



GEORGIA TAX CREDIT/EXEMPTION TIP SHEET

Machinery and Equipment Used to Reduce or Eliminate Air or Water Pollution.

O.C.G.A. § 48-8-3(36)(A) provides an exemption from sales tax for the sale of machinery and equipment which is incorporated into any facility and used for the primary purpose of reducing or eliminating air or water pollution. The Dept. of Revenue form ST-M7, available here http://www.etax.dor.ga.gov/salestax/st3forms/st_m7.pdf, must be downloaded, completed, and mailed to the DoR. The DoR will request the Dept. of Natural Resources, Environmental Protection Div., to certify to the DoR that the equipment will/does in fact serve to control or prevent pollution.

For more information call the DoR Sales & Use Tax Division at 404-417-6649, or e-mail to taxpayer.services@dor.ga.gov.

Georgia code also allows a credit against state income taxes for pollution control or prevention machinery or equipment used in whole or in part to reduce or eliminate air and/or water pollution. O.C.G.A. sections 48-7-40.2, 48-7-40-3, and 48.7.40.4. The amount of credit allowed depends on the designation of the county as tier 1 (8% of cost), tier 2 (5% of cost), or tier 3 (3% of cost). The relevant OCGA code sections are here:

http://www.legis.state.ga.us/cgi-bin/gl_codes_detail.pl?code=48-7-40.2

http://www.legis.state.ga.us/cgi-bin/gl_codes_detail.pl?code=48-7-40.3

http://www.legis.state.ga.us/cgi-bin/gl_codes_detail.pl?code=48-7-40.4

The credits against state income taxes also apply to recycling operations, as described in 48-7-40-4(a)(3-6), copied below.

(3) 'Recovered materials' means those materials, including but not limited to such materials as aluminum, oil, plastic, paper, paper products, scrap metal, iron, glass, and rubber, which have known use, reuse, or recycling potential; can be feasibly used, reused, or recycled; and have been diverted or removed from the solid waste stream for sale, use, reuse, or recycling, whether or not requiring subsequent separation and processing.

(4) 'Recycling' means any process by which materials which would otherwise become solid waste are collected, separated, or processed and reused or returned to use in the form of raw materials or products.

(5) 'Recycling machinery and equipment' means all tangible personal property used, directly or indirectly, to sort, store, prepare, convert, process, fabricate, or

manufacture recovered materials into products which are composed of at least 25 percent recovered materials, such term including, but not being limited to, power generation and pollution control machinery and equipment.

(6) 'Recycling manufacturing facility' means any facility, including land, improvements to land, buildings, building improvements, and any recycling machinery and equipment used in the recycling process resulting in the manufacture of products from recovered materials, provided that up to 10 percent of any building that is a component of a recycling facility may be used for office space to house support staff for the recycling operation.

The following has been abstracted from the article:

GEORGIA SALES AND USE TAX

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 BUSINESSES AND TAXPAYERS - SPECIAL ISSUES AND EXEMPTIONS
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Pollution Control and Air Quality Exemptions.

- a. **Machinery and Equipment Used to Reduce or Eliminate Air or Water Pollution.** O.C.G.A. § 48-8-3(36)(A) provides an exemption from sales tax for the sale of machinery and equipment which is incorporated into any facility and used for the primary purpose of reducing or eliminating air or water pollution.
 - i. Reg. § 560-12-2-.87(3) provides that the property must have the character of machinery at the time of purchase. Note that the statute states that machinery and equipment can qualify for the exemption. In the 1973 Op. Att. Gen. No. U73-18, it was held that soda ash used in reducing water pollution was not subject to the exemption as it was neither "machinery" nor "equipment." In addition, the regulations and statute specifically require that the machinery and equipment be incorporated into a facility. Finally,

Reg. § 560-12-2-.87(3) provides that the exemption is not applicable to materials to be incorporated into real property.

- ii. Unless the purchaser presents to the seller a certificate applied for by the purchaser and issued by the commissioner, the seller must collect sales tax. If the purchaser does not present the certificate, the purchaser may seek a refund of the tax if filed within three (3) years following the date of payment to the retailer.
 - iii. The exemption is available only to the ultimate owner of the equipment. The exemption is not available to contractors who purchase pollution control equipment and install the equipment into manufacturing facilities which they are building. *Indian River Construction Company v. Beloit Passavant Corp.*, 241 Ga. 282, 244 S.E.2d 814 (1978). Rather, the contractor is presumed to pass the tax cost on to the ultimate owner of the facility, who is entitled to apply for a refund of the tax paid by the contractor. *EIMCO BSP Services Company*, 241 Ga. 263, 244 S.E.2d 829 (1978).
- b. Machinery and Equipment Used in Recycling Waste Products. O.C.G.A. § 48-8-3(37) exempts the sale of machinery and equipment for use in combating air and water pollution and any industrial material bought for further processing in the manufacture of tangible personal property for sale or any part of the industrial material or by-product thereof which becomes a wasteful product contributing to pollution problems and which is used up in a recycling or burning process. Subparagraph (37) has been held to apply only to machinery and equipment actually used in recycling the waste product industrial materials referred to in the second part of the exemption. *EIMCO BSP Services Company v. Chilivis*, supra. Thus, the courts have limited subparagraph (37) to recycling machinery and equipment.
- c. Machinery and Equipment Incorporated into any Tele-communications Manufacturing Facility. Newly enacted O.C.G.A. 48-8-3(69) exempts the sale of machinery, equipment and materials incorporated into and used in the construction or operation of a clean room of Class 100 or less, not to include the building or any permanent, non-removable component of the building that houses such clean room, provided that such clean room is used directly in the manufacture of tangible personal property.

6. Procedure for Obtaining the Pollution Control Exemptions.

- a. General Rule. The statute and regulations generally require that even though the exemption may apply, the seller must nevertheless collect sales tax. The purchaser is then entitled to seek a refund upon proper proof that the machinery or equipment is subject to the exemption.

- b. **Advanced Determination Procedure.** In the context of the purchase of machinery in a new plant or additional machinery for an existing plant, or a purchase of machinery and equipment to combat air or water pollution, a purchaser may, prior to purchase, submit an application for certificate of exemption (Forms ST-M1 or ST-M7) to the Commissioner. If approved, the Commissioner will issue a Certificate of Exemption (Form ST-M2 or ST-M8), which can be presented to the seller certifying that the purchaser is entitled to purchase the machinery or equipment without paying tax. The Commissioner has the authority to require a bond as security in the event it is determined that the machinery is not, in fact, subject to the exemption. This advance ruling procedure is not available with respect to replacement machinery.
- c. **Machinery and Equipment Incorporated into any Telecommunications Manufacturing Facility.** Enacted in 1997, O.C.G.A. § 48-8-3(60) exempts the sale of machinery and equipment which is incorporated into a telecommunications manufacturing facility if:
 - (a) the machinery or equipment is primarily used to improve the air quality in certain advanced technology cleanrooms and
 - (b) the cleanrooms are used directly in the manufacture of tangible personal property.

Foregoing information compiled by R. C. Boelkins, Pollution Prevention Assistance Div., Georgia Dept. of Natural Resources, Sept. 15, 2006.