

Date Issued: June 6, 2014
Georgia Letter Ruling: LR SUT-2014-08
Topic: Service Providers

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

Facts as presented by Taxpayer

Lessor and Lessee entered into a Master Lease Agreement (the “Agreement”). Lessor’s position is that the Agreement does not meet the definition of a lease and must be treated as a purchase because the purchase option at the end of the initial term is \$1.00. Lessor’s position is based on the following:

The term “lease or rental” means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend. Effective May 1, 2012, “lease or rental” includes agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property (defined in IRC 7701(h)(3)(A) as a terminal rental adjustment clause). The term “lease or rental” does not include:

- A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;
- A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of \$100.00 or 1 percent of the total required payments;
- Providing tangible personal property along with an operator for a fixed or indeterminate period of time; a condition of this exclusion is that the operator is necessary for the equipment to perform as designed. An operator must do more than maintain, inspect, or install the tangible personal property.¹ (emphasis added)

Because Lessor considers the Agreement to be a purchase, rather than a lease, Lessor determined that Georgia sales tax is due on this transaction when the agreement commences. In calculating the Georgia sales tax due, Lessor determined the taxable amount to be the total amount received from the lessee under the agreement. Lessor did not exclude interest or installation costs from the taxable amount because neither the Agreement nor the monthly invoice separately states these amounts. Lessor’s initial position was based on the following:

Effective January 1, 2011, Georgia adopted the Streamlined Sales and Use Tax Agreement (“SSUTA”) definition of “sales price”. Effective April 27, 2011, the term “sales price” applies to the measure 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, valued in money, whether received in money or otherwise, without any deduction for the following:

- The seller’s cost of the property sold;
- The cost of materials used, labor, or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- Charges by the seller for any services necessary to complete the sale;
- Delivery charges.²

¹ O.C.G.A. § 48-8-2(17).

² O.C.G.A. § 48-8-2(34)(A).

Effective April 27, 2011, the term “sales price” does not include the following:

- Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;
- Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;
- Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser;
- Installation charges if they are separately stated on the invoice, billing, or similar document given to the purchaser;
- Telecommunications and nonrecurring charges if they are separately stated on the invoice, billing or similar document; and
- Credit for any trade in.³

A prior version of the Agreement did not separately state the amounts for installation and interest, and therefore the Department of Revenue had ruled in LR SUT-2013-20 that sales tax was due on the entire amount designated as the base monthly rental.

The Parties have subsequently executed an Addendum which itemizes the base monthly rental payments, setting forth the principal, installation cost, and interest comprising each base monthly rental payment.

Issue

Since the Parties executed a subsequent Addendum, which identifies the principal, installation cost, and interest associated with each base monthly rental payment, is Lessor correct in calculating Georgia sales tax only on the principal amount of each payment and not on the separately stated installation cost and interest?

Analysis

As stated above, “lease or rental” does not include “[a] transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of \$100.00 or 1 percent of the total required payments . . .” This statutory provision is consistent with the Supreme Court of Georgia’s statement in *Footpress Corporation v. Strickland*⁴ that “[t]he substance of a transaction controls its tax treatment rather than the appellation chosen by the parties.” Consequently, the Department considers the transaction at issue to be a purchase and not a lease.

Georgia imposes sales tax on the retail purchase of tangible personal property.⁵ Tax is imposed on the “sales price” of the particular purchase.⁶ “Sales price” means the total amount of consideration for which personal property or services are sold without any deduction for charges by the seller for a) any services necessary to complete the sale or b) delivery charges.⁷ Thus, charges mandatory for completion of the sale and charges for delivery are generally included in the taxable sales price. “Delivery charges” means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing.⁸ The taxable sales price does not include separately stated interest and financing charges and separately stated installation charges.⁹

Lessor initially determined the taxable amount to be the total amount received from Lessee under the Agreement and Lessor did not exclude interest or installation costs from the taxable amount because neither the Agreement nor the monthly invoice separately stated these amounts.

³ O.C.G.A. § 48-8-2(34)(B).

⁴ 242 Ga. 686 (1978).

⁵ O.C.G.A. § 48-8-30(a).

⁶ O.C.G.A. § 48-8-30(b)(1).

⁷ O.C.G.A. § 48-8-2(34)(A)(iii) and (iv).

⁸ O.C.G.A. § 48-8-2(10).

⁹ O.C.G.A. § 48-8-2(34)(B).

However, because the Agreement has now been amended and breaks the base monthly rental into its separate components (i.e., principal, interest, and installation cost) and because the definition of taxable sales price does not include separately stated interest and installation charges, these amounts are not included in the sales tax base.

Ruling

Lessor is correct in treating the transaction as a purchase rather than a lease and is correct in calculating Georgia sales tax on just the amounts noted as principal because any interest and installation charges in the transaction are separately stated and thus are expressly excluded from the taxable sales price pursuant to O.C.G.A. § 48-8-2(34)(B). As noted in the prior ruling, LR SUT-2013-20, charges for “Misc. Labor” are mandatory charges that are necessary to complete the sale and are, thus, included in the taxable sales price.

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.