Understanding the Georgia Manufacturing Exemptions
Agenda

- A History of the Georgia Manufacturing Exemption
- The Who, What and Where of Manufacturing
- Items Generally Exempt
- Items Generally Taxable
- Taxation of Energy
- Georgia Local Excise Tax
A History of the Georgia Manufacturing Exemption
Prior Law – Direct Use Exemption

• Prior manufacturing exemption (O.C.G.A. § 48-8-3(34)):
  - Machinery which is used directly in the manufacture of tangible personal property when the machinery is bought to replace or upgrade machinery in a manufacturing plant presently existing in this state and machinery components which are purchased to upgrade machinery used directly in the manufacture of tangible personal property in a manufacturing plant.
Prior Law – Direct Use Exemption Narrowly Construed

- Machinery must be “used directly in” the manufacture of tangible personal property
  - Exert physical force upon manufactured item
- Must qualify as “machinery”
  - “Assemblage of parts that transmits forces, motion, and energy one to another in a predetermined manner to accomplish a specific objective”
  - Replacement parts
    - No exemption until 1994
    - 2001 – 2005 – Phase-in of 100% repair part exemption
- Used during manufacturing process
- Fixed location
Prior Law – Direct Use Exemption Narrowly Construed

• Much disagreement (and litigation) on whether machinery was “directly” or “indirectly” used in the manufacturing process
• Hampered Georgia’s ability to attract (and retain) manufacturing companies
• Increased burden on DOR’s auditing staff
Prior Law – Direct Use Exemption

- Contested items under prior law
  - OSHA-mandated catwalks
  - Chillers and boilers supporting manufacturing process
  - Cooling towers
  - Testing equipment that does not test 100% of the manufactured product
  - Machinery used to internally manufacture other machines and parts
  - Forklifts
  - Certain cleaning, filtering and sterilizing equipment
  - Certain sorting and weighing equipment
  - Spare parts
  - Hand tools
  - Protection and safety equipment
  - Storage equipment
  - Conveyor belts
2009 Integrated Plant Legislation
HB 237

• Brought Georgia in line with the majority rule in Southeastern states
• Allowed Georgia to compete for manufacturing businesses
• Helped to avoid tax pyramiding; more faithful to the concept of taxing only the ultimate consumer
• Promoted efficient tax administration
• Became effective January 1, 2009
2009 Integrated Plant Legislation

- Revised manufacturing exemption (O.C.G.A. § 48-8-3(34)):
  - (A) Machinery or equipment which is used directly in necessary and integral to the manufacture of tangible personal property when the machinery or equipment is bought to replace or upgrade machinery or equipment in a manufacturing plant presently existing in this state and machinery or equipment components which are purchased to upgrade machinery used directly in or equipment which is necessary and integral to the manufacture of tangible personal property in a manufacturing plant;
  - (B) Machinery or equipment which is used directly in necessary and integral to the manufacture of tangible personal property when the machinery or equipment is incorporated is used for the first time in a new manufacturing plant located in this state;
  - (C) Machinery or equipment which is used directly in necessary and integral to the manufacture of tangible personal property when the machinery or equipment is incorporated is used as additional machinery or equipment for the first time into in a manufacturing plant presently existing in this state;
  - Effective January 1, 2009 – June 30, 2012
2009 Integrated Plant Legislation

• Three Main Changes to Exemption Statute

1. Added “or equipment” to the types of exempt manufacturing items
   ▪ Allows exemption for items that may not qualify as “machinery” or component parts of “machinery”

2. Removed the requirement that machinery (or equipment) be “directly used” in the manufacture of tangible personal property
   ▪ Replaced with “necessary and integral” language

3. Removed requirement that machinery (or equipment) used for the first time in a new facility be “incorporated” into the manufacturing plant
   ▪ Allows exemption for mobile machinery and handheld tools
2012 Integrated Plant Legislation
HB 386

• Provides for phase-out of tax on energy used by manufacturers (O.C.G.A. § 48-8-3.2(c))
• Revised manufacturing exemption (O.C.G.A. § 48-8-3.2(b)):
  ▪ 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 sale and use taxation
  ▪ Consolidated manufacturing, industrial materials, and packaging exemptions
  ▪ Incorporated language from regulation in statute
• Became effective July 1, 2012
2014 Integrated Plant Legislation
HB 900

• Expanded exemption by incorporating “consumable supplies” into the definition of “equipment” (O.C.G.A. § 48-4-3.2(a)(3))
• Became effective July 1, 2014
The Who, What and Where of Manufacturing
The Who

• Who is a manufacturer?

- A person or business, or a location of a person or business, that is engaged in the manufacture of tangible personal property for sale or further manufacturing. The person or business, or the location of a person or business, must be:
  - Classified as a manufacturer under the 2007 North American Industrial Classification System Sectors 21, 31, 32, or 33; or specific North American Industrial Classification System industry code 22111 or specific code 511110; or
  - Generally regarded as being a manufacturer.

- Businesses that are primarily engaged in providing personal or professional services, or in the operation of retail outlets, generally including, but not limited to, grocery stores, pharmacies, bakeries, or restaurants, are not considered manufacturers.
The Where

- **Where is a manufacturing plant?**
  - Any facility, site, or other area where a manufacturer engages in the manufacture of tangible personal property.
The What

• **What is machinery?**
  
  Machinery means an assemblage of parts that transmits force, motion, and energy one to the other in a predetermined manner to accomplish a specific objective.

  Machinery includes a machine and all of its components, including, but not limited to:
  
  - Belts
  - Pulleys
  - Shafts
  - Gauges
  - Gaskets
  - Repair and replacement parts
  - Operational structures attached to the machine including stairways and catwalks
  - Other devices that are required to regulate or control machines
  - Valves
  - Pipes
  - Wires
  - Blades
  - Bearings
The What

• What is equipment?
  ▪ Equipment is tangible personal property, other than machinery and industrial materials.
  ▪ Includes durable devices that are generally designed for long-term continuous or repetitive use AND consumable supplies.
  ▪ Includes, but not limited to:
    - Machinery clothing
    - Cones
    - Cores
    - Pallets
    - Hand tools
    - Tooling
    - Molds
    - Dies
    - Waxes
    - Jigs
    - Patterns
    - Conveyors
    - Safety devices
    - Pollution control devices
The What

• What are consumable supplies?
  ▪ Tangible personal property that is readily disposable or consumed or expended during the manufacturing process
  ▪ Chemicals used in water treatment or pollution control devices
  ▪ One use items – tapes, swabs, cups, sticks, bags, paper towels, etc.
  ▪ Welding gases not considered to be a fuel source
The What

- What if machinery or equipment is used in both an exempt and taxable capacity?
  - Substantial Purpose Test:
    - The “substantial purpose” is that purpose for which an item of tangible personal property is used more than one-third of the time of the total amount of time that the item is in use; alternatively, instead of time, the purpose may be measured in terms of other applicable criteria such as the number of items produced.
    - If M&E is used substantially (33%) in the manufacture of TPP, it is exempt.
The What

- Mining and Quarrying Activities
  - Most machinery or equipment used in mining and quarrying should be eligible for the new exemption including blasting, extraction, and crushing activities.
  - However, machinery or equipment used in quarrying and mining for site preparation, including the removal and clearing of overburden is *generally not* exempt.
  - “Mixed use” machinery and equipment need only be used more than 33% in exempt capacity.
Items Generally Exempt
Items Generally Exempt

• M&E used to convey or transport industrial materials, work in process, consumable supplies, or packaging supplies at or among plants or to convey finished goods to a distribution or storage point at a plant
  - Forklifts, conveyors, cranes, hoists, and pallet jacks
• M&E used to store, heat, cool, or prepare materials for further manufacturing
• M&E used to control, regulate, heat, cool, or produce energy for other M&E that is necessary and integral to manufacturing
  - Boilers, chillers, condensers, water towers, dehumidifiers, humidifiers, heat exchangers, generators, transformers, motor control centers, solar panels, air dryers, and air compressors
• Repair and replacement parts – including liquids (oils, grease, hydraulic fluids, coolants, lubricants, etc.)
Items Generally Exempt

- Testing and quality control equipment at a plant
- Electrical components located between a motor control center and exempt M&E, or between separate units of exempt M&E
- M&E used to maintain, clean, or repair exempt M&E
- M&E used to provide safety for employees
- M&E used to condition air or water to produce conditions necessary for manufacture of tangible personal property
- Pollution control, sanitizing, sterilizing, or recycling M&E
- Packaging containers whether reusable or single use
Items Generally Taxable
Items Generally Taxable

- Consumable supplies (not as of July 1, 2014)
- Motor vehicles required to be registered for operation on public highways
- Power lines or transformers bringing electricity into plant
- Real property (e.g. concrete slabs and foundations, general plant heating, cooling and ventilation, illumination, communications, plumbing, and for the personal comfort of employees)
- Storage tanks, containers, and racks used to handle, store or distribute finished goods *upon completion* unless otherwise exempt
- Administrative machinery or equipment
- Customer self-service equipment
Taxation of Energy
Energy Exemption

• “...[T]he sale, use, storage, or consumption of energy which is necessary and integral to the manufacture of tangible personal property at a manufacturing plant in this state shall be exempt from all sales and use taxation except for the sales and use tax for educational purpose.” (O.C.G.A. § 48-8-3.2(c)(1))

• The exemption is being phased in over a four-year period.
  ▪ 2013 – 25% exemption
  ▪ 2014 – 50% exemption
  ▪ 2015 – 75% exemption
  ▪ 2016 – 100% exemption

• Energy still subject to Educational Local Option Sales Tax (ELOST)
Energy Exemption

- Energy includes:
  - Natural or artificial gas
  - Oil
  - Gasoline
  - Electricity
  - Solid fuel
  - Wood
  - Waste
  - Ice
  - Steam
  - Water
  - Other materials necessary and integral for heat, light, power, refrigeration, climate control, processing, or other use in manufacturing

- Excludes energy purchased by a power producer
Energy Exemption

• Energy used for any purposes at a manufacturing plant is considered necessary and integral to the manufacture of tangible personal property:
  ▪ Energy used to operate machinery and equipment
  ▪ Energy used to create conditions necessary for manufacturing
  ▪ Energy used to perform an actual part of the manufacture of tangible personal property
  ▪ Energy used in administrative or ancillary activities that are located and performed at the manufacturing plant
  ▪ Energy used in related operations that convey, transport, handle, or store raw materials or finished goods at the manufacturing plant
  ▪ Energy used for heating, cooling, ventilation, illumination, fire safety, or prevention, and for personal comfort of the manufacturer’s employees at the manufacturing plant
Energy Exemption

- Separate metering not required
- Definition of “manufacturing plant” crucial to scope of exemption:
  - DOR has proposed regulatory definition which defines as “a parcel or tract of land or contiguous tracts or parcels of land in this state on which a manufacturer engages in the manufacture of tangible personal property.”
Georgia Local Excise Tax
Local Excise Tax

• The 2012 legislation exempting energy from most sales taxes contained a provision authorizing Georgia municipalities to impose an excise tax on the sale of energy used in manufacturing
• Can be enacted by county ordinance
• Capped at 2% (after phase-in)
Local Excise Tax

• Tax collected by dealer
• Tax is due at the same time sales tax would have otherwise been due
• Although tax is a debt of the purchaser of energy, there is currently no provisions for self-reporting by manufacturers
• Three-year statute of limitations runs from the time that sales and use tax would have been due and payable but for the exemption
Questions?

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