

Date Issued: May 22, 2015
Georgia Letter Ruling: LR SUT-2015-04
Topic: Education - PTA

This letter is in response to your request for guidance on the applicability of Georgia sales and use tax to sales made by a school. (“Taxpayer”).

Facts Presented by Taxpayer

Taxpayer is a nonprofit school. Taxpayer holds an auction once a year where donated goods are sold. The auction is the only time of year that donated goods are sold. The auction raises funds for school operations, which includes staff salaries, educational materials, supplies, and maintenance of the facilities. Goods sold at the auction include the following:

- Donated items such as household goods, gift baskets, and crafts.
- Products donated by individuals and businesses.
- Donated services, such as photography, landscape planning, exercise instruction, and vacation home stays.
- Donated gift cards.
- Food and drinks purchased by Taxpayer.

Issue

Are Taxpayer’s auction sales exempt from Georgia sales and use tax pursuant to O.C.G.A. § 48-8-3(56), which provides an exemption for sales by any parent-teacher organization qualified as a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code?

Analysis

Georgia levies and imposes a tax (subject to certain specific exemptions) on the retail purchase, retail sale, storage, use, or consumption of tangible personal property and on certain enumerated services.¹ Every purchaser of tangible personal property at retail in Georgia is liable for a tax at the rate of 4 percent of the sales price, plus any applicable local sales taxes. Every person making a sale of tangible personal property at retail in this state shall be liable for a tax on the sale at the rate of 4 percent of the sales price, plus applicable local sales tax, or the amount of taxes collected by him from his purchaser or purchasers, whichever is greater.²

O.C.G.A. § 48-8-3(56) provides an exemption for sales made by a parent-teacher organization qualified as a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code. Although Taxpayer is a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code, Taxpayer’s primary activities are not as a parent-teacher organization.³ The Internal Revenue Service’s determination letter (provided by Taxpayer) refers to Taxpayer as “an organization described in section 170(b)(1)(A)(ii)” of the Internal Revenue Code, i.e., “an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on . . .” Likewise, the Department of Revenue considers Taxpayer to be an educational institution (i.e., a school) as opposed to a parent-teacher organization for purposes of the exemption in O.C.G.A. § 48-8-3(56).

Ruling

Despite the parental involvement and participation in Taxpayer’s operations, Taxpayer’s regular and primary activities are educational in nature and are carried out by faculty pursuant to a curriculum, i.e., Taxpayer is primarily

¹ O.C.G.A. §§ 48-8-1 and 48-8-30(a).

² O.C.G.A. § 48-8-30(b)(1). *See also* O.C.G.A. § 48-8-35 (providing that “[a]ny dealer who neglects, fails, or refuses to collect the tax . . . upon a retail sale of tangible personal property made by him, his agent, or his employee when the sale is subject to the tax shall be liable for and shall pay the tax himself”).

³ IRS Determination Letter, Dec. 9, 1983.

a school. Consequently, the Department considers Taxpayer to be an educational institution and not a “parent-teacher organization” as contemplated by the sales and use tax exemption in O.C.G.A. § 48-8-3(56). Taxpayer’s auction sales are thus subject to Georgia sales and use tax (unless another specific exemption applies).

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.