

Date Issued: October 7, 2014
Georgia Letter Ruling: LR SUT 2014-16
Topic: Service Provider-Locker Rental

This letter is in response to your request for guidance on the application of Georgia sales and use tax to charges made by your client, for the rental of storage lockers.

Facts as presented by the Taxpayer

Taxpayer has executed a contract (“Agreement”) with Client on behalf of its subsidiaries to install, manage, and operate storage locker (“locker”) concession facilities (“Facility” or “Facilities”) at locations owned by the Client in various states including Georgia (“the Locations”) and pay the Client a share of the revenue therefrom. Taxpayer’s responsibilities under the Agreement include the design, fabrication, installation, and management of each contracted Facility for a specified term, subject to certain revenue performance metrics.

Taxpayer operates the Facilities as a concessionaire. As such, Taxpayer’s revenues are derived from fees charged to Location customers who use the lockers to store belongings during their stay at the Location. The Facilities include the buildings, space, equipment, and utilities that are owned or used by Taxpayer and are necessary to operate the locker concession at the Location. The Facilities, including the concrete slab foundations to which the lockers are affixed, are built, modified, and /or adapted as necessary by Taxpayer to accommodate the installation of Taxpayer’s locker units and related equipment. The locker units are wired into the Location’s electric utility service. All lockers are located inside the Location, some located in open-air areas and others in enclosed areas. Lockers adjacent to interior walls are affixed to both the interior wall and the foundation.

The Facility and all remodeling, addition, installations and any improvements, to the Facility that are not readily moveable without requiring substantial repairs to the Facility will remain the property of the Location regardless of whether the improvements were made or done by Taxpayer or the Location. The Location will provide utilities and maintenance for the Facility.

Issue

Are the revenues Taxpayer receives from Location customers for the use of lockers subject to Georgia’s sales and use tax?

Analysis

All retail purchases and sales of tangible personal property are taxable unless provided for otherwise.¹ Sales tax is levied and imposed upon the retail purchase, retail sale, rental, use, or consumption of tangible personal property and on certain enumerated 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 Georgia’s sales and use tax is not imposed on the sale or rental of real property.

“Real fixtures” means personal property that has been installed or attached to land or a building or group of buildings and is intended to remain permanently in its place. A consideration for whether personal property is a real fixture is whether its removal would cause significant damage to such property or to the real property to which it is attached. The term real fixtures shall not include trade fixtures. Real fixtures are classified as real property. Examples of real fixtures are plumbing, heating and cooling, and lighting fixtures.⁴ Taxpayer’s lockers are permanently installed and attached to buildings and foundations; removal of the installed lockers would cause

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 Ga. Comp. R. & Regs. r. 560-11-10-.02 (1)(w).

significant damage to the property to which they are attached. Thus, Taxpayer's lockers are real fixtures and classified as real property.

The rental of safe deposit boxes at a bank is not subject to the tax.⁵ In addition, storage warehousemen are considered to be providers of a nontaxable service.⁶ Although the case at hand does not involve safe deposit boxes or storage warehousemen, the guidance with respect to those transactions indicates that Taxpayer's charges for the use of lockers are not subject to the tax.

Ruling

Taxpayer's charges for the use of lockers are essentially storage charges and as such are not subject to Georgia's sales and use tax. In addition, Taxpayer's lockers are real fixtures and classified as real property. Georgia does not impose the tax on the sale or rental of real property, further indicating that charges made by Taxpayer for the use of storage lockers are not subject to Georgia's sales and use tax.

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.

⁵ Ga. Comp. R. & Regs. r. 560-12-2-.11(7).

⁶ Ga. Comp. R. & Regs. r. 560-12-2-.47.