

Date Issued: July 21, 2014  
Georgia Letter Ruling: LR SUT-2014-07  
Topic: Admissions

This letter is in response to your request for guidance on the application of Georgia's sales and use tax to charges made for art parties.

### **Facts**

Taxpayer offers art parties ("party") where customers create their version of a selected artwork. During the party, an artist guides the group providing instruction on various painting techniques. Parties are for entertainment, amusement, and recreation purposes only. Taxpayer is not providing art instruction.

The party charge includes a beverage, canvas, paint, art supplies, and instruction. Currently, Taxpayer is collecting tax on the entire party charge. Taxpayer purchases all canvases, paint, and art supplies exempt for resale.

### **Issues**

1. Are Taxpayer's charges to participate in an art party subject to the tax?
2. Is Taxpayer liable for sales and use tax on canvas, paint, art supplies, and other tangible personal property used in providing the art party?
3. Can Taxpayer purchase canvas, paint, art supplies, and other tangible personal property used in providing the art party exempt for resale?

### **Analysis**

All retail purchases and sales of tangible personal property are taxable unless provided for otherwise.<sup>1</sup> Sales tax is levied and imposed upon the retail purchase, retail sale, rental, storage, use, or consumption of tangible personal property and on certain enumerated services that occur in this state.<sup>2</sup> "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.<sup>3</sup>

#### *Party Charge*

The tax applies to charges made for admission to places of, amusement, sports, or entertainment<sup>4</sup> and to charges made for participation in games and amusement activities.<sup>5</sup> Taxpayer's art parties are provided for entertainment, amusement, and recreation purposes only. Accordingly, a charge for admission to and participation in an art party is subject to the tax.

---

<sup>1</sup> O.C.G.A. §§ 48-8-1 and 48-8-30(b).

<sup>2</sup> O.C.G.A. § 48-8-30.

<sup>3</sup> O.C.G.A. § 48-8-2(31).

<sup>4</sup> O.C.G.A. § 48-8-2(31)(C).

<sup>5</sup> O.C.G.A. § 48-8-2(31)(D); Ga. Comp. R. & Regs. r. 560-12-2-.01(1).

*Use of Tangible Personal Property*

Service providers are deemed the consumers of certain tangible personal property used or consumed during the provision of a service if the service provider does not separately charge for such property.<sup>6</sup> This category includes property that loses its identity when used and consumed during the provision of services and property that is deemed an inconsequential element of the service transaction.<sup>7</sup> If such property was purchased under terms of resale but the service provider does not separately charge for such property, the service provider must accrue and remit use tax because the property is deemed withdrawn from inventory for the service provider's use. The service provider must accrue and remit use tax on the cost price of any property withdrawn from inventory.<sup>8</sup>

Taxpayer is engaged in the provision of entertainment and amusement services. As a service provider, Taxpayer is liable for sales and use tax on all tangible personal property used in providing a party. If Taxpayer purchases any tangible personal property without payment of the tax, Taxpayer must accrue and remit use tax on the cost price of the tangible personal property used in the provision of a party.

A “bundled transaction” is the retail sale of two or more products where the products are otherwise distinct and identifiable and the products are sold for one nonitemized price. The term does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction.<sup>9</sup> A transaction is not a bundled transaction when the transaction is the retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service.<sup>10</sup>

Canvases, paint, art supplies, and other tangible personal property provided in connection with a party are essential to the party and are provided exclusively in connection with the party, and the true object of the transaction is the party rather than the purchase of canvas, paint, art supplies, and other tangible personal property. Consequently, Taxpayer’s charge for an art party is not a bundled retail sale of tangible personal property and art instruction. As discussed above, the charge is for participation in an amusement activity.

---

<sup>6</sup> Ga. Comp. R. & Regs. r. 560-12-1-.14(7)(d).

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> O.C.G.A. § 48-8-2(3)(A).

<sup>10</sup> O.C.G.A. § 48-8-2(3)(D).

*Sales of Tangible Personal Property*

While Taxpayer is liable for sales and use tax on all tangible personal property used to provide a party, Taxpayer must also collect the tax on any itemized charges made to the customer for canvases, paint, art supplies, or other tangible personal property. Taxpayer may purchase tangible personal property exempt for resale when Taxpayer will make itemized charges for the property on the customer's invoice.

**Rulings**

1. Taxpayer's art parties are amusement activities and charges for these parties are subject to the tax.
2. Taxpayer is liable for the tax on canvases, paint, art supplies, and all other tangible personal property used to provide a party when no separate charge will be made for the item on the customer's invoice.
3. If Taxpayer purchases any tangible personal property without payment of the tax, Taxpayer must accrue and remit use tax on the cost price of such tangible personal property used in providing a party. Taxpayer may purchase tangible personal property exempt for resale only when taxpayer subsequently sells the items at retail as evidenced by itemized charges for the property on the customer's invoice. Taxpayer must collect the tax on any such itemized charges made on the customer's invoice for canvases, paint, art supplies, or other tangible personal property.