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Frank M. O'Connell
Director

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Re: Request for Declaratory Ruling dated April 25, 2013

This letter is in response to your request for guidance on the application of Georgia sales and use tax to transfer fees charged by gunsmith shops.

Facts

Taxpayer is a Federal Firearms Licensed dealer and gunsmith shop located in Georgia. Under Federal law, guns can only be shipped to licensed gun dealers. Because of this, when an individual purchases a gun out of state, the gun purchased must be shipped to a licensed gun dealer located in this state for pick up by the purchaser. The Georgia gun shop charges a transfer fee at the time the purchaser takes delivery of the gun. The Georgia gun shop does not sell the gun and does not take payment for the gun. Taxpayer is requesting guidance on whether the transfer fee charged is subject to the tax.

Issue

Is the gun transfer fee charged by Taxpayer subject to the tax when Taxpayer does not sell the gun and does not take payment for the gun?

Analysis

Georgia imposes a tax on the retail sales price of tangible personal property and certain services.¹ A "Sale" is the 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 of any kind of tangible personal property for a consideration² The term "sales price" applies to the measure subject to sales tax and 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:

- the seller's cost of the property sold;
- 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;

¹ O.C.G.A. §§ 48-8-2(31); 48-8-30(a).

² O.C.G.A. § 48-8-2(33)(A).

- charges by the seller for any services necessary to complete the sale;
- delivery charges³

Unlike sales of tangible personal property, which are generally presumed taxable, sales of services are exempted unless specifically designated as taxable. In the same manner, fees are exempt unless explicitly identified in statute as being subject to the tax.

Ruling

The gun transfer fee charged by Taxpayer is not subject to tax when Taxpayer does not sell the gun transferred to the purchaser because the gun transfer fee is not identified as taxable in Georgia statutes.

When the Taxpayer charges a gun transfer fee in connection with a sale made by the Taxpayer, the gun transfer fee must be included in the sales price and taxed accordingly.

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, 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.

³ O.C.G.A. § 48-8-2(34)(A).