

Georgia Letter Ruling Number: LR SUT-2018-11  
Topic: Manufacturing Equipment  
Date Issued: October 24, 2018

This letter is in response to your request for guidance on the application of Georgia sales and use tax to purchases of portable metal racks used in the manufacturing of tangible personal property.

### **Facts**

[Redacted] (“Taxpayer”) is a manufacturing company with manufacturing plants in [Redacted] states. Taxpayer manufactures packaging that it sells to food companies for the packaging of their food products. The packaging Taxpayer sells to its customers is filled with the customer’s product. The package filled product is then sold and delivered to grocery and/or like-kind stores.

One component of Taxpayer’s packaging and delivery process at its plants involves the use of reusable portable metal racks. These metal racks are used for a short time in the finished goods warehouse to store rolls of metalized manufacturing product prior to shipping. These metal racks also double as a packaging component for these rolls because they are used in the same manner as pallets used to ship Taxpayer’s product. Currently, Taxpayer is paying sales tax on these metal racks.

### **Issue**

Is Taxpayer required to pay sales tax on the purchase of the item described above?

### **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 services.<sup>1</sup> “Retail sale” or a “sale at retail” means any sale, lease, or rental for any purpose other than for resale.<sup>2</sup> “Sale” means any transfer of title or possession, transfer of title and 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.<sup>3</sup> 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 purchases and uses of “packaging supplies” by manufacturers. “The sale, use, or storage of machinery or equipment which is necessary and integral to the manufacture of tangible personal property and the sale, use, storage, or consumption of industrial materials or packaging supplies shall be exempt from all sales and use taxation.”<sup>4</sup> Form ST-5M is used to claim this exemption.<sup>5</sup> “Manufacture of tangible personal property” used

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<sup>1</sup> O.C.G.A. §§ 48-8-1 and 48-8-30.

<sup>2</sup> O.C.G.A. § 48-8-2(31).

<sup>3</sup> O.C.G.A. § 48-8-3(33)(A).

<sup>4</sup> O.C.G.A. § 48-8-3.2(b).

<sup>5</sup> Ga. Comp. R. & Regs. r. 560-12-2-.62(e)(6).

synonymously with the term “manufacturing” means a manufacturing operation . . . The term includes, but is not limited to, . . . a packaging operation that occurs at a manufacturing plant.<sup>6</sup>

“Packaging supplies” means materials, including, but not limited to, containers, labels, sacks, boxes, wraps, fillers, cones, cores, pallets, or bags, used in a packaging operation solely for packaging tangible personal property.<sup>7</sup> “Packaging operation” means bagging, boxing, crating, canning, containerizing, cutting, measuring, weighing, wrapping, labeling, palletizing, or other similar processes necessary to prepare or package manufactured products in a manner suitable for sale or delivery to customers as finished goods or suitable for the transport of work in process at or among manufacturing plants for further manufacturing, and the movement of such finished goods or work in process to a storage or distribution area at a manufacturing plant.<sup>8</sup>

The exemption for “packaging supplies” used by a manufacturer does not differentiate between reusable packaging supplies and single-use packaging supplies.<sup>9</sup> Additionally, the exemption does not expressly require packaging supplies to serve a single purpose.<sup>10</sup> While exemptions from taxation are strictly construed, the metal racks at issue serve the same function and purpose as traditional single-use pallets, and pallets are expressly exempt as qualifying “packaging supplies”.<sup>11</sup> Thus, based on the facts presented above, the reusable portable metal racks are within the scope of the exemption provided to manufacturers of tangible personal property.

## **Ruling**

Taxpayer, based on the facts presented, is not required to pay sales and use tax on the reusable portable metal racks described above. Taxpayer may use Form ST-5M to make qualifying purchases without payment of tax.

## **Conclusion**

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.

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<sup>6</sup> O.C.G.A. § 48-8-3.2(a)(9).

<sup>7</sup> O.C.G.A. § 48-8-3.2(a)(13).

<sup>8</sup> O.C.G.A. § 48-8-3.2(a)(12).

<sup>9</sup> O.C.G.A. § 48-8-3.2(b).

<sup>10</sup> With respect to machinery and 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 purpose for which an item of tangible personal property is used more than one-third of the time will prevail for purposes of determining the eligibility for exemption. O.C.G.A. § 48-8-3.2(d)(2).

<sup>11</sup> O.C.G.A. § 48-8-3.2(a)(13).