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*Georgia lawmakers pass
legislation to significantly
change sales and use tax laws;
await Governor's signature*

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Update: H.B. 386 was signed by the Governor on April 19, 2012.

Georgia legislation, passed by the Senate on March 22, 2012, would make significant changes to the state's sales and use tax laws. In general, the legislation would revise manufacturing related exemptions, phase-in an exemption from sales tax for energy used in manufacturing, and expand the definition of "dealer," among other changes. The legislation passed the House on March 20, 2012, and is awaiting action by the Governor, who is expected to sign it into law. [[H.B. 386](#)]

Manufacturing related exemptions

Under the current law, sales of manufacturing machinery or equipment components bought to replace or upgrade machinery or equipment that is necessary and integral to the manufacture of tangible personal property and is located in a Georgia manufacturing plant are exempt from sales tax. Also exempt from sales tax are purchases of machinery or equipment used for the first time in a new manufacturing plant located in Georgia or when such machinery or equipment is used as additional machinery or equipment for the first time in a Georgia manufacturing plant.



The legislation would strike these current exemptions. In their place, it would exempt from all sales and use taxation "the sale, use or storage of machinery or equipment which is necessary and integral to the manufacture of tangible personal property."

If enacted, this proposed change shall become effective on January 1, 2013.

Energy exemption phase-in

The legislation would phase-in an exemption from state sales tax (and most local sales taxes) for the sale, use, storage, or consumption of energy that is necessary and integral to the manufacture of tangible personal property at a manufacturing plant in Georgia. The exemption would be phased-in as follows:

- From January 1, 2013 to December 31, 2013, the exemption shall be equal to 25% of the total amount of sales tax that would be collected;
- From January 1, 2014 to December 31, 2014, the exemption shall be equal to 50% of the total amount of sales tax that would be collected;
- From January 1, 2015 to December 31, 2015, the exemption shall be equal to 75% of the total amount of sales tax that would be collected; and
- On or after January 1, 2016, such sale, use, storage, or consumption of energy shall be fully exempt from sales and use taxation.

For purposes of the legislation, "energy" means "natural or artificial gas, oil, gasoline, electricity, solid fuel, wood, waste, ice, steam, water and other materials necessary and integral for heat, light, power, refrigeration, climate control, processing, or any other use in any phase of the manufacture of tangible personal property." The exemption would apply to energy used to operate machinery or equipment, to create conditions necessary for the manufacture of tangible personal property, and to perform an actual part of the manufacture of tangible personal property, among other uses.

If enacted, this proposed change shall become effective upon approval by the Governor or upon becoming law without such approval.

Expanded "dealer" definition

The legislation would expand the definition of "dealer" and impose sales and use tax on remote sales of taxable tangible personal property and services.

Under the legislation, a "dealer" is presumed to include every person who makes sales of taxable tangible personal property and services if a related member that has substantial nexus in Georgia "sells a similar line of products as the person and does so under the same or a similar business name, or uses trademarks, service marks, or trade names in this state that are the same or substantially similar to those used by the person."

A "dealer" is also presumed to include every person who makes sales of taxable tangible personal property and services if any other person who has substantial nexus in Georgia "delivers, installs, assembles, or performs maintenance services for the person's customers within this state, facilitates the person's delivery of property to

customers in this state by allowing the person's customers to pick up property sold by the person at an office, distribution facility, warehouse, storage place, or similar place of business maintained by the person in this state, or conducts any other activities in this state that are significantly associated with the person's ability to establish and maintain a market in this state for the person's sales."

These presumptions may be rebutted by "showing that the person does not have a physical presence in this state and that any in-state activities conducted on its behalf are not significantly associated with the person's ability to establish and maintain a market in this state."

In addition, the legislation would presume a "dealer" to include every person who makes sales of taxable tangible personal property and services and "enters into an agreement with one or more persons who are residents of this state under which the resident, for a commission or other consideration, based on completed sales, directly or indirectly refers potential customers, whether by a link on an internet website, an in-person oral presentation, telemarketing, or otherwise, to the person, if the cumulative gross receipts from sales by the person to customers in this state who are referred to the person by all residents with this type of agreement with the person is in excess of \$50,000 during the preceding 12 months."

This presumption may be rebutted by submitting proof, including sworn written statements, that the Georgia residents "did not engage in any activity within this state that was significantly associated with the person's ability to establish or maintain" a market in the state during the preceding 12 months. The legislation specifies that this provision will take effect 90 days after the effecting date of the Act and shall apply to sales made and services rendered on or after such effective date.

If enacted, the other proposed changes addressing the definition of dealer shall become effective on October 1, 2012.

Other changes

The legislation makes several other changes to the state's sales and use tax laws. Of note, the legislation would eliminate the sales and use tax exemption related to the sale or lease of production equipment or production services for use by a certified film producer or certified production company for qualified production activities. The legislation would also revise the sales and use tax exemptions related to agriculture and eliminate the sales tax on certain construction projects.

PwC Observes

"The changes to the statutory manufacturing exemption have codified the current Georgia manufacturing regulation and consolidated two previous exemptions into one," notes Elise Martin, PwC Manager in Atlanta. "The effect of this change will be to eliminate the different administrative procedures required to obtain the exemption for a new manufacturing plant versus an existing manufacturing plant. The overall exemption for manufacturing machinery is otherwise essentially the same as was previously laid out in the regulation."

"The additional phased-in exemption for energy used in a manufacturing process allows a manufacturer relief from the state level tax and county taxes, other than

educational taxes. However, the law change also allows a county to phase-in an excise tax on energy used by a manufacturer, thereby allowing the county to compensate for revenue lost as a result of this new exemption. The net effect to the manufacturer will be an exemption from the 4% state tax," observes Martin.

"With the changes to the definition of 'dealer,' Georgia has joined other states in an attempt to force remote sellers to collect use tax. These remote sellers previously escaped the collection responsibility because of their lack of nexus with the state. However, under the legislation, a remote seller may be forced to collect the tax if it has a related entity operating in the state selling similar products under the same or similar trade name or has another entity performing services or conducting marketing activities on its behalf in the state. The remote seller may also have to collect the tax if the seller obtains customers via the 'click-through' from a Georgia resident's website and these sales are in excess of \$50,000 in a twelve-month period."

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