

## Georgia Amends Certain Sales & Use Tax Exemptions and Definitions

May 2, 2014

### Overview

Governor Deal of Georgia recently signed into law House Bill 816 (H.B. 816),<sup>1</sup> House Bill 900 (H.B. 900),<sup>2</sup> and House Bill 933 (H.B. 933),<sup>3</sup> which include the following amendments to Georgia's sales and use tax laws:

- H.B. 816 modifies the definition of the term "delivery charges."
- H.B. 900 broadens the scope of the manufacturing machinery and equipment exemption to include certain consumable supplies.
- H.B. 933 eliminates the sunset provision for the exemption of certain aircraft repair parts.

In this Tax alert we summarize these Georgia law changes.

### Certain Postage Charges Are Excluded from Taxable "Delivery Charges"

Effective July 1, 2014,<sup>4</sup> H.B. 816 amends O.C.G.A. § 48-8-2(10) to exclude from the definition of taxable "delivery charges" "postage charges for the delivery of direct mail when the postage charge is passed on dollar-for-dollar without being marked up to the purchaser of the direct mail and separately stated on an invoice . . . ."<sup>5</sup> Prior to this law change, the definition of delivery charges, which are specifically included within the definition of "sales price,"<sup>6</sup> appeared to include postage charges for the delivery of direct mail irrespective of whether such charges were passed on to the purchaser.

### Broadening the Manufacturing Exemption

Under current law, and notwithstanding the 2009 adoption of the "integrated plant theory,"<sup>7</sup> "consumable supplies . . . consumed or expended during the manufacture of tangible personal property" were excluded from qualifying for the sales and use tax exemption for manufacturing machinery and equipment.<sup>8</sup> The term "consumable supplies" is defined as "tangible personal property, other than machinery, equipment, and industrial materials that is consumed or expended during the manufacture of tangible personal property."<sup>9</sup> The term includes, but is not limited to, "water treatment chemicals for use in, on, or in conjunction with machinery or equipment and items that are readily disposable."<sup>10</sup> The term excludes packaging supplies and energy.<sup>11</sup>

Pursuant to H.B. 900, effective July 1, 2014,<sup>12</sup> tangible personal property that satisfies the statutory definition of a consumable supply will now be categorized as a type of "equipment."<sup>13</sup> Accordingly, under this law

<sup>1</sup> 2013 Ga. Laws (2013 Ga. H.B. 816, Apr. 24, 2014). A copy of the adopted law is accessible at: <http://www.legis.ga.gov/Legislation/20132014/144982.pdf>.

<sup>2</sup> 2013 Ga. Laws (2013 Ga. H.B. 900, Apr. 24, 2014). A copy of the adopted law is accessible at: <http://www.legis.ga.gov/Legislation/20132014/145001.pdf>.

<sup>3</sup> 2013 Ga. Laws (2013 Ga. H.B. 933, Apr. 24, 2014). A copy of the adopted law is accessible at: <http://www.legis.ga.gov/Legislation/20132014/144836.pdf>.

<sup>4</sup> O.C.G.A. § 1-3-4(a)(1).

<sup>5</sup> H.B. 816, Sec. 1, amending O.C.G.A. 48-8-2(10).

<sup>6</sup> O.C.G.A. § 48-8-2(34)(A)(iv).

<sup>7</sup> Prior to January 1, 2009, machinery and equipment had to be "used directly" in the manufacturing process in order to qualify for the manufacturing exemption. See, O.C.G.A. § 48-8-3(34) (repealed 2009). Under Georgia's current "integrated plant theory," machinery and equipment are exempt if they are necessary and integral to the taxpayer's manufacturing operations, irrespective of whether they actually cause a physical change in raw materials, which was required under the prior version of the statutory section. 2008 Ga. Laws 790 (2008 Ga. H.B. 237, May 14, 2008). See, statutes cited *infra* note 8.

<sup>8</sup> O.C.G.A. § 48-8-3.2(b) exempts from Georgia sales and use tax "equipment" and "machinery" that is "necessary and integral the manufacture of tangible personal property." Under current law, O.C.G.A. § 48-8-3.2(a)(3) and (a)(7) exclude "consumable supplies" from the definitions of "equipment" and "machinery," respectively.

<sup>9</sup> O.C.G.A. § 48-8-3.2(a)(1).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> H.B. 900, Sec. 2.

<sup>13</sup> H.B. 900, Sec. 1, amending O.C.G.A. § 48-8-3.2(a)(1), (3), and (e)(7).

change purchases of consumable supplies that are “necessary and integral” to the manufacturing process will be exempt.

### Sunset Eliminated for Exemption Applicable to Certain Aircraft Repair Parts

Pursuant to O.C.G.A. § 48-8-3(86), sales and use tax shall not apply to “[t]he sale or use of engines, parts, equipment, and other tangible personal property used in the maintenance or repair of aircraft when such engines, parts, equipment, and other tangible personal property are installed on such aircraft that is being repaired or maintained in this state, so long as such aircraft is not registered in this state.” This statutory exemption was scheduled to sunset on July 1, 2015. Pursuant to H.B. 933, the sunset is eliminated.<sup>14</sup> Thus, this exemption is now permanent.

### Considerations

Taxpayers, especially those in the manufacturing industry, may wish to consider how the forgoing law changes affect the taxability of their purchases and if any tax software system modifications need to be undertaken.

### Contacts

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<sup>14</sup> H.B. 933, Sec. 1, amending O.C.G.A. § 48-8-3(86).