

Georgia Letter Ruling Number: LR SUT-2018-12
Topic: Fine Arts Admission
Date Issued: November 14, 2018

This letter is in response to your request for guidance on the Georgia sales and use tax exemption codified at O.C.G.A. § 48-8-3(100).

Facts Presented by Taxpayer

[Redacted] (“Taxpayer”) is a nonprofit corporation that owns and operates a theater in Georgia (the “Theater”). Taxpayer is exempt from income taxation under Section 501(c)(3) of the Internal Revenue Code.

Taxpayer’s Mission

As stated in its Articles of Incorporation, Taxpayer’s primary charitable mission is [Redacted]. (See Item One under Ruling.)

Performances and Exhibitions

Taxpayer asserts that some performances at the Theater fall squarely within the statutory definition of “fine arts” as provided in O.C.G.A. § 48-8-3(100). Taxpayer requests guidance on whether the following categories of performances qualify as fine arts performances:

- i. Musical theater: Any live theatrical performance in which the actors perform dedicated musical numbers, including Broadway-style musicals.
- ii. Scripted radio programs: Live performances of scripted material that are recorded for broadcast on radio or podcast. Scripted radio performances are intended to tell a story or a series of stories, although they may also include incidental musical performances.
- iii. Narrative performances: A scripted event whose primary purpose is to tell fictional, non-fictional, or biographical stories. Narrative performances include book tour performances in which the author tells stories from, or based on, his or her book. At book tour performances, authors frequently respond to audience questions.
- iv. Stand-up comedy: A live performance in which an entertainer tells jokes or amusing stories directly to an audience.
- v. Popular performance art: Entertaining live performances other than plays. The performances are choreographed and often scripted, although some of the performers’ presentation to the audience may be improvised.
- vi. Film: A motion picture presented on a screen.

Taxpayer’s Sales

Taxpayer contracts with promoters to bring performances to the Theater. These promoters’ contract with producers or artists who stage the various performances. Most of these producers, promoters, and artists are for-profit businesses with operations outside of Georgia. Taxpayer shares the proceeds from ticket sales to events at the Theater with its promoters, who receive the majority of net proceeds from ticket sales.

Generally, promoters set ticket prices to performances of their shows, and these prices are tax inclusive. Taxpayer’s charge for a taxable ticket is a “grossed-up” amount that includes both a base sales price and a charge for sales tax. For example, a ticket with a face value of \$100.00 includes a sales price of \$91.83 and a sales tax charge of \$8.17. The terms and conditions that Taxpayer provides with all tickets state that “[a]pplicable taxes are included.” In a typical contractual arrangement, the parties subtract sales tax from gross box office receipts before splitting up the remainder of the proceeds.

As a consequence of the pricing agreements and tax-inclusive ticket prices, Taxpayer has no, or very limited, ability to adjust the total price for a ticket in the event of a sales tax rate change or sales tax exemption. Under this structure, an exemption has no effect on Taxpayer's total charge for exempt sales: a customer will pay the same total price for a ticket regardless of whether the sale of the ticket is subject to or exempt from Georgia sales tax.

Issues

1. Are sales of tickets to fine arts performances or exhibitions conducted within the Theater exempt from Georgia sales and use tax under O.C.G.A. § 48-8-3(100)?
2. Which performances and exhibitions at the Theater qualify as "fine arts" for purposes of the exemption in O.C.G.A. § 48-8-3(100)?
3. Does the exemption in O.C.G.A. § 48-8-3(100) apply if the economic benefit of the exemption flows chiefly to for-profit businesses that do not meet the "primary mission" test of the statute?

Analysis

Sales and Use Tax

Georgia levies and imposes a tax (subject to certain specific exemptions) on the retail purchase, retail sale, storage, use, or consumption of tangible personal property, certain enumerated services, and utilities.¹ "Retail sale" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent. The term "retail sale" includes sales of tickets, fees, or charges made for admission to places of amusement, sports, or entertainment including, but not limited to, any place at which any exhibition, display, amusement, or entertainment is offered to the public or any other place where an admission fee is charged.² Taxpayer's ticket sales are retail sales and, thus, are subject to sales and use tax unless exempt.

Georgia sales and use tax is a tax on each transaction. It is a tax that is dual in nature, focusing primarily on the purchaser but also on the retailer. The ultimate liability for payment of sales and use tax falls upon the purchaser; however, the retailer or dealer responsible for collecting the tax from the purchaser is also liable for remitting the tax, even if such tax was not collected.³

Fine Arts Admission Exemption

Exemptions from taxation are strictly construed, and an exemption will not be granted unless the Act clearly and distinctly shows that such was the plain and unambiguous intention of the General Assembly.⁴

From April 25, 2017 until July 1, 2020, sales of tickets, fees, or charges for admission to certain fine arts performances or exhibitions are exempt from sales and use tax.⁵ To satisfy the requirements of this exemption, the performance or exhibition must be performed or exhibited by, or within a facility owned by, a tax exempt 501(c)(3) organization or a museum of cultural significance, if such organization's or museum's primary mission is to advance the arts in this state and to provide arts, educational, and culturally significant programming and exhibits for the benefit and enrichment of the citizens of this state.⁶

¹ O.C.G.A. §§ 48-8-1, 48-8-2(31), and 48-8-30(a).

² O.C.G.A. § 48-8-2(31).

³ O.C.G.A. § 48-8-30. See Ga. L. 1960, p. 153 (clarifying that the General Assembly's intent was that imposition of the tax is upon the purchaser and providing when the retailer is liable for the tax). See also *Independent Publishing Co. v. Hawes*, 119 Ga. App. 858 (1969); *Dittler Bros., Inc. v. AMR International, Inc.*, 142 Ga. App. 570 (1977).

⁴ Ga. Comp. R. & Regs. r. 560-12-1-.18. *Oxford v. J.D. Jewell, Inc.*, 215 Ga. 616 (1960).

⁵ Ga. L. 2017, p. 46; O.C.G.A. § 48-8-3(100).

⁶ *Id.*; Georgia Department of Revenue Policy Bulletin SUT-2017-07.

Additionally, the performance or exhibition must fall within the statutory definition of “fine arts.”

In this exemption, “fine arts” means music performed by a symphony orchestra, poetry, photography, ballet, dance, opera, theater, dramatic arts, painting, sculpture, ceramics, drawing, watercolor, graphics, printmaking, and architecture.⁷

Issue 1: The Theater

As set forth above, an organization must meet two criteria to be a qualifying facility owner: (1) be a tax exempt 501(c)(3) organization or a museum of cultural significance and (2) have a primary mission to advance the arts in this state and to provide arts, educational, and culturally significant programming and exhibits for the benefit and enrichment of the citizens of this state.

The Theater is owned by Taxpayer, an organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. Therefore, criterion (1) is satisfied.

Taxpayer’s stated mission is [Redacted].

Therefore, from April 25, 2017 until July 1, 2020, sales of tickets to fine arts performances conducted within the Theater are tax exempt.

Issue 2: Fine Arts

The relevant exemption defines “fine arts” by expressly stating specific qualifying genres and mediums: music performed by a symphony orchestra, poetry, photography, ballet, dance, opera, theater, dramatic arts, painting, sculpture, ceramics, drawing, watercolor, graphics, printmaking, and architecture.

A statute draws its meaning from the text. Rules of statutory construction mandate the presumption that the General Assembly meant what it said and said what it meant.⁸ Unless the context requires otherwise, statutorily defined words have the meanings specified.⁹ Statutes are presumed to be enacted with full knowledge of the law and must be construed in connection and in harmony with the existing law.¹⁰ When the General Assembly has knowledge of a term or descriptive language but does not make reference to those words, the omission is considered an affirmative choice not to act.¹¹

Further, the statutory text must be viewed in the context in which it appears and must be read in its most natural and reasonable way, as an ordinary speaker of the English language would.¹² In all interpretations of statutes, the ordinary signification shall be applied to all words, except words of art or words connected with a particular trade or subject matter, which shall have the signification attached to them by experts in such trade or with reference to such subject matter.¹³

To determine whether performances fall within the definition of “fine arts,” the Department must consider the nature and character of the performance. In considering the performances at issue, the analysis turns on whether such performances qualify as “theater” or “dramatic arts.”¹⁴

⁷ *Id.*

⁸ *Patton v. Vanterpool*, 302 Ga. 253 (2017) (citations omitted).

⁹ O.C.G.A. § 1-3-2.

¹⁰ *Grange Mut. Cas. Co. v. Woodard*, 300 Ga. 848 (2017)

¹¹ *Patton*, 302 Ga. at 257.

¹² *Patton*, 302 Ga. at 254.

¹³ O.C.G.A. § 1-3-1(b).

¹⁴ Taxpayer’s request was framed in these terms, and the Department agrees that the subject performances do not fall squarely within a narrow, enumerated art (e.g., ballet or opera).

The term “theater” may encompass dramatic literature and plays or the performance of plays.¹⁵ Commonly, theater refers to the live onstage production of previously written plays that include actors performing the roles of the characters in the text. Generally, the term “theater” encompasses musical theater (i.e., theatrical productions with musical numbers and dialogue based on a unifying plot).

The definitions of “drama” and “dramatic” inform the scope of the term “dramatic arts.” Both “drama” and “dramatic” refer to the art of creating or putting on plays, having an effect like that of acted plays, telling a story that portrays life or character and that involves conflicts and emotions through action and dialogue, and performing a story on a stage. Dramatic arts are characterized by serious tones and subjects, character development, and emotional situations and events.¹⁶

With this backdrop, the Department reviews the performance categories as described by Taxpayer:

- i. Musical theater is a subgenre of theater in which plays that include musical numbers are being performed live. Thus, musical theater performances are “fine arts” performances for purposes of the subject exemption.
- ii. Taxpayer describes scripted radio performances as comparable to the live performance of plays where the audio is being recorded for later broadcast or use. Since scripted radio performances entail scripts with dialogue, a dramatic narrative, and individuals portraying characters, scripted radio performances fall within the definition of “fine arts.”
- iii. Taxpayer designates a broad category of narrative performances. Examples of such performances include book tour performances and a performance of insights and musings inspired by the performer’s memoir. This type of performance includes an author reading a portion of his or her book, discussing the book’s elements, signing books, taking pictures, and connecting with the audience. Generally, these engagements are marketing and promotional events for the publisher, author, and book. Thus, even though certain qualifying performances (e.g., scripted radio performances) may contain a dramatic narrative, the usual nature and character of narrative performances (as described by Taxpayer) are unlike the performances defined as “fine arts.”
- iv. In stand-up comedy, a performer tells jokes or amusing stories. The definition of “fine arts” does not contemplate this genre or type of performance.
- v. Popular performance art are performances other than plays. Such performances include magic shows and science demonstrations. The definition of “fine arts” does not contemplate this genre or type of performance.
- vi. Films, as presented at the Theater, are distinct from, and outside the definition of, “fine arts.” The General Assembly is well acquainted with terms describing movies: the terms “film,” “moving picture show,” and “motion picture” are used in the sales tax definitions and exemptions.¹⁷ If the General Assembly meant to include film in the definition of fine arts, it would have used terms that already appear within the sales and use tax laws.

Issue 3: Economic benefit of the exemption

Typically, a sales and use tax exemption relieves anyone liable for payment of tax from the payment of tax.¹⁸ In Georgia, the ultimate liability for payment of sales and use tax falls upon the purchaser, so an exemption from the tax

¹⁵ Theater. Merriam-Webster.com. <https://www.merriam-webster.com/dictionary/theater> (Last accessed October 1, 2018).

¹⁶ Drama. Merriam-Webster.com. <https://www.merriam-webster.com/dictionary/drama> (Last accessed October 1, 2018); Dramatic. Merriam-Webster.com <https://www.merriam-webster.com/dictionary/dramatic> (Last accessed October 1, 2018).

¹⁷ O.C.G.A. §§ 48-8-2(31)(C)(vii) and 48-8-3(24).

¹⁸ See generally O.C.G.A. §§ 48-8-3, 48-8-3.2, 48-8-3.3, and 48-8-3.4.

would ordinarily directly benefit that purchaser. However, a dealer responsible for collecting the tax is also liable for remitting the tax. Because they have a tax remittance obligation, dealers may to some extent also benefit from a sales and use tax exemption. If the General Assembly intends that a person other than the taxpayer obtain the benefit of an exemption, the legislature can and does state this intention and provide for a method for such person to claim a refund of taxes paid by another person.¹⁹ No such provisions are contained in this exemption.

Rulings

1. Taxpayer is a tax-exempt organization that has a primary mission of advancing the arts in Georgia and providing arts, educational, and culturally significant programming that enriches Georgia's citizens. Therefore, the Theater falls within the class of facilities described in O.C.G.A. § 48-8-3(100), and tickets to fine arts performances and exhibitions at the Theater are exempt from Georgia sales tax.
2. Musical theater and scripted radio performances, as described by Taxpayer, fall within the definition of "fine arts" in O.C.G.A. § 48-8-3(100). On the contrary, narrative performances in general, stand-up comedy, popular performance art, and films (as characterized in Taxpayer's requests and this letter) do not appear to have been contemplated as "fine arts" and, accordingly, will typically fall outside the scope of the subject exemption.
3. O.C.G.A. § 48-8-3(100) applies to any transaction where the elements of the exemption are satisfied, regardless of the extent or recipient of any economic benefit that stems from such transaction being tax exempt.

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. The facts herein are those presented by the taxpayer and the Department accepts them as true for this ruling. If the facts presented herein change, are not true, are different, or material facts have been omitted, the conclusions reached in this ruling may change. In addition, subsequent statutory or administrative rule changes or judicial interpretations of the statutes or rules upon which this advice is based may subject similar future transactions to a different tax treatment than that expressed in this ruling.

¹⁹ See, e.g., O.C.G.A. § 48-8-3(99) (qualifying theaters may request a refund of taxes paid by contractors on tangible personal property used for or in the renovation or expansion of such theaters).