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Georgia Letter Ruling No. 2013-06-13-03 Refunds & Exemption Documentation

This letter is in response to your request for Georgia sales and use tax guidance.

**Facts**

The Company and its affiliates bill its customers for all applicable costs and taxes at the time of sale. There are times when the customer does not tell the Company that the customer is exempt and does not provide exemption documentation at the time of the sale. At times, the customers will short pay the invoice by the amount of the taxes and provide the Company with the appropriate exemption certificate. Other times, customers will provide an exemption certificate and request a refund of all applicable taxes. The Company's current procedure is to verify the accuracy of the certificate for the relevant period and refund tax to the customer (if the invoice was paid in full) or offset the refund against the Company current sales tax liability in the case where the Company has already remitted the tax to the state and the customer short-paid the invoice.

The Company proposes the following procedures:

- (1) Limit the time period of all tax refunds to 90 days from the date of the invoice.
- (2) If the customer fails to provide a certificate at the time of purchase, the customer is required to pay the invoice in full.
- (3) If, after making the purchase, the customer provides the Company with an exemption certificate, the Company will review the certificate to ensure the certificate is applicable for the time period and process the appropriate tax refund to the customer and make an adjustment on the Company's next sales tax return.
- (4) For requests after 90 days from the date of the invoice, the customer will work with the Company to complete the necessary refund claim forms for the state to review, and the customer will file the refund claim with the state.

## **Issue**

Do the sales tax refund procedures outlined above comply with Georgia law?

## **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> Any dealer who neglects, fails, or refuses to collect the tax 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>3</sup>

All gross sales of a retailer are subject to the tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is on the person who makes the sale unless such person takes from the purchaser a certificate stating that the property is purchased for resale or is otherwise exempt.<sup>4</sup> For transactions occurring between January 1, 2011 and March 4, 2013, the certificate relieves the seller from the burden of proof (mentioned above) if the seller acquires from the purchaser a properly completed certificate.<sup>5</sup> The Department of Revenue (“Department”) must relieve a seller of the tax otherwise applicable if the seller obtains a fully completed exemption certificate approved by the Streamlined Sales Tax Governing Board, the Department, or the Multistate Tax Commission or captures the relevant data elements required under the Streamlined Sales and Use Tax Agreement within 90 days subsequent to the date of sale.<sup>6</sup> If the seller has not obtained a fully completed exemption certificate or all relevant data elements required under the Streamlined Sales and Use Tax Agreement within 90 days subsequent to the date of sale, the Department must provide the seller with 120 days subsequent to a request for substantiation to either:

- (1) Obtain a fully completed exemption certificate from the purchaser, taken in good faith which means that the seller obtain a certificate that claims an exemption that:
  - (A) Was statutorily available on the date of the transaction in the jurisdiction where the transaction is sourced;
  - (B) Could be applicable to the item being purchased; and
  - (C) Is reasonable for the purchaser's type of business; or
- (2) Obtain other information establishing that the transaction was not subject to the tax.<sup>7</sup>

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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).

<sup>3</sup> O.C.G.A. § 48-8-35.

<sup>4</sup> O.C.G.A. § 48-8-38(a).

<sup>5</sup> O.C.G.A. § 48-8-38(b).

<sup>6</sup> O.C.G.A. § 48-8-38(f).

<sup>7</sup> O.C.G.A. § 48-8-38(f).

The Department must relieve a seller of the tax otherwise applicable if the seller obtains a blanket exemption certificate from a purchaser with which the seller has a recurring business relationship.<sup>8</sup>

Effective March 5, 2013, the burden of proving that a sale of tangible personal property is not a sale at retail shall be upon the seller unless the seller, in good faith, takes from the purchaser a properly completed exemption certificate stating that the property is purchased for resale or is otherwise tax exempt. A properly completed certificate taken in good faith means that the seller must obtain a certificate:

- (1) That is fully completed, including, but not limited to, the name, address, sales tax number, and signature of the taxpayer when required;
- (2) In a form appropriate for the type of exemption claimed;
- (3) Claiming an exemption that was statutorily available on the date of the transaction in the jurisdiction where the transaction is sourced;
- (4) Claiming an exemption that could be applicable to the item being purchased; and
- (5) Claiming an exemption that is reasonable for the purchaser's type of business.

With respect to sales for resale, the certificate relieves the seller from the burden of proof if the seller acquires from the purchaser a properly completed certificate, taken in good faith, from a purchaser who:

- (1) Is engaged in the business of selling tangible personal property;
- (2) Has a valid sales tax registration number at the time of purchase and has listed his or her sales tax number on the certificate; and
- (3) At the time of purchasing the tangible personal property, the seller has no reason to believe that the purchaser does not intend to resell it in his or her regular course of business.

### **Ruling**

The procedures outlined above are permissible under Georgia sales tax law. However, the Department of Revenue does not endorse any particular refund procedures to which a dealer and the dealer's customer agree. The refund terms and procedures that the Company chooses to put in place are a matter of private contract between the Company and its customers.

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.

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<sup>8</sup> O.C.G.A. § 48-8-38(g).