

Overview of Georgia's New Exemption for Energy Used in Manufacturing

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In March 2012, the Georgia General Assembly passed H.B. 386 which made changes to a wide variety of Georgia sales, income, and property tax provisions. Most of these changes are effective January 1, 2013. The most significant change to the Georgia sales tax was the introduction of the long anticipated exemption from Georgia sales tax for "energy" used in manufacturing. The Georgia Department of Revenue will likely be publishing regulations on this exemption and will be issuing new exemption certificates to use when claiming this exemption.

Following is an overview of the provisions of the exemption as it exists in H.B. 386.

Application

1. Applies to energy which is necessary and integral to the manufacture of tangible personal property.
2. Energy is: artificial gas, gasoline, electricity, solid fuel, wood, waste, ice, steam, water and other materials necessary and integral for heat, light, power, refrigeration, climate control, or processing.
3. Applies to state sales tax and local taxes **except** local taxes paid for educational purposes. This amount will vary by county but is usually 1%.

Exempt Operations

Exemption applies to energy used:

1. To operate machinery or equipment,
2. To create conditions necessary for the manufacture of tangible property,
3. To perform an actual part of the manufacture of tangible personal property,
4. For administrative or other ancillary activities that are located and performed at the manufacturing plant so long as such activities primarily benefit such manufacture of property,
5. In related activities that convey, transport, handle, or store raw materials or finished goods,
6. For heating, cooling, ventilation, illumination, fire safety, or prevention
7. For personal comfort and convenience of manufacturer's employees at the manufacturing plant,
8. For any other purpose at a manufacturing plant

In essence, all of the energy that can be connected in some way to the production of tangible property will be exempt. Energy used for marketing, sales, and nonproduction activities would not be exempt. Neither would energy used in an executive office of a manufacturer where no manufacturing occurs. The Department of Revenue will need to clarify how the exemption will be applied when there is no physical

separation of the administrative activities related to manufacturing and the administrative activities unrelated to manufacturing. They will need to also prepare a new Form ST-5M which will be the exemption certificate given to the utility companies by the manufacturer.

Phase In Period

25% exempt: January 1, 2013 to December 31, 2012

50% exempt: January 1, 2014 to December 31, 2014

75% exempt: January 1, 2015 to December 31, 2015

100% exempt: January 1 2016 forward

Securing Benefit

Other than stating that the seller of these services will be relieved of any liability so long as they receive an exemption certificate from the purchaser, the statute is silent as to any specific requirements for securing the benefit of this exemption. There are usually two options for claiming exemptions such as this. The first option is for purchasers to claim an exemption for 100% of the energy purchased and then accrue use tax on the taxable portion. For 2013, the accrual would be at 75% of the energy used in manufacturing plus 100% of energy used in non-manufacturing activities, plus educational tax on the 25% of energy that is exempt from state tax. For companies that use this method, there would be an additional sales tax audit procedure to ensure that the use tax remitted is accurate and does not under pay the state or educational taxes due.

The other option would be for manufacturers to provide exemption certificates to their energy companies claiming a certain percentage to be exempt. Under this method, the seller has the responsibility for calculating the tax that is due and adding this to the customer's bill. Depending on the energy company used and the sophistication of their billing system, this option may not be available. Small energy resellers, it may not be possible to make this type of adjustment. Companies should be in early communications with their energy suppliers regarding the method for securing this exemption.

The matter could become more complicated when there are multiple meters used for a single form of energy. Many manufacturers have separate meters for separate areas of the production plant. In these cases, it will be important to determine the exempt percentage based on the meter used.