

Georgia Letter Ruling: LR SUT-2020-04
Topic: Manufacturing Exemptions
Date Issued: April 15, 2020

This letter is in response to your request for guidance on the application of Georgia sales and use tax to certain purchases and uses of equipment by Taxpayer.

Facts Presented by Taxpayer

Taxpayer is a manufacturer that purchases solar power equipment for certain out of state (i.e., outside of Georgia) solar projects it is contemplating. Taxpayer purchases some of the equipment from manufacturers in Georgia and other equipment from vendors outside of Georgia, which Taxpayer then transports temporarily into Georgia. All of the equipment is to be stored temporarily in Georgia in a Taxpayer leased warehouse until the projects begin. The equipment will be temporarily stored in Georgia for as little as a few weeks or as long as several months. When the projects are to begin, Taxpayer will contribute the equipment to the project rather than sell the equipment and will retain partial ownership over the overall project. None of the projects being contemplated are located in Georgia, therefore none of the equipment will ultimately be used in Georgia.

Issue

Is storage in Georgia of the equipment referenced above a taxable use in Georgia?

Analysis

Georgia levies and imposes sales and use 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 Thus, purchases for resale are not subject to sales and use tax as such purchases are not “retail sales”.³

O.C.G.A. section 48-8-3.2(b) provides the following sales and use tax exemption for certain machinery and equipment:

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. (emphasis added).

To qualify for this exemption, the purchaser must meet certain criteria, and the items purchased must meet certain criteria. For purposes of this ruling, the Department assumes Taxpayer and the equipment at issue meet these criteria. If the machinery and equipment purchases qualify for the underlying exemption, the statute quoted above provides that the storage of the machinery and equipment is also exempt from taxation (even if the machinery and equipment are ultimately used outside Georgia).

Ruling

Taxpayer represents that it is making purchases that qualify for the exemption contained in O.C.G.A. §48-8-3.2(b). As such, the storage of such items in Georgia is also exempt from sales and use tax.⁴

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 In addition to purchases for resale not being subject to the tax, retention (i.e., storage) of items purchased for resale is also not subject to the tax. O.C.G.A. §48-8-39(a).

⁴ Furthermore, if Taxpayer’s contribution of the subject machinery and equipment to the project is a “sale”, Taxpayer’s initial purchases of the machinery and equipment are for resale and thus not subject to sales and use tax, and Taxpayer’s subsequent retention/storage of the items purchased for resale is not subject to tax pursuant to O.C.G.A. §48-8-39(a).

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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.