the loading ramps, the auto hauler trailer, while in active service as a transporter, is able to perform its designed function. The facts and circumstances, taken as a whole, indicate that the loading ramps do not fall within the scope of the exemption in O.C.G.A. § 48-8-3(33)(A).

The non-skid paint and lubricant paint are included as stand-alone parts or tools when the auto hauler trailer is originally purchased. However, these paints are not integral in that they are not essential for completeness as it relates to the auto hauler as a vehicle and its purpose in carrying out its function as a transporter of automobiles or trucks (as cargo). The facts and circumstances, taken as a whole, indicate that the paints do not fall within the scope of the exemption in O.C.G.A. § 48-8-3(33)(A).

The conspicuity tape (a/k/a DOT Tape) shall be given the same analysis as given for the non-skid and lubricant paints. The facts and circumstances, taken as a whole, indicate that the paints do not fall within the scope of the exemption in O.C.G.A. § 48-8-3(33)(A). We note that while the conspicuity tape is required by the DOT, such requirements are not determinative from a statutory perspective. Specifically, regardless of DOT requirements, the conspicuity tape are

⁷ Taxpayer must also charge tax on all other items that fall within the scope of the exemption unless Taxpayer obtains in good faith a fully completed exemption certificate.

not integral parts. Without the conspicuity tape, the auto hauler in active motion, is indeed able to perform its designed function.

The flatbed truck products (winch tracks and winches) are component parts affixed to the auto hauler, but they do not necessarily come with the auto hauler as original equipment. The winch tracks and winches share some common characteristics with the loading ramps. The winch track and winches are not essential for completeness as it relates to the auto hauler as a vehicle and its purpose in carrying out its function as a transporter of automobiles or trucks (as cargo). Without the winch track and winches, the auto hauler in active motion, is able to perform its designed function. The facts and circumstances, taken as a whole, indicate that the winches and winch tracks do not fall within the scope of the exemption in O.C.G.A. § 48-8-3(33)(A).

Rulings

1. The cluster chains, replacement wheel straps, and ratchet wheel strap tie-downs fall within the scope of items that may be purchases exempt from tax under O.C.G.A. §48-8-3(33)(A). The burden of proving that sales of these items are not taxable shall be upon Taxpayer unless Taxpayer, in good faith, takes from the purchaser a certificate stating that the property is tax exempt. Thus, Taxpayer must generally charge tax on the sale of these items unless Taxpayer obtains in good faith a fully completed exemption certificate from the purchaser.

Tie down bars, height measurement sticks, loading ramps, non-skid paint and lubricant paint, conspicuity tape, and flatbed truck products do not fall within the scope of the exemption in O.C.G.A. §48-8-3(33)(A).

2. To the extent that Taxpayer, to date, accepted exemption certificates in good faith from purchasers buying any of the items addressed in this ruling, Taxpayer is not liable for tax on such transactions. Commencing immediately, and based on the analysis provided herein, with respect to sales of tie down bars, height measurement sticks, loading ramps, non-skid paint and lubricant paint, conspicuity tape, and/or flatbed truck products (i.e., items that do not fall within the scope of the exemption in O.C.G.A. §48-8-3(33)(A)), Taxpayer should collect tax. With respect to cluster chains, replacement wheel straps, and ratchet wheel strap tie-downs, Taxpayer should (as discussed above) collect tax on the sale of these items unless Taxpayer obtains in good faith a fully completed exemption certificate from the purchaser. As a matter of policy, without tax statutes or regulations that specifically permit an implementation window (i.e. – a grace period), the request for a 60-day grace period by the Taxpayer is deemed an ineligible request under Ga. Comp. R. & Regs. r. 560-1-1-.10(3)(a).

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. 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.