Sales & Use Tax...
The Little Known “BIG “ Tax

Presented By: Berranthia Brown, CMI – The Coca-Cola Company
Kim Ciamarra, CPA, CMI – Crowe Horwath, LLP
Today’s Agenda

- Introduction and Overview of Sales & Use Tax
- Georgia Statistics on Sales & Use Tax
- Taxability in Manufacturing, Energy, Agriculture Industries in Georgia
- Sales Tax Holidays for 2013
- Recent Legislative Updates for 2012 & 2013- E-Fairness & Title Ad Valorem
- Marketplace Fairness Act
- Q/A
Introduction & Overview of Sales & Use Tax Definitions

- **Sales Tax** – Charged by a supplier on their invoice. Supplier is responsible for collecting and paying the Sales Tax to the State on its monthly Sales & Use Tax Return.

- **Use Tax** – Accrued by the buyer when a supplier does not charge “Sales Tax” on the invoice. Buyer is responsible for calculating and paying Use Tax directly to the State on its monthly Sales & Use Tax Return.
Introduction and Overview

General Definitions

- **Tangible Personal Property** - Something that can be seen, weighed, measured, felt, or touched.

- **Real Property** - Land, Buildings, and Fixtures attached thereto which, if removed, would significantly damage the building or the item removed.
  - “Fixtures” means tangible personal property installed or attached to land or building and that is intended to remain permanently in its place.
  - Fixtures are classified as real property.
  - Fixture examples include plumbing, lighting fixtures, slabs, and foundations.

- **Services** - Charges that are distinct from purchases of tangible personal property. Tax treatment differs depending on many factors.
Introduction and Overview
General Taxability of Purchases

- Tangible Personal Property is generally taxable.
  - Tangible Personal Property purchased for Resale is exempt.
    - For example, raw materials and ingredients purchased to manufacture a product for sale.

- Real Property and Real Property Construction Services are generally exempt.

- Services – only specifically listed services are taxable.
  - Taxable examples include Utility, Telephone, and Transportation services

- Installation Labor - when separately stated on invoice is exempt

- Repair Labor – when separately stated on invoice is exempt

- Freight – is taxable

- Special Exemptions apply to Manufacturing
Georgia Statistics – Sales & Use Tax

Sales and Use Tax: Net Sales and Use Tax collections for April totaled nearly $417 million — down from $482.5 million in April 2012 — for an overall decrease of $65.5 million, or -13.6 percent. Gross Sales Tax collections were down $58.5 million compared to FY 2012 as a result of the recently implemented Title ad Valorem Tax fee law, which replaced both the point-of-sale sales tax on a vehicle and the annual ad valorem tax known as the “birthday tax,” effective March 1. Lastly, the combined impact of the monthly distribution to local governments and April refund activity was a decrease of $7.25 million to the month’s net collections.

GEORGIA DEPARTMENT OF REVENUE
Comparative Summary of Net Revenue Collections
(unaudited - 000's)

<table>
<thead>
<tr>
<th>For the Month Ended</th>
<th>April 2013 (FY 2013)</th>
<th>April 2012 (FY 2012)</th>
<th>$ Change</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax Revenues:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Income Tax - Individual:</td>
<td>$ 1,014,714</td>
<td>$ 804,831</td>
<td>$ 209,883</td>
<td>26.1%</td>
</tr>
<tr>
<td>Sales and Use Tax - General:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sales and Use Tax - Gross (Footnote 2)</td>
<td>$ 843,671</td>
<td>$ 902,066</td>
<td>$(58,395)</td>
<td>-6.5%</td>
</tr>
<tr>
<td>Local Sales Tax Distribution (Footnote 1)</td>
<td>$ (421,064)</td>
<td>$ (400,822)</td>
<td>$ (20,242)</td>
<td>-5.1%</td>
</tr>
<tr>
<td>Sales Tax Adjustments/Refunds</td>
<td>$ (5,786)</td>
<td>$ (18,821)</td>
<td>$ 13,035</td>
<td>69.3%</td>
</tr>
<tr>
<td>Net Sales and Use Tax - General</td>
<td>$ 416,822</td>
<td>$ 482,423</td>
<td>$(65,601)</td>
<td>-13.6%</td>
</tr>
</tbody>
</table>
“Manufacturing” begins as industrial materials are received at a manufacturing plant and end once the packaging operation is complete and the tangible personal property is ready for sale or shipment.

Machinery or Equipment necessary and integral to the manufacture of tangible personal property (“Manufacturing”) is exempt

- “Machinery” includes a machine and all of its components, including belts, pulleys, shafts, gauges, gaskets, valves, hoses, pipes, wires, blades, bearings, operational structures attached to the machine, including stairways and catwalks, or other devices that are required to regulate or control the machine, allow access to the machine, or enhance or alter its productivity or functionality.
- The term includes Repair or Replacement Parts.
- The term excludes Real Property and Consumable Supplies
Machinery or Equipment necessary and integral to manufacturing is exempt (continued)

- “Equipment” means tangible personal property, other than machinery, industrial materials, and consumable supplies.
  - Examples of equipment include machinery cones, cores, pallets, hand tools, tooling, molds, dies, waxes, jigs, patterns, conveyors, safety devices, and pollution control devices.
  - The term excludes Real Property and Consumable Supplies.
Machinery or Equipment necessary and integral to manufacturing is exempt *(continued)*

- “Repair or replacement part” means a part for any machinery or equipment that is necessary and integral to manufacturing. Repair or replacement parts must be used to maintain, repair, restore, install, or upgrade machinery or equipment necessary and integral to manufacturing.

  • Examples of repair and replacement parts may include oils, greases, hydraulic fluids, coolants, lubricants, machinery clothing, molds, dies, waxes, jigs, and other interchangeable tooling.

  • Miscellaneous Spare Parts – are eligible for exemption as repair or replacement parts when used to maintain, repair, restore, install, or upgrade machinery or equipment used in manufacturing.
Manufacturing

- Machinery and Equipment used in Packaging Operations is exempt
  - “Packaging Operation” means bagging, boxing, crating, canning, containerizing, cutting, measuring, weighing, wrapping, labeling, palletizing, or other similar processes necessary to prepare or package manufactured products for sale or delivery to customers as finished goods, and the movement of finished goods to a storage or distribution area.

- Packaging supplies are exempt
  - “Packaging Supplies” means materials including containers, labels, sacks, boxes, wraps, fillers, cones, cores, pallets, or bags, used in a packaging operation solely for packaging tangible personal property.
Energy Used in Manufacturing

- “Energy” - means natural or artificial gas, oil, gasoline, electricity, solid fuel, wood, waste, ice, steam, water, and other materials necessary and integral for heat, light, power, refrigeration, climate control, processing, or any other use in any phase of manufacturing.


- Phased in 4 year period January 2013 –December 2015. 100% fully exempt as of January 1, 2016

- Still subject to ELOST (Local Sales Tax)
Energy Used in Manufacturing

- Energy which is necessary and integral to manufacturing at a manufacturing plant is exempt from:
  - State sales tax and “certain” Local sales tax, but
  - Not from state sales tax levied for educational purposes, and
  - Not from local sales tax levied for educational purposes, and
  - Not from local sales tax levied as a result of a local constitutional amendment.

- Utility provider is responsible for charging the appropriate tax rate when an exemption is claimed.
Energy that is exempt as necessary and integral to manufacturing includes:

- Energy used to operate machinery or equipment used in manufacturing, and create conditions necessary for manufacturing;
- Energy used in administrative or other activities so long as those activities primarily benefit manufacturing;
- Energy used to convey, transport, handle, or store raw materials or finished goods;
- Energy used for heating, cooling, ventilation, illumination, fire safety or prevention, and personal comfort and convenience of the employees;
- and energy used for any other purpose at a manufacturing plant.
There is no exemption for purchases of M&E used in research and development activities.

If the M&E is going to be used to manufacture products to be sold in test markets, then it may be eligible for exemption.

Georgia does have a tax credit for income tax purposes for certain expenditures.
Other Taxable Purchases

- Administrative Equipment is taxable.
  - Examples include computers, computer peripherals, servers, copiers, telephones, facsimile machines, office furniture, office furnishings, office supplies, and educational materials used for non-manufacturing functions including, but not limited to, sales, marketing, research and development, accounting and payroll, purchasing, finished goods inventory control, warehousing, and distribution.

- Supplies not used in the manufacturing process are taxable
Other Purchases
Real Property Improvements

- Contractor pays tax on materials purchased from their supplier. Contractor is the consumer of these materials purchased to fulfill a real property construction contract.

- Contractor does not charge sales tax on their invoice for construction services.

- Examples Include
  - New Construction
  - Building Addition
  - Remodeling and Maintenance
  - Constructing or Expanding a Parking Lot
How To Claim Exemptions with Supplier

- Work with vendors at the time of purchase and prior to invoicing to ensure they received a sales tax exemption certificate for exempt purchases.

- Issue tax exemption certificates to vendors
Effective January 1, 2013, sales and use by Qualified Agriculture Producer of agricultural production inputs, energy used in agriculture, machinery, and equipment is exempt from sales & use tax.

Taxpayer that meets criteria for designation as Qualified Agriculture Producer may apply for GATE card, which contains an exemption number. To Date: 27,000 GATE cards issued

Dept of Agriculture (DOA) shares information with DOR

DOA administers WHO gets exemption and DOR administers WHAT is exempt.
Retail Sales Tax- “Sales Tax Holidays”

- Clothing, Computers, and School Supplies- August 9-10, 2013
- Energy efficient & Water efficient products. – October 4-5, 2013
- Examples of exempt and taxable items.
  1. Exempt clothing includes but is not limited to: Antique /vintage clothing, Aprons, household and shop , Athletic clothing, ski wear, uniforms, tennis apparel , baby clothes, bandanas , Bathing suits and caps, Bras, Coats, Jackets, Dresses, Pants.
  2. Taxable Clothing includes: Accessories, Handbags, Watches, Cellular devices

- Sales Tax Holiday Transaction Rules- Articles normally sold as a unit. Articles normally sold as a unit may not be priced separately and sold as individual items in order to qualify for the exemption. The following example illustrates the application of the rule to the exemption:

  A pair of shoes sells for $200.00. The pair of shoes cannot be split in order to sell each shoe for $100.00 to qualify for the exemption.
E-Fairness (Out of State Sellers)- “Click Thru Nexus”

Must collect sales tax from Georgia customers if:

1. Company located in Georgia sells similar products using similar business name as the out-of-state seller, or the related company uses trademarks, or trade names in Georgia similar to those used by seller OR

2. On behalf of seller, a person or entity located in Georgia delivers, installs, or assembles the seller’s product, performs maintenance services, or provides a customer pick-up service in Georgia or performs similar activities in Georgia on behalf of seller

Beginning Dec 31, 2012, out of state seller must collect Georgia Sales tax from GA customers if:

a. Seller made more than $50,000 in sales to GA customers in 12 mths preceding, whether via link on a internet website, in person presentation, telemarketing or otherwise and

b. Seller pays a commission or other consideration to Georgia residents based on completed sales
Title Ad Valorem - a.k.a. “Birthday Tax”

- Purchases of motor vehicle on or after March 1, 2013
- Exempt from sales & use tax – except from T-SPLOST counties
- Will not pay annual ad valorem tax
- Pay one-time State & Local title ad valorem Tax (TAVT) + $18 title app fee must be paid at time applying for title
- All changes in ownership trigger payment of TAVT.
- TAVT imposed on Fair Market Value of vehicle
Marketplace Fairness Act of 2013

- Passed by the Senate on May 6, 2013 and has been sent to the U.S. House of Representatives

- This bill would give states the power to require out of state sellers not physically located in the state to collect taxes on sales to individuals who are located in the state.

- Under current law a remote seller cannot be required to collect sales tax in another state unless the seller has a physical presence in the state.
  
  • Remote sellers are generally defined as business which sell their products using the internet, mail order or telephone without having a physical presence in that state.

- The bill includes an exception for smaller remote sellers with less than $1 million in total out-of-state sales.
Marketplace Fairness Act of 2013

- While the common perception is that the primary effect of the act would be on consumers, the greater impact may be on the businesses required to comply with the legislation.

- If the bill becomes law, all multistate businesses would have to consider the following:
  - Taxability of the sales of their products and services in all states;
  - Making significant changes to their order taking;
  - Adjust their billing & administrative systems; and
  - Plan for increased tax return compliance and audit burdens.
Marketplace Fairness Act of 2013

- To collect tax from remote sellers without a physical presence in the state, states will need to either be members of the Streamlined Sales & Use Tax Agreement or adopt uniform administrative and taxability measures to simplify their sales tax laws

- Streamlined Sales Tax Agreement
  - The Agreement is a result of the cooperative effort of 44 states and DC, local governments and the business community to simplify sales and use tax collection and administration by retailers and states.
  - A full member state is one that has been determined by the Streamlined Sales Tax Governing Board to have changed their sales tax administration law so that they meet all the requirements set forth in the Agreement
Marketplace Fairness Act of 2013

- Streamlined Sales Tax
  - Current member states - AR, GA, IN, IA, KS, KY, MI, MN, NE, NV, NJ, NC, ND, OK, RI, SD, UT, VT, WA, WV WI & WY
- Passage of the bill by the U.S. House of Representatives is not certain.
- President Barack Obama has indicated his support for this legislation.
- What should companies do now?
  - Monitor the progress of the legislation through Congress.
  - If it appears the bill is likely to become law, businesses should review their billing systems and tax-compliance contingency plans.
Contact Information

Berranthia Brown, CMI – berbrown@coca-cola.com
Kimberly Ciamarra, CPA, CMI - kimberly.ciamarra@crowehorwath.com

Georgia Department of Revenue Website: www.etax.dor.ga.gov
Thank You!