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Re: Request for Letter Ruling

This letter is in response to your request for guidance on the application of Georgia sales and use tax to the taxability of certain sales made to Georgia Agriculture Tax Exemption (“GATE”) certificate holders.

**Facts**

Taxpayer provided the following facts:

Taxpayer sells and services cleaning equipment to the agricultural industry, and is getting inquiries about the use of the GATE card when purchasing and servicing hot and cold water pressure washers.

The Informational Bulletin SUT 2013-01-28 states that machinery and equipment used to clean and maintain a poultry house and the surrounding premises is a purchase that qualifies for the agriculture exemption, as well as repair and replacement parts for tractors and other farm machinery and equipment, including tires, batteries, spark plugs, motor oils, oil filters, greases, lubes and hydraulic fluids. However, it does not state anything about machinery and equipment used to clean and maintain general farm equipment. Taxpayer has also had this question arise from the manager of a cotton gin in regards to cleaning equipment to clean and maintain equipment around the gin.

### **Issues**

1. Is cleaning equipment that is used to clean and maintain general farm equipment on a farm a qualifying purchase?
2. If this is a qualifying purchase, are repair and replacement parts for equipment used to clean and maintain general farm equipment on a farm a qualifying purchase?
3. Is cleaning equipment that is used to clean and maintain cotton gin equipment (example module builders, module trucks, loaders, etc.) a qualifying purchase?
4. If this is a qualifying purchase, are repairs and replacement parts for equipment used to clean and maintain cotton gin equipment a qualifying purchase?

### **Analysis**

Georgia levies and imposes sales tax (subject to certain specific exemptions) on the retail purchase, retail sale, storage, use, or consumption of tangible personal property and on certain enumerated services.<sup>1</sup> Every purchaser of tangible personal property at retail in Georgia is liable for a tax on the purchase at the rate of 4 percent of the sales price of the purchase, plus any applicable local sales taxes.<sup>2</sup> All sales are deemed taxable unless the contrary is established.<sup>3</sup> In order to claim exemption, the seller ordinarily obtains an exemption certificate from the purchaser showing that the purchaser is exempt from the tax.<sup>4</sup>

The sales and use taxes levied or imposed by this article shall 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>5</sup> A dealer can make exempt sales of agricultural machinery and equipment to a qualified agricultural producer providing a valid Georgia Agriculture Tax Exemption (GATE) certificate issued by the Georgia Department of Agriculture.

“Agricultural machinery and equipment” means machinery and equipment used in the production of agricultural products, including, but not limited to, machinery and equipment used in the production of poultry and eggs for sale, including, but not limited to, equipment used in the cleaning or maintenance of poultry houses and the surrounding premises...<sup>6</sup> Machinery and equipment used to repair or maintain agricultural machinery and equipment is qualifying agricultural machinery and equipment and exempt from Georgia sales and use tax.

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

<sup>2</sup> Tangible personal property is defined as personal property “which may be seen, weighted, measured, felt, or touched, or is in any other manner perceptible to the senses.” State v. Cherokee Brick & Tile Co., 79 S.E.2d 322 (1953).

<sup>3</sup> O.C.G.A. § 48-8-38.

<sup>4</sup> O.C.G.A. § 48-8-38; Ga. Comp. R. & Regs. r. 560-12-1-.08(1).

<sup>5</sup> O.C.G.A. § 48-8-3.3(b).

<sup>6</sup> O.C.G.A. § 48-8-3.3(a)(1)(A).

“Agricultural machinery and equipment” also means ... any repair, replacement, or component parts installed on agricultural machinery and equipment.<sup>7</sup> Repair, replacement, and component parts installed on machinery and equipment used to repair or maintain agricultural machinery and equipment are exempt from Georgia sales and use tax.

The previous and the amended versions of O.C.G.A. § 48-8-38 both state that the seller bears the burden of proving that a retail sale is not subject to sales tax. Prior to March 5, 2013, sellers met the burden of proving that a sale was not subject to sales tax by accepting a properly completed certificate of exemption or obtaining the relevant data from the purchaser within 90 days subsequent to the date of the sale. The amendment changes the manner in which sellers meet this burden. Effective March 5, 2013, 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.

A seller takes a properly completed certificate in good faith if the certificate is:

- Fully completed, including, but not limited to, the name, address, sales tax number, and signature of the taxpayer when required;
- In a form appropriate for the type of exemption claimed;
- Claiming an exemption that was statutorily available on the date of the transaction in the jurisdiction where the transaction is sourced;
- Claiming an exemption that could be applicable to the item being purchased; and
- Claiming an exemption that is reasonable for the purchaser's type of business.

The amendment’s good faith requirement applies to all exempt sales, including sales exempt under the GATE program. The amendment does not change the exemption certificate acceptable under the GATE program: The GATE certificate remains the only form of agriculture exemption certificate acceptable for purchases under this program.

### **Rulings**

Effective March 5, 2013, 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.

A seller takes a properly completed certificate in good faith if the certificate is:

- Fully completed, including, but not limited to, the name, address, sales tax number, and signature of the taxpayer when required;
- In a form appropriate for the type of exemption claimed;
- Claiming an exemption that was statutorily available on the date of the transaction in the jurisdiction where the transaction is sourced;

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<sup>7</sup> O.C.G.A. § 48-8-3.3(a)(1)(B).

- Claiming an exemption that could be applicable to the item being purchased; and
  - Claiming an exemption that is reasonable for the purchaser's type of business.
1. Sales of cleaning equipment used to clean and maintain general farm equipment are exempt from Georgia sales and use tax when the seller accepts a valid GATE certificate in good faith.
  2. Sales of repair and replacement parts for equipment used to clean and maintain general farm equipment are exempt from Georgia sales and use tax when the seller accepts a valid GATE certificate in good faith.
  3. Sales of cleaning equipment used to clean and maintain cotton gin equipment are exempt from Georgia sales and use tax when the seller accepts a valid GATE certificate in good faith.
  4. Sales of repair and replacement parts for equipment used to clean and maintain cotton gin equipment are exempt from Georgia sales and use tax when the seller accepts a valid GATE certificate in good faith.

The opinions expressed in this ruling are based upon the information contained in your request and limited to the specific transactions, facts, and taxpayer in question. Should the circumstances regarding the transactions change, or differ materially from those represented, then this ruling may become invalid. In addition, please be advised that 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 response.