

Georgia Letter Ruling Number: LR SUT-2018-13  
Topic: Agricultural Equipment  
Date Issues: December 7, 2018

This letter is in response to your request for guidance dated September 5, 2018 regarding the application of Georgia sales and use tax to certain sales of shipping containers made by your company.

### **Facts as Presented by Taxpayer**

[Redacted] (“Taxpayer”) is an auctioneer in the business of selling new and used tangible personal property (“property”) through unreserved public auctions. Taxpayer regularly sells industrial equipment, motor vehicles, agricultural equipment, and other property. The auctions take place throughout the year at a location within the state. The owner of the property (“Consignor”) consigns the property to Taxpayer for the auction process while retaining the title to the property. Taxpayer acts as a selling agent for the Consignor. In addition to selling property that is owned by a Consignor, Taxpayer also purchases tangible personal property in its own name to auction.

Taxpayer charges all buyers sales tax on the sales price of the auctioned property and remits the tax to the Georgia Department of Revenue unless the buyer produces the applicable exemption document.

Potential buyers may bid on items at the auction in person, bid by submitting a proxy, or bid for the items over the internet through Taxpayer’s website. Buyers could be residents of the state of the auction, a different state, or a different country.

Taxpayer regularly sells new and used storage and shipping containers (“Containers”). Customers argue these Containers qualify for the Georgia Agricultural Tax Exemption (“GATE”) program. Because buyers arrange for their own shipping and installation, Taxpayer has no way of determining the ultimate disposition of a Container after the sale takes place.

### **Issues**

1. Is there a limitation on the size, dimensions, or physical makeup of containers that can qualify for the GATE program?
2. If a buyer claims a Container will not be affixed to real property but instead used as “portable storage” can the Container qualify for the GATE program? What specific documentation is necessary to establish this claim?
3. Beyond grain bins, are there any other types of storage containers that can qualify for the GATE program?

### **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.<sup>1</sup> “Retail sale” means a sale of tangible personal property or taxable service to any person other than for resale.<sup>2</sup> “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.<sup>3</sup>

#### *Georgia Agriculture Tax Exemption*

Georgia sales and use tax does not apply to sales to, or use by, a qualified agriculture producer of agricultural production inputs, energy used in agriculture, and agricultural machinery and equipment.<sup>4</sup> To obtain the benefit of the exemption, the qualified agriculture producer must hold a valid Georgia Agriculture Tax Exemption (GATE) certificate/card issued by the Georgia Department of Agriculture.<sup>5</sup>

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<sup>1</sup> O.C.G.A. § 48-8-30.

<sup>2</sup> O.C.G.A. § 48-8-2(31).

<sup>3</sup> O.C.G.A. § 48-8-2(33)(A).

<sup>4</sup> O.C.G.A. § 48-8-3.3(b); Ga. Comp. R. & Regs. r. 560-12-2-.03.

<sup>5</sup> O.C.G.A. § 48-8-3.3(d) and (e); Ga. Comp. R. & Regs. r. 560-12-2-.03(7).

Agricultural machinery and equipment includes devices and containers used in the transport and shipment of agricultural products as well as grain bins and attachments to grain bins that are used in agricultural operations regardless of whether such grain bins or attachments become incorporated into real property.<sup>6</sup> Examples of agricultural production inputs, when used in a qualifying agricultural operation, are materials, containers, crates, boxes, labels, sacks, bags, or bottles used for packaging agricultural products when the product is either sold in the containers, sacks, bags, or bottles directly to the consumer or when such use is incidental to the sale of the product for resale; and containers, plastic, canvas, and other fabrics used in the care and raising of agricultural products or canvas used in covering feed bins, silos, greenhouses, and other similar storage structures.<sup>7</sup>

#### *Dealer's Acceptance of a Certificate of Exemption*

All sales are subject to sales tax until the contrary is established.<sup>8</sup> O.C.G.A. § 48-8-38 requires retail sellers to collect sales tax unless they, in good faith, take from the purchaser a properly completed certificate of exemption, such as a GATE card. The GATE card is the only form of exemption certificate acceptable for purchases under the GATE program.<sup>9</sup> A seller takes a GATE card in good faith when:

- Upon the first use of a GATE card each calendar year, the seller verifies that the purchaser's GATE card is not expired;
- The exemption could be applicable to the item being purchased;
- The exemption is reasonable for the purchaser's type of business; and
- The seller has not received actual notice of a suspension or revocation of the GATE card.<sup>10</sup>

A seller must obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurs. In other words, a seller must maintain a copy of a purchaser's GATE card, or all data listed on the card, notwithstanding whether the sale is made in person, by proxy, or over the internet.<sup>11</sup>

#### **Rulings**

1. Containers sold to or used by a GATE card holder are exempt from tax if such containers are used for packaging agricultural products, used in the care and raising of agricultural products, or used in the transport and shipment of agricultural products. There is no statutory or regulatory limitation on the size, dimensions, or physical makeup of containers that can qualify for the agricultural sales and use tax exemption. Accordingly, regardless of size, dimensions, or physical make up, containers used in a qualifying agricultural operation are exempt from tax when sold to or used by a GATE card holder.
2. A shipping container used in an agricultural operation as portable storage could qualify for exemption under the GATE program. The dealer's acceptance of a GATE card taken in good faith from the purchaser is sufficient documentation to establish this claim.

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<sup>6</sup> O.C.G.A. § 48-8-3.3(a)(1); Ga. Comp. R. & Regs. r. 560-12-2-.03(2)(a). Agricultural products are items produced by agricultural operations. O.C.G.A. § 48-8-3.3(a)(2.1); Ga. Comp. R. & Regs. r. 560-12-2-.03(2)(d). Agricultural operations, a term which is used synonymously with the term agricultural purposes, includes growing, harvesting, protecting, or storing crops; managing livestock, equine, or poultry; producing or storing feed for use in poultry or livestock production; producing plants or designated animals; post-harvest services on crops with the intent of preparing them for market or further processing; and manufacturing dairy products. O.C.G.A. § 48-8-3.3(a)(2); Ga. Comp. R. & Regs. r. 560-12-2-.03(2)(b).

<sup>7</sup> O.C.G.A. § 48-8-3.3(a)(3); Ga. Comp. R. & Regs. r. 560-12-2-.03(2)(c).

<sup>8</sup> O.C.G.A. § 48-8-38.

<sup>9</sup> O.C.G.A. §§ 48-8-3.3 and 48-8-38.

<sup>10</sup> Georgia Department of Revenue Policy Bulletin SUT-2016-01, revised August 21, 2018.

<sup>11</sup> O.C.G.A. § 48-8-38. Dealers must maintain records to support all purchases and sales for a period of no less than three years. O.C.G.A. § 48-8-52.

3. As discussed above, there is no statutory or regulatory limitation on the size, dimensions, or physical makeup of containers (or other similar tangible personal property) that can qualify for the agricultural sales and use tax exemption. In general, all containers (including grain bins) that could reasonably be used in a qualifying agricultural operation may be sold tax exempt when the seller in good faith takes a GATE card from the purchaser (or lessee).

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.