Date Issued: August 15, 2014
Georgia Letter Ruling: LR SUT-2014-11
Topic: Service Provider – Used Parts

This letter is in response to your request for guidance on the application of Georgia sales and use tax to certain transactions entered into by Taxpayer.

Facts as Presented by Taxpayer

Taxpayer is engaged in providing medical to hospitals and other healthcare institutions in Georgia. This equipment is usually offered with an optional maintenance agreement. When Taxpayer services an item covered by a maintenance agreement, Taxpayer will often remove worn, obsolete, or defective parts and replace them with new or refurbished components taken from Taxpayer's parts inventory.

Taxpayer purchases the parts in its parts inventory from third-party vendors nationwide. Taxpayer self-assesses and remits Georgia use tax when these parts are first removed from inventory and used in maintaining a customer's equipment. The same part, in refurbished state, may ultimately be used on the equipment of multiple customers. Taxpayer requests a ruling regarding whether it is liable for use tax only when it first removes the part from inventory or also when Taxpayer subsequently uses the part in repairing a different customer's equipment.

Issue

Does Taxpayer owe Georgia sales and use tax upon its acquisition and/or use of replaced parts as described above?

Analysis

In Georgia, "[t]here is levied and imposed a tax on the retail purchase, retail sale, rental, storage, use, or consumption of tangible personal property . . ."[1] "Retail sale" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.[2] "'Sale' means any transfer of title or possession, transfer of title and possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any means of any kind of tangible personal property for a consideration . . ."[3] "Use" means the exercise of *any* right or power over tangible personal property incident to the ownership of the property.[4] (emphasis added). Thus, unless an exemption applies, when title (or possession) passes in Georgia in exchange for consideration, or when a use occurs in Georgia, tax is due as described below.

Every purchaser of tangible personal property at retail in this state shall be liable for a tax on the purchase at the rate of 4 percent (plus the applicable local rate) of the sales price[5] of the purchase.[6] The tax shall be paid by the purchaser to the retailer making the sale, as provided in this article.[7] The retailer shall remit the tax to the commissioner as provided in this article and, when received by the commissioner, the tax shall be a credit against the tax imposed on the retailer.[8] Whenever a purchaser of tangible personal property under subsection 48-8-30(b) does not pay the tax imposed upon him or her to the retailer/dealer who is involved in the taxable transaction, the purchaser shall be a dealer himself and the commissioner, whenever he or she has reason to believe that a purchaser or lessee has not so paid the tax, may assess and collect the tax directly against and from the purchaser.[9]

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[1] O.C.G.A. § 48-8-30(a).
[2] O.C.G.A. § 48-8-2(31).
[3] O.C.G.A. § 48-2-33(A).
[4] O.C.G.A. § 48-8-2(40).
[5] "'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 . . ." (O.C.G.A. § 48-8-2(34)(A)).
[6] O.C.G.A. § 48-8-30(b)(1).
[7] Id.
[8] Id.
[9] O.C.G.A. § 48-8-30(g).

Unless certain limited exceptions apply, "[u]pon the first instance of use, consumption, distribution, or storage within this state of tangible personal property purchased at retail outside this state, the owner or user of the property shall be a dealer and shall be liable for a tax at the rate of 4 percent (plus the applicable local rate) of the purchase price".[10]

In the case at hand, the transactions between Taxpayer and any particular customer ("Customer") begin with the sale of equipment from Taxpayer to Customer. Customer presumably obtains title to and full ownership rights in the equipment, including all parts and components of the equipment. When Customer and Taxpayer enter into a Master Service Agreement (the "Agreement"), Taxpayer will provide Customer certain equipment quality performance assurance services and repair services for the prices set forth in the Agreement. The Agreement also provides that "[r]eplaced parts become [Taxpayer's] property and will promptly be removed by [Taxpayer] from the Equipment Site". Thus, pursuant to the mutually agreed upon terms, conditions, and obligations contained in the Agreement, title/ownership of replaced parts passes from Customer to Taxpayer.

When title to the replaced parts passes from Customer to Taxpayer, a "sale" has occurred. As discussed above, a sale is any transfer of title or possession, transfer of title and possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any means of any kind of tangible personal property for a consideration. Both parties to the Agreement provide and receive consideration. Consequently, the transfer of replaced parts from Customer to Taxpayer is in exchange for consideration and is, thus, a "sale" for sales and use tax purposes.

The sale described above does not appear to be for resale, i.e., Taxpayer does not acquire the replaced parts for the purpose of reselling the parts. Since a "retail sale" is a sale for any purpose other than for resale, the sale of replaced parts from Customer to Taxpayer is a retail sale for sales and use tax purposes. If that retail sale occurs in Georgia, the sale is subject to the tax imposed by O.C.G.A. § 48-8-30(b), and pursuant to O.C.G.A. § 48-8-30(b) and (g), Taxpayer, as the purchaser of the replaced parts, is liable for the tax.

If the sale of replaced parts occurs outside Georgia but Taxpayer subsequently uses the parts in Georgia, O.C.G.A. § 48-8-30(c) (commonly referred to as "use tax") is implicated, and Taxpayer owes the tax upon Taxpayer's first use of the replaced parts in Georgia.

Ruling

Whether Taxpayer acquired the replaced parts in Georgia or acquired the parts outside Georgia and subsequently used the parts in Georgia, Taxpayer is liable for the tax imposed by O.C.G.A. § 48-8-30 and any applicable local sales and use taxes.

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.

[10] O.C.G.A. §§ 48-8-30(c), 48-8-2(30) (explaining that "purchase price" applies to the measure subject to use tax and has the same meaning as sales price).