



**Department of Revenue**  
**Sales and Use Tax Division**  
310 Trinity-Washington Building  
Atlanta, Georgia 30334  
Telephone: (404) 656-4060

**T. Jerry Jackson**  
Commissioner

**Phillip M. Embry**  
Director

January 18, 2001

**Mark S. Woodall**

Director of Governmental Affairs  
Associated General Contractors of America, Inc., Georgia Branch  
1940 The Exchange  
Atlanta, GA 30339

Dear Mr. Woodall:

This is in response to your letter related to the applicability of Georgia sales and use tax to purchases made by governments for use in real property construction projects.

Purchases of tangible personal property by the United States Government, State of Georgia, Counties or Municipalities of Georgia, or School Boards of Georgia used solely by the government would be exempt from Georgia sales and use tax as provided under O.C.G.A. § 48-8-3(1). This exemption, however, would not apply to a contractor using materials that have been purchased and provided by a government, except those used to install or repair public water, gas or sewer systems, used in real-property construction contracts.

O.C.G.A. § 48-8-63 stipulates that a contractor is the end consumer and is liable for the tax on any materials purchased by them or furnished to them to perform their contracts. The following subparagraph is the pertinent part of O.C.G.A. § 48-8-63 that relates to your question of taxability on government supplied construction materials to contractors:

“(b) Each person who contracts to perform services in this state and who is furnished tangible personal property for use under the contract by the person, or his agent or representative, for whom the contract is to be performed, when a sales or use tax has not been paid to this state by the person supplying the tangible personal property, shall be deemed to be the consumer of the tangible personal property so used and shall pay a use tax based on the fair market value of the tangible personal property so used irrespective of whether any right, title, or interest in the tangible personal property becomes vested in the contractors.”

Based on the above statute, contractors are liable for the use tax on any materials given to them unless the applicable sales or use tax is paid to the supplier or the following specific sales and use tax exemption applies.

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Materials furnished by a government for use in public water, gas or sewer systems in Georgia are not subject to the above statute as provided by O.C.G.A. § 48-8-3(2). This exemption, however, does not extend to purchases made by the contractor.

For your reference, please find enclosed a copy of all three statutes that are referenced in this response.

I trust this information will assist your membership in properly applying Georgia sales and use tax to purchases used in a real property governmental construction contract. If we may be of any further assistance to you or your membership related to sales and use tax, please feel free to contact me at (404) 656-4060.

Sincerely,



Jon C. Galbraith  
Administrative Specialist, Sr.

cc: Clint Muller, Association County Commissioners of Georgia  
Laura Haase, Georgia Municipal Association  
Gary Ashley, Georgia School Boards Association

**O.C.G.A. § 48-8-63.**

- (a) Each person who orally, in writing, or by purchase order contracts to furnish tangible personal property and to perform services under the contract within this state shall be deemed to be the consumer of the tangible personal property and shall pay the sales tax imposed by this article at the time of the purchase. Any person so contracting who fails to pay the sales tax at the time of the purchase or at the time the sale is consummated outside the limits of this state shall be liable for the payment of the sales or use tax. This Code section shall not relieve the dealer who made the sale from such dealer's liability to collect and pay the tax on purchases by a contractor.
- (b) Each person who contracts to perform services in this state and who is furnished tangible personal property for use under the contract by the person, or such person's agent or representative, for whom the contract is to be performed, when a sales or use tax has not been paid to this state by the person supplying the tangible personal property, shall be deemed to be the consumer of the tangible personal property so used and shall pay a use tax based on the fair market value of the tangible personal property so used irrespective of whether any right, title, or interest in the tangible personal property becomes vested in the contractors.
- (c) Each person who orally, in writing, or by purchase order contracts to perform any service the principal part of which is the furnishing of machinery which will not be under the exclusive control of the contractor shall be liable to collect a sales tax on the rental value of the machinery so used. If labor and other charges are not separated from the rental charge, the person so contracting shall be liable to collect a sales tax on the entire contract price.
- (d)(1) Any subcontractor who enters into a construction contract with a general or prime contractor shall be liable under this article as a general or prime contractor. Any general or prime contractor who enters into any construction contract or contracts with any subcontractor, where the total amount of such contract or contracts between such general or prime contractor and any subcontractors on any given project equals or exceeds \$250,000.00 shall withhold up to 4 percent of the payments due the subcontractor in satisfaction of any sales or use taxes owed this state.
- (2) The prime or general contractor shall withhold payments on all contracts that meet the criteria specified in paragraph (1) of this subsection until the subcontractor furnishes such prime or general contractor with a certificate issued by the commissioner showing that all sales taxes accruing by reason of the contract between the subcontractor and the general or prime contractor have been paid and satisfied. If the prime or general contractor for any reason fails to withhold up to 4 percent of the payments due the subcontractor under their contract, such prime or general contractor shall become liable for any sales or use taxes due or owed this state by the subcontractor. (e) Whenever a subcontractor holding a contract with a general or prime contractor has posted with the commissioner either a good and valid bond with a surety company authorized to do business in this state or legal securities in an amount of not less than \$5,000.00 nor more than \$50,000.00, as determined by the commissioner, conditioned that all sales and use taxes which may accrue to this state on account of the execution of contracts that meet the criteria established in paragraph (1) of subsection (d) of this Code section by subcontractors will be paid when due, no general or prime contractor shall withhold any sums due the subcontractor

under their contract with respect to sales and use taxes. (f) Nothing contained in this Code section shall be construed to impose any sales or use tax with respect to the use of tangible personal property owned by the United States in the performance of contracts with the United States when the property is not actually used up and consumed in the performance of the contract. Tangible personal property incorporated into real property construction which loses its identity as tangible personal property shall be deemed to be used up and consumed within the meaning of this subsection.

**O.C.G.A. § 48-8-3.** The sales and use taxes levied or imposed by this article shall not apply to:

(1) Sales to the United States government, this state, any county or municipality of this state, or any bona fide department of such governments when paid for directly to the seller by warrant on appropriated government funds;

(2) Transactions in which tangible personal property is furnished by the United States government or by a county or municipality of this state to any person who contracts to perform services for the governmental entity for the installation, repair, or extension of any public water, gas, or sewage system of the governmental entity when the tangible personal property is installed for general distribution purposes, notwithstanding Code Section 48-8-63 or any other provision of this article. No exemption is granted with respect to tangible personal property installed to serve a particular property site;