

Date Issued: June 26, 2014
Georgia Letter Ruling: LR SUT-2014-09
Topic: Admissions

This letter is in response to your request seeking guidance related to the application of Georgia sales and use tax on the sale or gift of admissions made by Taxpayer.

Facts as presented by Taxpayer

Taxpayer is a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code. Taxpayer was organized and operates exclusively for charitable, educational, and informational purposes.

To further these purposes, Taxpayer's activities include:

- Introducing and promoting performances and organize other performing arts activities for educational purposes.
- Teaching seminars.
- Providing volunteer services to local communities and participating in community-sponsored activities.

Taxpayer is requesting a ruling as to whether its sales of admissions to performances are subject to sales and use tax.

Issues

1. Are Taxpayer's sales of admissions to performances subject to the tax?
2. Is Taxpayer liable for the tax when it gives away admissions to performances?

Analysis

Georgia sales and use 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.¹ "Retail sale" or a "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.² "Retail sale" specifically includes sales of tickets, fees, or charges made for admission to, or voluntary contributions made to places of, amusement, sports, entertainment, exhibition or display.³

Purchases and Sales Made by a Nonprofit Organization

Exemptions from taxation are strictly construed and an exemption will not be granted unless the relevant law clearly and distinctly shows that such was the plain and unambiguous intention of the General Assembly.⁴ The Georgia Code does not provide a sales and use tax exemption for a nonprofit organization created exclusively for the charitable, educational, and informational purpose of promoting culture.⁵

Ga. Comp. R. & Regs. r. 560-12-2-.22 provides guidance related to purchases and sales made by a nonprofit organization:

No exemption is granted to churches, religious, charitable, civic, or other nonprofit organizations. They are required to pay the tax on all purchases of tangible personal property. Further, when such organizations engage in selling tangible personal property at retail, they are required to comply with provisions of the Act relating to collection and remittance of the tax.

¹ O.C.G.A. § 48-8-30.

² O.C.G.A. § 48-8-2(31).

³ O.C.G.A. § 48-8-2(31)(C); Ga. Comp. R. & Regs. r. 560-12-2-.01.

⁴ O.C.G.A. § 48-8-3; Ga. Comp. R. & Regs. r. 560-12-1-.18.

⁵ O.C.G.A. § 48-8-3.

Thus, even though Taxpayer is a nonprofit organization created for charitable, educational, and informational purposes, Taxpayer must pay sales and use tax on all purchases of tangible personal property made for its own use including tangible personal property used in the production of performances. Taxpayer must also collect and remit tax when making retail sales. Because “retail sale” includes charges, or voluntary contributions for admissions to places of amusement, entertainment, exhibition, display, sports, or entertainment, Taxpayer’s charges for admissions to performing arts are retail sales and are subject to the tax.

Tax Deductible Donations Received by a Tax Exempt Nonprofit Organization

As mentioned above, O.C.G.A. § 48-8-2(31)(C) provides that “retail sale” includes voluntary contributions made to places of, amusement, sports, entertainment, exhibition or display. However, a tax-deductible donation is not a contribution as contemplated by Code Section 48-8-2(31)(C) and is not a retail sale. For audit purposes, the organization must maintain sufficient documentation to readily identify any donations as such and not as sales, i.e., the organization must appropriately record donations as “donation income” rather than “sales income”, etc. and the organization must maintain documentation to support the organization’s payment of sales or use tax on any tangible personal property or taxable admissions that the organization purchased and ultimately gave to a donor.⁶

Ga. Comp. R. & Regs. r. 560-12-2-.74 Premiums and Gifts provides:

- (1) Donors of tangible personal property are users or consumers and purchases by them are taxable, including purchases of gifts for advertising purposes.
- (2) The tax applies to the cost price of property purchased originally for resale and later used as a gift.
- (3) The tax applies to purchases of property to be awarded as prizes at the cost price of such property.

Taxpayer is liable for the tax on its cost price of tangible personal property and admissions to entertainment that Taxpayer purchases and subsequently gives as gifts. If Taxpayer gives away an admission that it did not purchase, such as an admission to a performance, Taxpayer does not owe any tax as Taxpayer neither acquired the admission in a taxable transaction, nor disposed of the admission in a taxable transaction.

Rulings

1. Because Georgia law does not provide a sales and use tax exemption for purchases or sales made by a nonprofit organization, Taxpayer must pay the tax on all purchases of tangible personal property made for the organization’s own use, and Taxpayer must collect and remit tax when making taxable retail sales. Because the tax is imposed on the sale of admissions to entertainment, Taxpayer’s sales of admissions to performances are subject to the tax.
2. Taxpayer does owe the tax on its purchase price of any tangible personal property or admissions that it purchases and subsequently gives away, whether given to a donor who makes a tax-deductible donation or to anyone else. However, Taxpayer does not owe tax on tangible personal property and admissions that Taxpayer gives away if Taxpayer did not purchase the tangible personal property or admission in the first instance. For example, in the present case, Taxpayer is not liable for sales and use tax if it gives away an admission to a performance, assuming that Taxpayer does not purchase the admission. If Taxpayer does not purchase the admission and does not sell the admission, no retail sale occurs. However, as discussed above, if Taxpayer provides admission to performances in exchange for consideration that is not a tax-deductible donation, such transaction is a retail sale pursuant to O.C.G.A. § 48-8-2(31)(C) and tax is due on the sales price.

⁶ <http://www.irs.gov/pub/irs-pdf/p526.pdf> May 30, 2014; Georgia Department of Revenue, Informational Bulletin SUT 2013-03-28, Fundraising Activities Conducted by Nonprofit Entities.

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