

Date Issued: January 6, 2016
Georgia Letter Ruling: LR SUT-2016-08
Topic: Warranties – Repair and Parts

This letter is in response to your request for guidance on the application of Georgia sales and use tax to charges made for repairs performed under a warranty.

Facts Presented by Taxpayer

[Redacted] (“Taxpayer”) sells third party warranties to its customers. Taxpayer offers manufacturer’s warranties and optional extended warranties. Charges for manufacturer’s warranties are included in the sales price of the product and are not separately itemized on the customer’s invoice. Charges for optional extended warranties are separately itemized on the customer’s invoice. Taxpayer also performs repair work covered by warranty.

Issues

1. How does the tax apply to parts used in repairs covered by a manufacturer’s warranty (when tax was previously paid on the purchase price of the warranty)?
2. How does the tax apply to charges made for parts used in repairs covered by an optional extended warranty (when tax was not previously paid on the purchase price of the warranty)?
3. How does the tax apply to a charge made for a deductible associated with a manufacturer’s warranty (on which tax was previously paid)?
4. How does the tax apply to a charge made for a deductible associated with an optional extended warranty (on which tax was not previously paid)?
5. How does the tax apply to a charges made to customers for parts and repair labor?
6. Who is responsible for collecting and remitting any tax due?

Analysis

Georgia levies and imposes a tax (subject to certain specific exemptions) on the retail purchase, retail sale, rental, storage, use, or consumption of tangible personal property and on certain enumerated services.¹ “Retail sale” or “sale at retail” means a sale of tangible personal property or taxable services for any purpose other than for resale.² “Sale” means any transfer of title or possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner, by any means, of any kind of tangible personal property for a consideration.³

Every dealer making sales within or outside the state of tangible personal property for distribution, storage, use, or other consumption in this state must collect the tax from the purchaser at the time of sale.⁴ The dealer must add the amount of the tax imposed to the sales price or charge, and any dealer who neglects, fails, or refuses to collect the tax is liable for and shall pay the tax himself.⁵ The amount subject to tax is the “sales price,” which means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise without any deduction for the following:

¹ O.C.G.A. §§ 48-8-1, -30(a).

² O.C.G.A. § 48-8-2(31).

³ O.C.G.A. § 48-8-2(33).

⁴ O.C.G.A. § 48-8-34.

⁵ O.C.G.A. § 48-8-35.

- (i) The seller's cost of the property sold;
- (ii) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- (iii) Charges by the seller for any services necessary to complete the sale; and
- (iv) Delivery charges.⁶

As a general rule, mandatory charges made by Taxpayer must be included in the sales price (the amount subject to tax) regardless of whether the charge is itemized on the customer's invoice. However, Georgia provides an exemption for "charges for services rendered by repairmen for which a separate charge is made."⁷ Accordingly, Taxpayer's charges for repair labor are not subject to the tax when the charge is separately itemized on the customer's invoice. If Taxpayer makes one charge for both parts and repair labor, the tax applies to the total charge.⁸

Additionally, with respect to items withdrawn from inventory, Ga. Comp. R. & Regs. 560-12-1-.14 provides as follows:

(e) The withdrawal from inventory of property used to repair an item under a manufacturer's or retail dealer's warranty that was included in the sales price of the item does not constitute a taxable use by the person performing the repair work. In other words, the manufacturer or dealer is not liable for use tax on the withdrawal of parts or materials used or consumed when making such a repair. The repair parts are deemed to have been part of the original sales price of the warranty accompanying the property.

(f) The withdrawal from inventory of property used to repair an item under an optional or extended warranty or maintenance agreement that was not included in the sales price of the item constitutes a taxable use by the person performing the repair work. When a manufacturer or dealer withdraws property from inventory to make repairs under the optional or extended warranty or maintenance agreement, the manufacturer or dealer is liable for use tax on the cost price of the property used or consumed if such property was purchased under terms of resale. If the manufacturer or dealer makes a charge for the property used in the repair, the use of the property is not a withdrawal from inventory for the manufacturer's or dealer's own use. Instead, the sale is the taxable event and the manufacturer or dealer must charge sales tax to the purchaser as with any other retail sale. In this case, the property used in the repair would be taxable and any separately stated labor charges would be exempt.

Taxpayer is not liable for tax on parts used by Taxpayer to repair an item under a manufacturer's warranty when sales tax was previously paid on the warranty (as part of the sales price of the item under warranty). Taxpayer is liable for tax on parts used by Taxpayer to repair an item under an optional extended warranty when sales tax was not previously paid on the warranty (because the warranty was not included in the sales price of the item). Deductible charges are taxable when tax was previously paid on the associated warranty (manufacturer's warranty). Deductible charges are not taxable when tax was not previously paid on the associated warranty (optional or extended warranty).

Rulings

1. Taxpayer is not liable for the sales or use tax on parts that Taxpayer uses in repairs covered by a warranty when tax was previously paid on the purchase price of the warranty (manufacturer's warranty).
2. Taxpayer is liable for the sales or use tax on parts that Taxpayer uses in repairs covered by a warranty when tax was not previously paid on the purchase price of the warranty (optional extended warranty).

⁶ O.C.G.A. § 48-8-2(34).

⁷ O.C.G.A. § 48-8-3(23).

⁸ Ga. Comp. R. & Regs. 560-12-2-.78(1)(a).

3. Deductible charges are taxable when tax was previously paid on the purchase price of the associated warranty (manufacturer's warranty).
4. Deductible charges are not taxable when tax was not previously paid on the purchase price of the associated warranty (optional extended warranty).
5. Separately stated charges for repair labor are not subject to the tax.
6. When making taxable sales in this state, Taxpayer must collect the tax from the customer at the time of the sale and remit the tax to the Georgia Department of Revenue.

The opinions expressed in this ruling are based upon the information contained in your request and limited to the specific transactions, facts, circumstances, and taxpayer in question. Should the circumstances regarding the transactions change or differ materially from those represented, this ruling may become invalid. Subsequent statutory or administrative rule changes or judicial interpretations of the statutes or rules upon which this ruling is based may subject similar future transactions to different tax treatment than expressed in this ruling.