

Date Issued: September 22, 2015
Georgia Letter Ruling: LR SUT-2015-14
Topic: Service Provider-Computer Based Electronic Messaging

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

Facts as Presented by Taxpayer

Taxpayers provide computer-based electronic messaging services, utilizing Taxpayer's own network of computer services and the public internet. Taxpayer is not regulated as a telecommunications provider by the Federal Communications Commission or any other governmental entity. Taxpayer offers data distribution services. Customers send data to Taxpayer electronically via the customers' own computers and equipment via each customer's own internet provider or third-party telecommunications carrier. Once the data is processed, Taxpayer utilizes third-party communications carriers, the internet, etc. to transmit the processed data to recipients. Taxpayer does not transfer tangible property to a customer at any time.

Issue

Are Taxpayer's charges for data distribution services subject to the tax?

Analysis

Georgia levies and imposes a tax (subject to certain specific exemptions) on the retail purchase, retail sale, rental, storage, use, or consumption of tangible personal property and on certain enumerated services. Unlike sales of tangible personal property, which are generally presumed to be taxable, sales of services are exempt unless they are specifically designated as taxable.¹ Because the data distribution services are not explicitly identified as being taxable under Georgia law, charges made for such services are not subject to the tax.

However, as end users and consumers, service providers are liable for sales and use tax on the purchase price of all tangible personal property used in the provision of a service.² A provider of data distribution services is liable for the tax on the purchase price of all tangible personal property used to provide the service.

Ruling

Based on the facts presented, Taxpayer is providing nontaxable services. However, Taxpayer owes tax on the purchase price of all tangible personal property used to provide its data distribution services.

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.

¹ O.C.G.A. §§ 48-8-1, -30(a).

² Ga. Comp. R. & Regs. 560-12-1-.14(7)(d).