

House Bill 415

By: Representatives Harbin of the 122nd, Pruett of the 149th, Clark of the 101st, Wilkinson of the 52nd, Nix of the 69th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales
2 and use taxes, so as to provide that machinery and equipment used in research and
3 development is exempt from sales and use taxes; to provide and revise definitions; to provide
4 for related matters; to repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 style="text-align:center">**SECTION 1.**

7 Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use
8 taxes, is amended by revising Code Section 48-8-3.2, relating to definitions, exemption,
9 applicability, and examples, as follows:

10 "48-8-3.2.

11 (a) As used in this Code section, the term:

12 (1) 'Consumable supplies' means tangible personal property, other than machinery and
13 industrial materials, that is consumed or expended during the manufacture of tangible
14 personal property. The term includes, but is not limited to, water treatment chemicals for
15 use in, on, or in conjunction with machinery or equipment and items that are readily
16 disposable. The term excludes packaging supplies and energy.

17 (2) 'Energy' means natural or artificial gas, oil, gasoline, electricity, solid fuel, wood,
18 waste, ice, steam, water, and other materials necessary and integral for heat, light, power,
19 refrigeration, climate control, processing, or any other use in any phase of the
20 manufacture of tangible personal property. The term excludes energy purchased by a
21 manufacturer that is primarily engaged in producing electricity for resale.

22 (3) 'Equipment' means tangible personal property, other than machinery and industrial
23 materials. The term includes durable devices and apparatuses that are generally designed
24 for long-term continuous or repetitive use. The term also includes consumable supplies.
25 Examples of equipment include, but are not limited to, machinery clothing, cones, cores,
26 pallets, hand tools, tooling, molds, dies, waxes, jigs, patterns, conveyors, safety devices,

27 and pollution control devices. The term includes components and repair or replacement
28 parts. The term excludes real property.

29 (4) 'Fixtures' means tangible personal property that has been installed or attached to land
30 or to any building thereon and that is intended to remain permanently in its place. A
31 consideration for whether tangible property is a fixture is whether its removal would
32 cause significant damage to such property or to the real property to which it is attached.
33 Fixtures are classified as real property. Examples of fixtures include, but are not limited
34 to, plumbing, lighting fixtures, slabs, and foundations.

35 (5) 'Industrial materials' means materials for future processing, manufacture, or
36 conversion into articles of tangible personal property for resale when the industrial
37 materials become a component part of the finished product. The term also means
38 materials that are coated upon or impregnated into the product at any stage of its
39 processing, manufacture, or conversion, even though such materials do not remain a
40 component part of the finished product for sale. The term includes raw materials.

41 (6) 'Local sales and use tax' means any sales tax, use tax, or local sales and use tax which
42 is levied and imposed in an area consisting of less than the entire state, however
43 authorized, including, but not limited to, such taxes authorized by or pursuant to
44 constitutional amendment; by or pursuant to Section 25 of an Act approved March 10,
45 1965 (Ga. L. 1965, p. 2243), as amended, the 'Metropolitan Atlanta Rapid Transit
46 Authority Act of 1965'; and by or pursuant to any article of this chapter.

47 (7) 'Machinery' means an assemblage of parts that transmits force, motion, and energy
48 one to the other in a predetermined manner to accomplish a specific objective. The term
49 includes a machine and all of its components, including, but not limited to, belts, pulleys,
50 shafts, gauges, gaskets, valves, hoses, pipes, wires, blades, bearings, operational
51 structures attached to the machine, including stairways and catwalks, or other devices that
52 are required to regulate or control the machine, allow access to the machine, or enhance
53 or alter its productivity or functionality. The term includes repair or replacement parts.
54 The term excludes real property and consumable supplies.

55 (8) 'Machinery clothing' means felts, screen plates, wires, or any other items used to
56 carry, form, or dry work in process through the manufacture of tangible personal
57 property.

58 (9) 'Manufacture of tangible personal property,' used synonymously with the term
59 'manufacturing,' means a manufacturing operation, series of continuous manufacturing
60 operations, or series of integrated manufacturing operations engaged in at a
61 manufacturing plant or among manufacturing plants to change, process, transform, or
62 convert industrial materials by physical or chemical means into articles of tangible
63 personal property for sale, for promotional use, or for further manufacturing that have a

64 different form, configuration, utility, composition, or character. The term includes, but
65 is not limited to, the storage, preparation, or treatment of industrial materials; assembly
66 of finished units of tangible personal property to form a new unit or units of tangible
67 personal property; movement of industrial materials and work in process from one
68 manufacturing operation to another; temporary storage between two points in a
69 continuous manufacturing operation; random and sample testing that occurs at a
70 manufacturing plant; research and development that occurs at a manufacturing plant; and
71 a packaging operation that occurs at a manufacturing plant.

72 (10) 'Manufacturer' means a person or business, or a location of a person or business, that
73 is engaged in the manufacture of tangible personal property for sale or further
74 manufacturing. To be considered a manufacturer, the person or business, or the location
75 of a person or business, must be:

76 (A) Classified as a manufacturer under the 2007 North American Industrial
77 Classification System Sectors 21, 31, 32, or 33, or North American Industrial
78 Classification System industry code 22111 or specific code 511110; or

79 (B) Generally regarded as being a manufacturer.

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

83 (11) 'Manufacturing plant' means any facility, site, or other area where a manufacturer
84 engages in the manufacture of tangible personal property.

85 (12) 'Packaging operation' means bagging, boxing, crating, canning, containerizing,
86 cutting, measuring, weighing, wrapping, labeling, palletizing, or other similar processes
87 necessary to prepare or package manufactured products in a manner suitable for sale or
88 delivery to customers as finished goods or suitable for the transport of work in process
89 at or among manufacturing plants for further manufacturing, and the movement of such
90 finished goods or work in process to a storage or distribution area at a manufacturing
91 plant.

92 (13) 'Packaging supplies' means materials, including, but not limited to, containers,
93 labels, sacks, boxes, wraps, fillers, cones, cores, pallets, or bags, used in a packaging
94 operation solely for packaging tangible personal property.

95 (14) 'Real property' means land, any buildings thereon, and any fixtures attached thereto.

96 (15) 'Repair or replacement part' means a part for any machinery or equipment that is
97 necessary and integral to the manufacture of tangible personal property. Repair or
98 replacement parts must be used to maintain, repair, restore, install, or upgrade such
99 machinery or equipment that is necessary and integral to the manufacture of tangible
100 personal property. Examples of repair and replacement parts may include, but are not

101 limited to, oils, greases, hydraulic fluids, coolants, lubricants, machinery clothing, molds,
 102 dies, waxes, jigs, and other interchangeable tooling.

103 (16) 'Research and development' means activity that has as its ultimate goal the
 104 development of new products or prototypes, the improvement of existing products, the
 105 development of new uses for existing products, or the development or improvement of
 106 methods for producing products.

107 ~~(16)~~(17) 'Substantial purpose' means the purpose for which an item of tangible personal
 108 property is used more than one-third of the time of the total amount of time that the item
 109 is in use; alternatively, instead of time, the purpose may be measured in terms of other
 110 applicable criteria, including, but not limited to, the number of items produced.

111 (b) The sale, use, or storage of machinery or equipment which is necessary and integral
 112 to the manufacture of tangible personal property and the sale, use, storage, or consumption
 113 of industrial materials or packaging supplies shall be exempt from all sales and use
 114 taxation.

115 (c)(1) Except as otherwise provided in paragraph (4) of this subsection, the sale, use,
 116 storage, or consumption of energy which is necessary and integral to the manufacture of
 117 tangible personal property at a manufacturing plant in this state shall be exempt from all
 118 sales and use taxation except for the sales and use tax for educational purposes levied
 119 pursuant to Part 2 of Article 3 of this chapter and Article VIII, Section VI, Paragraph IV
 120 of the Constitution and except for local sales and use taxes for educational purposes
 121 authorized by or pursuant to local constitutional amendment. This exemption shall be
 122 phased in over a four-year period as follows:

123 (A) For the period commencing January 1, 2013, and concluding at the last moment
 124 of December 31, 2013, such sale, use, storage, or consumption of energy shall be
 125 exempt from an amount equal to 25 percent of the total amount of state sales and use
 126 tax that would be collected at the rate of 4 percent on such sale, use, storage, or
 127 consumption of energy and shall be exempt from an amount equal to 25 percent of the
 128 total amount of each local sales and use tax that would be collected at the rate of 1
 129 percent on such sale, use, storage, or consumption of energy;

130 (B) For the period commencing January 1, 2014, and concluding at the last moment
 131 of December 31, 2014, such sale, use, storage, or consumption of energy shall be
 132 exempt from an amount equal to 50 percent of the total amount of state sales and use
 133 tax that would be collected at the rate of 4 percent on such sale, use, storage, or
 134 consumption of energy and shall be exempt from an amount equal to 50 percent of the
 135 total amount of each local sales and use tax that would be collected at the rate of 1
 136 percent on such sale, use, storage, or consumption of energy;

137 (C) For the period commencing January 1, 2015, and concluding at the last moment
138 of December 31, 2015, such sale, use, storage, or consumption of energy shall be
139 exempt from an amount equal to 75 percent of the total amount of state sales and use
140 tax that would be collected at the rate of 4 percent on such sale, use, storage, or
141 consumption of energy and shall be exempt from an amount equal to 75 percent of the
142 total amount of each local sales and use tax that would be collected at the rate of 1
143 percent on such sale, use, storage, or consumption of energy; and

144 (D) On or after January 1, 2016, such sale, use, storage, or consumption of energy shall
145 be fully exempt from such sales and use taxation.

146 (2)(A) Any person making a sale of items qualifying for exemption under
147 paragraph (1) of this subsection shall be relieved of the burden of proving such
148 qualification if the person making the sale receives a certificate from the purchaser
149 certifying that the purchase is exempt under this subsection.

150 (B) Any person who qualifies for the exemption under paragraph (1) of this subsection
151 shall notify and certify to the person making the qualified sale that such exemption is
152 applicable to the sale.

153 (3) With respect to services which are regularly billed on a monthly basis, the exemption
154 under paragraph (1) of this subsection shall become effective with respect to and the
155 exemption shall apply to services billed on or after January 1, 2013.

156 (4) If a competitive project of regional significance under paragraph (93) of Code
157 Section 48-8-3 is started in a county or municipality, it shall not be subject to the phase-in
158 period contained in subparagraphs (A), (B), and (C) of paragraph (1) of this subsection,
159 but such project shall receive the full exemption provided for in subparagraph (D) of
160 paragraph (1) of this subsection notwithstanding the January 1, 2016, limitation in that
161 subparagraph.

162 (d) The exemptions under this Code section shall be applied as follows:

163 (1) The manufacture of tangible personal property commences as industrial materials are
164 received at a manufacturing plant and concludes once the packaging operation is
165 complete and the tangible personal property is ready for sale or shipment, regardless of
166 whether the manufacture of tangible personal property occurs at one or more separate
167 manufacturing plants;

168 (2) For machinery or equipment that has multiple purposes, some purposes necessary and
169 integral to the manufacture of tangible personal property and some purposes not
170 necessary and integral to the manufacture of tangible personal property, the substantial
171 purpose of such machinery or equipment will prevail for purposes of determining the
172 eligibility for exemption. The commissioner shall consider any reasonable methodology

173 for measuring the substantial purpose of machinery or equipment for which the
174 substantial purpose is not readily identifiable;

175 (3) For leased machinery or equipment that did not qualify for an exemption at the date
176 of lease inception and subsequently qualifies for the exemption under this Code section,
177 the exemption shall apply to all lease payments made subsequent to such qualification;

178 (4) Miscellaneous spare parts for which the ultimate use of the spare parts is unknown
179 at the time of purchase are eligible for the exemption as repair or replacement parts.
180 However, use tax must be accrued and remitted if spare parts are withdrawn from the
181 inventory of spare parts and used for any purpose other than to maintain, repair, restore,
182 install, or upgrade machinery or equipment that is necessary and integral to the
183 manufacture of tangible personal property; and

184 (5) Energy necessary and integral to the manufacture of tangible personal property
185 includes energy used to operate machinery or equipment, to create conditions necessary
186 for the manufacture of tangible personal property, or to perform an actual part of the
187 manufacture of tangible personal property; energy used in administrative or other
188 ancillary activities that are located and performed at the manufacturing plant so long as
189 such activities primarily benefit such manufacture of tangible personal property; energy
190 used in related operations that convey, transport, handle, or store raw materials or
191 finished goods at the manufacturing plant; energy used for heating, cooling, ventilation,
192 illumination, fire safety or prevention, and personal comfort and convenience of the
193 manufacturer's employees at the manufacturing plant; and energy used for any other
194 purpose at a manufacturing plant.

195 (e) Examples that qualify as necessary and integral to the manufacture of tangible personal
196 property include, but are not limited to:

197 (1) Machinery or equipment used to convey or transport industrial materials, work in
198 process, consumable supplies, or packaging materials at or among manufacturing plants
199 or to convey and transport finished goods to a distribution or storage point at the
200 manufacturing plant. Specific examples may include, but are not limited to, forklifts,
201 conveyors, cranes, hoists, and pallet jacks;

202 (2) Machinery or equipment used to gather, arrange, sort, mix, measure, blend, heat,
203 cool, clean, or otherwise treat, prepare, or store industrial materials for further
204 manufacturing;

205 (3) Machinery or equipment used to control, regulate, heat, cool, or produce energy for
206 other machinery or equipment that is necessary and integral to the manufacture of
207 tangible personal property. Specific examples may include, but are not limited to,
208 boilers, chillers, condensers, water towers, dehumidifiers, humidifiers, heat exchangers,

- 209 generators, transformers, motor control centers, solar panels, air dryers, and air compressors;
210 (4) Testing and quality control machinery or equipment located at a manufacturing plant
211 used to test the quality of industrial materials, work in process, or finished goods;
212 (5) Starters, switches, circuit breakers, transformers, wiring, piping, and other electrical
213 components, including associated cable trays, conduit, and insulation, located between
214 a motor control center and exempt machinery or equipment or between separate units of
215 exempt machinery or equipment;
216 (6) Machinery or equipment used to maintain, clean, or repair exempt machinery or
217 equipment;
218 (7) Machinery or equipment used to provide safety for the employees working at a
219 manufacturing plant, including, but not limited to, safety machinery and equipment
220 required by federal or state law, gloves, ear plugs, face masks, protective eyewear, hard
221 hats or helmets, or breathing apparatuses;
222 (8) Machinery or equipment used to condition air or water to produce conditions
223 necessary for the manufacture of tangible personal property, including pollution control
224 machinery or equipment and water treatment systems;
225 (9) Pollution control, sanitizing, sterilizing, or recycling machinery or equipment;
226 (10) Industrial materials bought for further processing in the manufacture of tangible
227 personal property for sale or further processing or any part of the industrial material or
228 by-product thereof which becomes a wasteful product contributing to pollution problems
229 and which is used up in a recycling or burning process;
230 (11) Machinery or equipment used in quarrying and mining activities, including blasting,
231 extraction, and crushing; ~~and~~
232 (12) Energy used at a manufacturing plant; and
233 (13) Machinery or equipment or raw materials used for research and development."

234

SECTION 2.

235 All laws and parts of laws in conflict with this Act are repealed.