



Douglas J. MacGinnitie
Commissioner

State of Georgia
Department of Revenue
Administrative Division – Office of Tax Policy
1800 Century Blvd., Suite 15107
Atlanta, Georgia 30345-3205
(404) 417-6649

Frank M. O'Connell
Director

January 29, 2013

Georgia Letter Ruling SUT No. 2013-01-29 Leases

This letter is in response to your request for guidance on the application of Georgia sales and use tax to certain motor vehicle lease transactions.

Facts

Taxpayer is a motor vehicle dealership that offers two types of leases: a “standard lease” and a “one pay lease”.

Standard Lease

When a customer enters into a standard lease and has a trade-in as part of the down payment, the Taxpayer only collects sales tax on the portion of the down payment that exceeds the net trade value (if any). The net trade value is the value of the vehicle traded in that exceeds the payoff amount on that vehicle. Only this net value to the dealership is considered a payment toward the leased vehicle.

One Pay Lease

In a one pay lease transaction the entire amount due for the lease period is paid at one time. The one pay lease contract refers to the payment as “total lease payment”. The “total lease payment” is reduced by any net trade allowance to arrive at the amount to be paid in cash.

Issues

1. Does the net trade-in value reduce the amount subject to tax in the two lease transactions described above?
2. How does a purchaser or lessee apply for a sales tax refund?

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.¹ 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.² All gross sales of a retailer are subject to the tax imposed by this article until the contrary is established.³ 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.⁴

“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 of any kind of tangible personal property for a consideration.⁵ “Retail sale” means any “sale, lease, or rental for any purpose other than for resale...” (emphasis added).⁶ “Sales price” refers to the amount 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.⁷ “Sales price” shall not include credit for any trade-in.⁸ In addition, Code Section 48-8-44 provides “when used articles are taken in trade ... as a credit or partial payment on the sale of new and used articles, the tax imposed by this article shall be paid on the value of the new or used articles less the credits for the used articles.”

A claim for refund of a tax or fee erroneously or illegally assessed and collected may be made by the taxpayer at any time within three years after the date of the payment of the tax or fee to the commissioner.⁹

Rulings

1. The relevant provisions regarding the calculation of the amount subject to tax when a taxable sale occurs require the amount that would otherwise be subject to tax to be reduced by the value of a trade-in. Since a lease is a “sale” for sales tax purposes, the net trade-in value of any vehicle traded in reduces the amount that is subject to sales tax, i.e., the taxable “sales price” of the lease transaction is calculated after application of the net trade-in allowance.
2. If a lessee overpaid sales tax, the Taxpayer may, within three years of the date the tax was remitted to the State, refund the tax to the lessee and take a credit on a subsequent return. Alternatively, the lessee may submit a refund claim directly to the Department of Revenue. The lessee should include: a) Form ST-12 (Sales Tax Claim for Refund), and b) Form ST-12A (Waiver of Vendor’s Rights for Refund), which should be completed and signed by the Taxpayer. If the Taxpayer chooses to not complete Form ST-12A, the lessee may then submit form ST-12B (Purchaser’s Claim for Sales Tax Refund Affidavit) in lieu of Form ST-12A.

¹ O.C.G.A. §§ 48-8-1 and 48-8-30(a).

² O.C.G.A. § 48-8-30(b)(1).

³ O.C.G.A. § 48-8-38(a).

⁴ O.C.G.A. § 48-8-35.

⁵ O.C.G.A. § 48-8-2(33)(A).

⁶ O.C.G.A. § 48-8-2(31).

⁷ O.C.G.A. § 48-8-2(34).

⁸ O.C.G.A. § 48-8-2(34)(B)(vi).

⁹ O.C.G.A. § 48-2-35(c)(1).

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.