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

This letter is in response to your request for guidance on the application of Georgia sales and use tax to services offered by the Taxpayer.

Facts

The Taxpayer has provided the following facts:

The Taxpayer has recently begun selling a new service to its customers. The service entails the use of an item that is drop-shipped from the manufacturer directly to the customer's place of business, plus associated services, including cash management services. The agreement between the Taxpayer and its customer is a long-term contract and the agreement does not provide that the item is being rented or leased; the agreement only allows for the use of the item. Title to the item remains with the Taxpayer throughout the term of the contract, at the end of which, it is the Taxpayer's intention to recover the item. The service is presented to the customer as a total solution, i.e., the use of the item provided by the Taxpayer and the associated services for a single charge on their invoice.

Issue

Because the Taxpayer is paying Georgia sales tax on the item to the manufacturer or accruing and remitting applicable state and local use tax on its purchase of the item, is it proper for the Taxpayer to then bill the customer a single charge - for secure transportation and cash management services only - without including Georgia sales tax since each of these services would not otherwise be subject to Georgia sales tax?

Analysis

Georgia imposes a tax on the retail sales price of tangible personal property and certain services.¹ Unlike sales of tangible personal property, which are generally presumed taxable, sales of services are exempted unless specifically designated as taxable.

¹ O.C.G.A. §§ 48-8-2(31); 48-8-30(a).

Service contractors are treated as users or consumers of the materials they buy for use in completing contracts. They must pay the sales tax at the time of purchase, and if the tax is not paid then, or if the purchase was made out of state, the contractors are liable for the payment of use tax.²

In *C.W. Matthews Contracting Co. v. Collins*, the Supreme Court of Georgia held that the State Revenue Commissioner may assess a local option tax on contractors' use of equipment in other counties, where the use created no state obligation.³ The court held that "the legislative intent of section 48-8-82 was to restrict the local tax to the same types of items and transactions defined as subject to the state tax, and not to limit the imposition of local tax to those instances in which the state tax must actually be paid." The court went on to explain that "the legislature clearly relied on Article 1 of Chapter 8, the state sales and use tax article, to fill these gaps by stating in section 48-8-82 that a local option tax must 'correspond' to the state sales and use tax, and by providing in section 48-8-87 that a local option tax is to be administered and collected 'in the same manner and subject to the same applicable provisions, procedures, and penalties provided in Article 1.'"⁴ The Court further noted that section 48-8-90 "clearly contemplates that more than one local taxing jurisdiction may impose a local option tax by permitting a taxpayer to credit the amount of local option tax paid in one jurisdiction against the subsequent imposition of a local option tax on the same property by another jurisdiction."⁵

Service contractors are not only liable for state and local sales tax at the time of purchase, but are also liable for local use tax at the rate of the jurisdiction in which the tangible personal property is subsequently used to fulfill the contract. Credit is granted for state sales or use tax legally imposed and previously paid in any state or taxing jurisdiction that grants credit for a like tax paid in Georgia.⁶ The credit for taxes paid to another state applies only to taxes paid before Georgia state tax becomes due, and not to taxes paid later in destination states or jurisdictions.⁷

Ruling

Because the Taxpayer is paying Georgia sales tax on the item to the manufacturer at the time of purchase or accruing and remitting applicable state and local use tax on its purchase of the item, it is proper for the Taxpayer to then bill the customer a single charge - for secure transportation and cash management services only - without including Georgia sales tax since each of these services would not otherwise be subject to Georgia sales tax.

However, as a service contractor, the Taxpayer is an end user and consumer and liable for sales and use tax on all tangible personal property used by it in the performance of a service contract. Tax is due at the rate of the county in which the Taxpayer takes delivery of the tangible personal property as well as the rate of the county in which the tangible personal property is used by the Taxpayer to fulfill the service contract. In general, reciprocal credit may be taken for sales or use tax paid at the time of purchase against any use tax liability that may become due at a later date.

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

² O.C.G.A. § 48-8-63(b); Ga. Comp. R. & Regs. r. 560-12-2-.26(1).

³ 265 Ga. 448 (1995).

⁴ Ibid.

⁵ Ibid.

⁶ O.C.G.A. § 48-8-42(a); Ga. Comp. R. & Regs. r.560-12-1-.32(1).

⁷ Georgia Policy Statement No. SUT 2011-05-25.

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.