

Date Issued: September 9, 2015
Georgia Letter Ruling: LR SUT-2015-15
Topic: Service Provider - Rewards

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

Facts as presented by Taxpayer

Taxpayer owns and operates a rewards program business in Georgia. The rewards program is designed for various businesses (“Locations”) to reward patrons of the Locations for good behavior. Taxpayer places a machine, with toys and other prizes inside, at the participating Location. The Location purchases special tokens from Taxpayer and gives the tokens out to patients or students, who can then use the tokens to obtain prizes.

Taxpayer purchases the machine, tokens, and prizes from out-of-state sellers. The items are delivered to Taxpayer in Georgia. Taxpayer pays for shipping but does not pay sales tax on the items at the time of purchase. Taxpayer provides the machine and prizes to the Locations at no cost. The machine and prizes remain the property of Taxpayer, and Taxpayer is responsible for maintaining and repairing the machine. The only items that Taxpayer “sells” to the Locations are the tokens.

Once the Location’s supply of tokens depletes, Taxpayer makes a service visit to the Location to collect the used tokens, restock the prizes, and sell more tokens to the Location. Used tokens collected out of the machine are resold to the Locations. When Taxpayer or a Location terminates the Agreement, Taxpayer removes the machine and remaining prizes from the Location and collects any unused tokens. The Location receives prizes from the machine in exchange for the unused tokens. The Location does not receive a cash refund of the amounts it paid for the unused tokens.

Issues

- 1) Are Taxpayer’s sales of tokens subject to sales and use tax?
- 2) Does Taxpayer owe use tax on the machine, tokens, and/or prizes it purchases out of state?

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.¹ A retail sale is “any sale, lease, or rental for any purpose other than for resale.”² A sale is “any transfer of title and [or] 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 The dealer making the taxable sale must collect the tax from the purchaser and remit such tax to the Department.⁴ A sale is sourced to the location where the purchaser takes possession of the tangible personal property.⁵

Georgia also imposes a tax on the use, consumption, distribution, or storage in Georgia of tangible personal property purchased at retail outside Georgia.⁶ O.C.G.A. § 48-8-30(c)(1) provides that “[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 liable for a tax at the rate of 4 percent of the cost price” plus any

¹ O.C.G.A. §§ 48-8-1, -30.

² O.C.G.A. § 48-8-2(31).

³ O.C.G.A. § 48-8-2(33)(A).

⁴ O.C.G.A. § 48-8-30.

⁵ O.C.G.A. § 48-8-77.

⁶ O.C.G.A. §§ 48-8-1, -30(c).

applicable local taxes.⁷ A credit is allowed against the tax owed for like taxes previously paid in another state.⁸

In addition, local use tax is due upon the first instance of use, consumption, distribution, or storage of tangible personal property in a local jurisdiction. Because local tax rates vary by county, the local county tax rate is dependent upon in which county the tangible personal property is used, consumed, distributed, or stored.⁹ Thus, when a person purchases tangible personal property outside Georgia and subsequently brings the property into Georgia, that person is liable for Georgia state and local use tax. The credit allowed for like taxes previously paid in another state is similarly allowed against local taxes due for like taxes previously paid to another local jurisdiction.¹⁰

Unlike sales of tangible personal property, which are generally presumed taxable, sales of services are not subject to tax unless specifically designated as taxable. However, service providers must pay the tax on tangible personal property used in providing their services. A service provider is deemed the end user and consumer of tangible personal property used or consumed during the provision of a service if the service provider does not separately charge for the property.¹¹ The service provider is liable for the tax on the purchase price of such tangible personal property.

Here, Taxpayer provides the Locations with a reward program, and, as such, the Department considers Taxpayer to be providing a nontaxable service. Taxpayer is not required to collect sales tax on its charges for tokens; however, Taxpayer must pay tax on its purchases of tangible personal property to be used in providing its services. Taxpayer owes use tax on the machines, prizes, and tokens purchased from out of state sellers and used in Georgia. Taxpayer owes local taxes at the rate of the local jurisdiction where Taxpayer first receives and stores the items. If the items are subsequently used in a local jurisdiction with a higher local tax rate, Taxpayer will owe additional use tax based on the difference between the local tax rates.

Rulings

- 1) Taxpayer is a provider of a nontaxable service and is not required to collect sales tax on the “sale” of the tokens to the Locations.
- 2) Taxpayer owes tax on its purchases of tangible personal property used in providing its services, including the machine, tokens, and prizes. When such property is purchased from an out-of-state without payment of Georgia sales tax, Taxpayer owes Georgia use tax when the property is delivered to and stored by Taxpayer in Georgia.

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, this ruling may become invalid. In addition, subsequent statutory or administrative rule changes or judicial interpretations of the statutes or rules upon which this ruling is based may subject similar future transactions to different tax treatment than that expressed in this ruling.

⁷ If the item was purchased outside Georgia and used outside Georgia for more than six months, the owner of the property is then liable for tax at the rate of four percent of the cost price or fair market value of the property, whichever is less. O.C.G.A. § 48-8-30(c)(2).

⁸ O.C.G.A. § 48-8-30(c)(3).

⁹ O.C.G.A. §§ 48-8-1, -80, -100, -110, -140, -200, -240.

¹⁰ O.C.G.A. §§ 48-8-30(c)(3).

¹¹ Ga. Comp. R. & Regs. 560-12-1-.14(7)(d).