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Georgia Letter Ruling SUT No. 2013-06-12-01 Leases

This letter is in response to your request for guidance regarding the application of the one percent transportation special purpose local option sales and use tax to certain lease transactions.

**Facts**

Effective January 1, 2013, a one percent transportation special purpose local option sales and use tax ("TSPLOST") took effect in forty-six Georgia counties. This tax is imposed on the first \$5,000 of a motor vehicle transaction, resulting in a maximum TSPLOST tax of \$50 on a motor vehicle.

When a vehicle is purchased and will be registered in a TSPLOST county, the additional one percent tax up to a maximum of \$50 must be collected in full at the time of the transaction. However, a number of questions have arisen as to the application of TSPLOST to lease payments when a vehicle is registered in one of the forty-six TSPLOST counties.

**Issues**

1. Assuming a vehicle is registered in a TSPLOST county, must the TSPLOST be collected on lease payments made after January 1, 2013, even if the lease began prior to January 1, 2013?
2. Can the TSPLOST be collected in full up to the maximum amount of \$50 at lease inception or must the TSPLOST be collected on each monthly lease payment up to the \$5000 limitation?
3. What happens when a lease originates in a non-TSPLOST county but then the lessee moves into and registers the vehicle in a TSPLOST county?
4. What happens when a lease originates in a TSPLOST county but then the lessee moves into and registers the vehicle in a non-TSPLOST county?
5. What happens when a lease originates in one TSPLOST county but then the lessee moves into and registers a vehicle in another TSPLOST county?
6. Are other payments, such as capitalized cost reduction (down payment) or end of term lease payments counted toward the \$5000 limitation and subject to TSPLOST?

## **Analysis**

All retail purchases and sales of tangible personal property are taxable unless provided for otherwise.<sup>1</sup> Tax is levied and imposed upon the retail purchase, retail sale, rental, storage, use, or consumption of tangible personal property and on services described in this article that occur in this state.<sup>2</sup> "Retail sale" or "sale at retail" means a sale to a consumer or to any person for any purpose other than for resale of tangible personal property or certain services.<sup>3</sup> "Sale" means any transfer of title or possession, transfer of title and possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any means.<sup>4</sup>

The sales price paid is used as the basis of the tax.<sup>5</sup> When a trade-in credit or partial payment is allowed on the sale of new or used articles, the tax must be paid on the value of the new or used article less the credit allowed for the used article.<sup>6</sup> For motor vehicles taken in trade (without deduction for liens), the tax must be paid on the value of the motor vehicle less the allowance for the used article.<sup>7</sup>

Effective January 1, 2011 and before May 1, 2013, the lease or rental of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment is sourced as follows:

For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location is not be altered by intermittent use at different locations.

Twelve special transportation districts are created corresponding with the twelve regional commissions under O.C.G.A. § 50-8-4. Subject to voter approval, each district is authorized to impose a one percent special district transportation tax for ten years to fund transportation projects on an investment list to be developed by the affected local governments and the state. The special district tax will be imposed on the first \$5,000 of any transaction involving the sale or lease of a motor vehicle.<sup>8</sup>

A credit for the special district transportation sales and use tax paid in one special district may be allowed for tangible personal property subject to the same tax in another special district or jurisdiction upon the same property. If the amount of sales or use tax so paid is less than the amount of the use tax due, the purchaser pays the difference.<sup>9</sup>

Forty-six counties in a statewide referendum have approved the imposition of a 10-year, 1% TSPLOST effective January 1, 2013. The counties are: Appling; Bleckley; Burke; Candler; Chattahoochee; Clay; Columbia; Crisp; Dodge; Dooley; Emanuel; Evans; Glascock; Hancock; Harris; Jeff Davis; Jefferson; Jenkins; Johnson; Laurens; Lincoln; Macon; Marion; McDuffie; Montgomery; Muscogee; Quitman; Randolph; Richmond; Schley; Stewart; Sumter; Talbot; Taliaferro; Tattnall; Taylor; Telfair; Toombs; Treutlen; Warren; Washington; Wayne; Webster; Wheeler; Wilcox; and Wilkes.

Effective March 1, 2013, sales and use taxes (other than TSPLOST) and the ad valorem tax on motor vehicles will no longer be imposed on motor vehicles titled in Georgia. These taxes will be replaced by a one-time title fee called the title ad valorem tax (TAVT). The TAVT is an alternative ad valorem property tax authorized by Art. VII, §1, Paragraph III (b)(3), of the Georgia Constitution. Pursuant to the

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<sup>1</sup> O.C.G.A. §§ 48-8-1 and 48-8-30(b).

<sup>2</sup> O.C.G.A. § 48-8-30.

<sup>3</sup> O.C.G.A. § 48-8-2(6)(A).

<sup>4</sup> O.C.G.A. § 48-8-2(33)(A).

<sup>5</sup> O.C.G.A. § 48-8-30(d).

<sup>6</sup> O.C.G.A. § 48-8-44; Ga. Comp. R. & Regs. r. 560-12-1-.34.

<sup>7</sup> O.C.G.A. § 48-8-2(34)(B)(vi); Ga. Comp. R. & Regs. r. 560-12-2-.09(1)(a).

<sup>8</sup> O.C.G.A. §§ 48-8-241(a), 48-8-241(b), 48-8-241(d)(1), 48-8-241(d)(5).

<sup>9</sup> O.C.G.A. § 48-8-252.

constitutional provision, motor vehicles that are subject to the state and local title ad valorem tax will be classified as a separate and distinct class of tangible personal property for ad valorem property tax purposes. Sales and use tax will continue to apply to leases or rentals of motor vehicles.<sup>10</sup>

With the signing of House Bill 266 on March 6, 2013, motor vehicle lease payments are exempt from the TSPLOST. The Department has taken the position that this exemption will be retroactive to March 1, 2013. Thus, beginning March 1, 2013, all lessees will enjoy a full sales and use tax exemption on lease payments, including the TSPLOST.

### **Rulings**

1. As a general rule, for vehicles registered in a TSPLOST county, leases exceeding thirty-one days that began prior to January 1, 2013 are subject to TSPLOST effective January 1, 2013. However, for leases that commenced on or after January 1, 2012 but before March 1, 2013, the lessee and/or lessor have the choice of (a) continuing to subject the lease payments to sales tax, or (b) effective March 1, 2013, subjecting the vehicle to title ad valorem tax and not subjecting the lease payments to sales tax. [The opt-in period ends February 28, 2014.]
2. The TSPLOST cannot be collected in full up to the maximum amount of \$50 at lease inception. The TSPLOST must be collected on each monthly lease payment (subject to the \$5,000 limitation) in the same manner as any other sales and use tax.
3. When a lease originates in a non-TSPLOST county and subsequently the lessee moves into and registers the vehicle in a TSPLOST county, the TSPLOST will be due on each lease payment (specifically, on the first \$5,000 of lease payments in the aggregate) made during the time the vehicle is registered in a TSPLOST county.
4. When a lease originates in a TSPLOST county and subsequently the lessee moves into and registers the vehicle in a non-TSPLOST county, the TSPLOST will no longer be due on each lease payment while the vehicle is registered in that non-TSPLOST county.
5. When a lease originates in one TSPLOST county and the lessee subsequently moves into and registers a vehicle in another TSPLOST county the TSPLOST will be collected for and remitted to the new TSPLOST county of registration.
6. All lease payments, such as capitalized cost reduction (down payment) and end of term lease payments are counted toward the \$5000 limitation and are subject to the TSPLOST.

It should again be noted that for lease transactions that exceed thirty-one days and that are commenced on or after March 1, 2013, and are for a motor vehicle upon which a state and local title ad valorem tax is paid, the lease payments are exempt from state and local sales and use taxes, including the TSPLOST

The opinions expressed in this ruling are based upon the information contained in your request and limited to the specific transactions in question. Should the circumstances regarding the transactions change, or differ materially from those represented, then this ruling may become invalid. In addition, please be advised that 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 those expressed in this response.

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<sup>10</sup> O.C.G.A. §§ 48-5B-1(b)(1)(A), 48-5-441.1, 48-8-3(95).