

Georgia Letter Ruling: LR SUT-2019-02
Topic: Jet Fuel
Date Issued: November 20, 2019

This letter is in response to your request for guidance on the application of Georgia state sales and use tax to Taxpayer's purchases and uses of jet fuel.

Facts Presented by Taxpayer

Taxpayer provides U.S. domestic and international air transportation for passengers and cargo. As part of its business, Taxpayer makes purchases at retail of jet fuel, both within and outside the State of Georgia, for use in its aircraft.

Issue

Is Taxpayer required to pay state sales and use tax on jet fuel?

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 any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.² In the case at hand, Taxpayer concedes that jet fuel is tangible personal property and that Taxpayer purchases jet fuel at retail (i.e., not for resale, sublease, or subrent). Consequently, retail purchases of jet fuel are subject to state sales and use tax at a 4% rate, unless the law specifically provides otherwise.³

With certain limitations, the Governor of Georgia may suspend the collection of state taxes.⁴ A Governor's suspension of the collection of taxes due the state is only effective until the next meeting of the General Assembly.⁵ On July 30, 2018, Governor Nathan Deal signed an Executive Order which suspended the collection of state sales and use tax on jet fuel effective August 1, 2018.⁶

The General Assembly next met in a special session from November 13, 2018 through November 17, 2018. In that special session, the General Assembly enacted O.C.G.A. § 48-8-19(b), which provides as follows:

The General Assembly of Georgia hereby ratifies the Executive Order of the Governor dated July 30, 2018, and filed in the official records of the office of the Governor as Executive Order 07.30.18.01 which suspended the collection of any rate of sales and use tax as such tax applies to jet fuel. *The General Assembly of Georgia hereby continues such suspension of collection indefinitely.*

Id. (emphasis added). As noted above, when the Governor suspends the collection of taxes, the Governor's suspension is only effective "until the next meeting of the General Assembly."⁷ By the terms of its ratification of the Governor's Executive Order, however, the General Assembly exercised its own authority and enacted a legislative suspension of the collection of state sales taxes "indefinitely."⁸

Notably, this is not the first time that the General Assembly has ratified the Governor's suspension of the collection of a tax, and then tacked on its own legislative suspension for an additional period of time. By Executive Order dated December 5, 2014, Governor Deal suspended the collection of a pending increase in the rate of prepaid state taxes on motor fuel and aviation gasoline that would have come into effect on January 1, 2015. Because the rate was subject to change every six months based on the then market price of these fuels, Governor Deal provided in Executive Order

¹ O.C.G.A. §§ 48-8-1, 48-8-2(31), and 48-8-30(a).

² O.C.G.A. § 48-8-2(31).

³ O.C.G.A. § 48-8-30(a).

⁴ O.C.G.A. § 45-12-22(a).

⁵ O.C.G.A. § 45-12-22(b).

⁶ Executive Order 07.30.18.01, issued by Gov. Nathan Deal July 30, 2018, effective August 1, 2018.

⁷ O.C.G.A. § 45-12-22(b).

⁸ O.C.G.A. § 48-8-19(b).

12.05.14.02 that the suspension would end “the last moment of June 30, 2015.” When the 2015 General Assembly came into session the following month, it not only ratified the Governor’s suspension but also tacked on a legislative suspension for an additional six month period by adding to its ratification that “[t]he period of suspension under this subsection shall conclude at the last moment of December 31, 2015.”⁹

In extending the Governor’s suspension, the 2015 General Assembly noted in its findings that “the price of gasoline has fluctuated dramatically since the adjournment of the 2014 General Assembly,” and that it was the intention of the state “to stabilize the rate of taxation on motor fuels and aviation gasoline during periods of volatile price swings.”¹⁰ These findings echoed the Governor’s reference in his Executive Order to the “significant volatility in the cost of gasoline” that could result in “an inconsistent level of funding” for the State’s transportation network.¹¹ The General Assembly thus not only agreed that the volatility in fuel prices justified the Governor’s suspension of collection through June 30, 2015, but further decided that such conditions would continue to exist as it legislatively suspended any collection based on an increase in prices for a further six months.

Similarly, Governor Deal noted the following as justification for suspending the collection of state sales and use tax on jet fuel effective August 1, 2018:

- The annual economic impact of Georgia airports amounts to over \$62 billion per year;
- Direct flights out of Hartsfield-Jackson Atlanta International Airport alone have supported nearly \$11 billion in foreign investment and 42,000 jobs across the state;
- Georgia currently assesses a 4% state sales and use tax on jet fuel pursuant to Article 1 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated;
- This assessment amounts to the fourth highest tax burden on jet fuel among states with major airport hubs, behind only Illinois, California, and Michigan, and
- Many other states impose little or no tax on jet fuel, placing Georgia airports at a competitive disadvantage compared to those in Florida, New York, North Carolina, and Texas, among others.¹²

The General Assembly that met for the 2018 Special Session noted the above five reasons in its own findings, and added the following justification:

- The distribution of the proceeds of sales and use tax on jet fuel could jeopardize Georgia’s legal standing and compliance with federal aviation programs.¹³

The General Assembly agreed that these same justifications supported the Governor’s suspension and therefore ratified it, and apparently in recognition that these same justifications would continue to exist, decided to continue the suspension of collection “indefinitely.”¹⁴

Although the General Assembly’s statement that it “hereby continues such suspension of collection indefinitely”¹⁵ is plain and direct, two further provisions enacted in the same law introduce potential confusion. That next subparagraph in the same section as the indefinite suspension provides that “[f]or the time period commencing on August 1, 2018 ... and concluding at the last moment of November 30, 2018, sales and use taxation pursuant to Code Section 48-8-30 as such tax applies to jet fuel shall be governed by the provisions of this Code section [48-8-19] notwithstanding any

⁹ 2015 H.B. 319, codified at O.C.G.A. § 48-8-17.

¹⁰ *Id.*

¹¹ Executive Order 12.05.14.02, issued by Gov. Nathan Deal December 5, 2014, effective January 1, 2015

¹² Executive Order 07.30.18.01, issued by Gov. Nathan Deal July 30, 2018, effective August 1, 2018.

¹³ 2018 H.B. 5EX, 2018 Special Session, codified at O.C.G.A. § 48-8-19(a).

¹⁴ 2018 H.B. 5EX, 2018 Special Session, codified at O.C.G.A. § 48-8-19(b).

¹⁵ *Id.*

provisions of Code Section 48-8-30 or any other law to the contrary.”¹⁶ Further, the bill put into effect on December 1, 2018 a new provision which exempted state sales and use tax on jet fuel until June 30, 2019.¹⁷

Together, these provisions could be construed as providing an “indefinite” suspension that ends on a date certain at the end of the month in which it was enacted – that is, November 30, 2018. But such a construction would leave the sentence, “[t]he General Assembly of Georgia hereby continues such suspension of collection indefinitely,” without legal effect. That reading would violate the fundamental rule of statutory construction that requires avoiding a construction that makes some language “mere surplusage” with no legal effect. *Georgia Dep’t of Nat. Res. v. Center for a Sustainable Coast, Inc.*, 294 Ga. 593, 603 (2014); *Slakman v. Continental Cas. Co.*, 277 Ga. 189, 191 (2003).

An alternative construction would harmonize these provisions by giving them all legal effect. First, “we must presume that the General Assembly meant what it said and said what it meant”:¹⁸ that the suspension is “indefinite[,]” i.e., “having no exact limits.”¹⁹ Second, the next subparagraph’s end date of November 30, 2018 does not provide a date certain that ends the *indefinite suspension*, but instead merely sunsets that provision’s command to interpret the Code section “notwithstanding any provisions of Code Section 48-8-30 or any other law to the contrary.” In other words, the provision opens the door for the General Assembly to decide to lift the suspension at a later date. Third, the law’s new *exemption* of jet fuel from the sales and use tax ensures that however soon the legislature decides to lift the *indefinite suspension*, jet fuel will be subject to sales and use tax no sooner than July 1, 2019.

This construction makes particular sense in light of the General Assembly’s reasons for the suspension.²⁰ The General Assembly may well have determined that given the nature of these reasons, it could not determine a date certain after which the reasons no longer supported a suspension of the tax, so it decided to continue the suspension “indefinitely” until assurance could be provided that, for example, “Georgia’s legal standing and compliance with federal aviation programs” would no longer be jeopardized. That is in contrast to suspensions in past years, where the conditions that led to the suspensions would in fact end by the time of the end date provided by the statute that provided for the suspension.²¹ And indeed, those past suspension statutes are worded differently to reflect that difference: unlike Code Section 48-8-19, each of those provisions mentioned only a single “end date” for the suspension, and that was the end date that each of these respective Code section would apply “notwithstanding any provisions of Code Section 48-8-30 or any other law to the contrary.”²²

Ruling

The Governor, in conjunction with the General Assembly, suspended state sales and use tax on jet fuel from August 1, 2018 through November 30, 2018. The General Assembly then chose to continue the Governor’s suspension indefinitely as a Legislative suspension. Concurrent with this Legislative suspension, the General Assembly enacted a full statutory exemption effective December 1, 2018 through June 30, 2019. Beginning July 1, 2019, state sales and use tax applied to retail sales of jet fuel just as it applied to any other retail sales of tangible personal property, but until further act of the General Assembly, collection of such taxes is suspended pursuant to O.C.G.A. § 48-8-19(b). Accordingly, the collection of state sales and use taxes on the sale or use of jet fuel is suspended indefinitely until the General Assembly passes a law that ends the suspension.

¹⁶ O.C.G.A. § 48-8-19(c) (emphasis added).

¹⁷ O.C.G.A. § 48-8-3.5(b).

¹⁸ *Deal v. Coleman*, 294 Ga. 170, 172 (2013)

¹⁹ MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/indefinitely>.

²⁰ 2018 H.B. 5EX, 2018 Special Session, codified at O.C.G.A. § 48-8-19(a).

²¹ O.C.G.A. § 48-8-15 (suspension of sales taxes on sales of liquid propane gas and natural gas for home heating from December 19, 2005 through March 31, 2006 (LP gas) and April 30, 2006 (natural gas) due to winter price spike); O.C.G.A. § 48-8-16 (suspension of sales taxes on sales of dyed fuel oils from May 12, 2008 through April 30, 2009 due to price spike hindering agriculture); O.C.G.A. § 48-8-17 (suspension of prepaid tax rate increase on sales of motor fuel and aviation gasoline from December 5, 2014 through December 31, 2015 due to “volatile price swings”).

²² *Id.*

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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.