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Georgia Letter Ruling SUT No. 2013-06-12-01 Non-Profit Organizations

This letter is in response to your request for guidance on the application of Georgia sales and use tax to sales made by a nonprofit organization.

Facts

Taxpayer is a non-profit organization that operates a lounge where it makes sales of food, beverage, tangible personal property and admissions to members, guests, and occasionally the general public. Taxpayer is now seeking guidance as to the correct application of sales and use tax to its sales of food, beverage, tangible personal property, and admissions.

Issue

Are Taxpayer's retail sales of food, beverage, tangible personal property, and admissions subject to Georgia sales and use tax?

Analysis

All retail purchases and sales of tangible personal property are taxable unless provided for otherwise.¹ Tax is levied and imposed upon the retail purchase, retail sale, rental, storage, use, or consumption of tangible personal property and on certain services that occur in this state.² "Retail sale" or a "sale at retail" means a sale to a consumer or to any person for any purpose other than for resale of tangible personal property or certain services.³ Retail sales that are subject to state sales tax include sales of tickets, fees, or charges made for admission to places of amusement, sports, or entertainment such as billiard or pool rooms, bowling alleys, theaters, public dance halls, and any other place where an admission fee is charged.⁴

¹ O.C.G.A. §§ 48-8-1 and 48-8-30(b).

² O.C.G.A. § 48-8-30.

³ O.C.G.A. § 48-8-2(6)(A).

⁴ O.C.G.A. § 48-8-2(31)(C).

Sales for resale are excluded from the definition of “retail sale.”⁵ A sale for resale is the transfer of tangible personal property not for consumption or use, but to be resold by the purchaser in the regular course of business.⁶

Generally, no exemption is granted to churches, religious, charitable, civic or other non-profit organizations. These organizations are required to pay sales tax on all retail purchases of tangible personal property unless a specific exemption applies. Generally, when such organizations engage in selling tangible personal property at retail, they are required to comply with the statutory provisions relating to collection and remittance of the tax.⁷ Tax collected by a registered nonprofit is remitted using the Form ST-3 Sales and Use Tax return. However, registered nonprofits may purchase exempt for resale by providing the dealer with a properly completed Form ST-5 Sales Tax Certificate of Exemption.

Ruling

Taxpayer’s retail sales of food, beverage, tangible personal property, and admissions are subject to Georgia sales and use tax. Thus, Taxpayer must collect and remit Georgia sales tax on all of its retail sales of food, beverage, tangible personal property, and admissions.

Taxpayer must remit sales and use tax using the Form ST-3 Sales and Use Tax return. Taxpayer may purchase inventory exempt for resale by providing the dealer with a properly completed Form ST-5 Sales Tax Certificate of Exemption.

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

⁵ O.C.G.A. § 48-8-2(6) until 01/01/2011; O.C.G.A. § 48-8-2(31) effective 01/01/2011.

⁶ O.C.G.A. § 48-8-39(a).

⁷ Ga. Comp. R. & Regs. 560-12-2-.22.