

# PUBLICATION

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## Sales and Use Tax Developments for Georgia Manufacturers

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In its 2008 legislative session, the Georgia General Assembly expanded the sales and use tax exemption for manufacturing machinery and enacted a sales and use tax cap on energy used in manufacturing. These Acts, House Bill 237 and House Bill 272 respectively, were both signed by the Governor on May 14, 2008.

**Expanded Sales Tax Exemption for Manufacturing Machinery.** House Bill 237 broadens the exemption for manufacturing machinery - O.C.G.A. § 48-8-3(34) - by replacing the phrase "machinery which is *used directly* in the manufacture of tangible personal property" with the phrase "machinery *or equipment* which is *necessary and integral* to the manufacture of tangible personal property." O.C.G.A. § 48-8-3(34.3) was also amended to broaden the exemption for repair and replacement parts for machinery which is necessary and integral to the manufacture of tangible personal property.

In other jurisdictions, the phrase "necessary and integral to manufacturing," has been interpreted to include activities that are essential or indispensable functions of the manufacturing operations, such as storage equipment, intra-plant transport machinery, and safety and protective equipment. Since House Bill 237 does not define the term "equipment," it is unclear how broadly the exemption for equipment will be construed. We expect the Georgia Department of Revenue to provide its interpretation by regulation or otherwise.

**Sales and Use Tax Cap on Fuels Used in Manufacturing.** House Bill 272 provides a partial exemption from sales and use taxes for certain fuels used directly or indirectly in the manufacture or processing of tangible personal property in Georgia. The partial exemption, as adopted, went into effect on July 1, 2008 and will expire on December 31, 2010.

This cap exempts from sales and use tax the excess amount over a specified purchase price per a specified volume of fuel; for example, the tax will apply to the first \$2.48 *per gallon* of the sales price of No. 2 fuel oil. The purpose behind this partial exemption, according to State Representative Charles Martin, is to insulate the manufacturing community from rising energy costs and to maintain and increase Georgia's competitive advantages for new and expanded industry.

The partial exemption includes the following fuels: natural and artificial gas, No. 2 fuel oil, No. 6 fuel oil, propane, petroleum coke and coal. The exemption does not apply to the local portion of the sales and use tax.