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This is in response to your letter related to the applicability of Georgia sales and use tax to inmate purchases of tangible personal property made at prison commissaries located in this state.

### **Facts**

The operator of the Correctional Facility commissary collects sales tax on its retail sales of tangible personal property made to inmates. Inmates make purchases using funds received from family members, friends, church members, and other sources.

### **Issues**

1. Are inmates exempt from the payment of Georgia's sales and use tax on purchases of tangible personal property made at correctional institution commissaries located in this state?
2. Are inmate purchases of tangible personal property exempt from Georgia's sales and use tax when the purchase is paid for by money gifted to the inmate?

### **Analysis**

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 and on certain enumerated services.<sup>1</sup> Every purchaser of tangible personal property at retail in Georgia is liable for a tax on the purchase at the rate of 4 percent of the sales price of the purchase, plus any applicable local sales taxes.

The dealer making the taxable sale must collect the tax from the purchaser and remit the tax to the Department.<sup>2</sup> The definition of "dealer" includes a person who; "sells at retail, offers for sale at retail, or has in his possession for sale at retail, or for use, consumption, distribution, or storage for use or consumption in this state tangible personal property," and "manufactures or produces

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

<sup>2</sup> O.C.G.A. § 48-8-30(b)(1).

tangible personal property for sale at retail or for use, consumption, distribution, or storage for use or consumption in this state.”<sup>3</sup>

“Each dealer shall add the amount of the tax imposed under this article, as far as practicable, to the sale price or charge. The tax shall be a debt from the purchaser or consumer to the dealer until it is paid and shall be recoverable at law in the same manner as authorized for the recovery of other debts. Any dealer who neglects, fails, or refuses to collect the tax provided for in this article upon a retail sale of tangible personal property made by him, his agent, or his employee when the sale is subject to the tax shall be liable for and shall pay the tax himself.”<sup>4</sup> Effective July 1, 2012, sellers may (but are not required to) “absorb” the tax that they would otherwise charge purchasers, but in such a case, the seller must provide the buyer with written evidence that the seller will be liable for and pay any tax that the buyer is relieved from paying.<sup>5</sup>

“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.<sup>6</sup> “Sales price” means the total amount valued in money, whether paid in money or otherwise, for which tangible personal property or services are sold.

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.<sup>7</sup> Georgia’s code section related to sales and use tax exemptions, O.C.G.A. § 48-8-3, does not provide an exemption specific to purchases made by incarcerated persons located in this state; nor, does the code section provide an exemption for purchases made with consideration received as a gift by the individual making the purchase.

## **Rulings**

1. Georgia statute does not provide an exemption from the payment of sales and use taxes for purchases made by incarcerated individuals. Unless the operator of the correctional facility elects to absorb the tax, as a dealer located in this state, it must collect sales tax on all of its retail sales of tangible personal property and taxable services made to inmates.
2. Georgia law does not provide an exemption from the payment of sales and use taxes for purchases made by incarcerated individuals – including those purchases paid for by funds received as gifts.

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<sup>3</sup> O.C.G.A. § 48-8-2(8)(F)&(G).

<sup>4</sup> O.C.G.A. § 48-8-35.

<sup>5</sup> O.C.G.A. § 48-8-36.

<sup>6</sup> O.C.G.A. § 48-8-2(33)(A).

<sup>7</sup> Ga. Comp. R. & Regs. r. 560-12-1-.18.

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### **Conclusion**

The opinions expressed in this ruling are based upon the information contained in your request and limited to the specific transactions and taxpayer 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 that expressed in this response.