

Date Issued: November 3, 2015
Georgia Letter Ruling: LR SUT-2015-17
Topic: Direct Mail/Printing

This letter is in response to your request for guidance on the application of Georgia sales and use tax to the printing and mailing of monthly statements mailed to Georgia addresses by Taxpayer on behalf of its client.

Facts

Taxpayer contracts with various companies to format, generate, print, and mail items such as bills, monthly statements, and notices. Taxpayer is located in [location redacted], but has employees in Georgia and thus has a taxable presence for sales and use tax purposes.

Taxpayer has entered into a contract to manage a client's monthly statement printing and mailing, including data processing and formatting, printing, and mailing monthly statements to the client's customers in Georgia. The amount billed to the client varies based on the number of records Taxpayer processes. The client pays Taxpayer the actual cost of all postage. Based on current fair market values, the tangible personal property (ink, paper, envelopes) that Taxpayer uses to provide its service comprises less than ten percent of the client's total contract price. Taxpayer states that it is not a direct mail company and does not sell printed material or other tangible personal property.

Issue

Is Taxpayer required to collect Georgia sales tax on charges to its client?

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 "Retail sale" means a sale of tangible personal property for any purpose other than for resale.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

The sale of printed or copied material delivered in a tangible medium, including direct mail, is a sale of tangible personal property and is subject to Georgia sales and use tax.⁴ "Direct mail" means "printed material delivered or distributed by United States mail or other delivery service . . . to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the costs of the items are not bill directly to the recipients."⁵ Although Taxpayer states that it is not a direct mail company, the monthly statements mailed out by Taxpayer are printed material delivered to addresses on a list provided by or at the direction of Taxpayer's client, and the cost of the items is not billed to the statement recipients. Thus, the monthly statements fall within the definition of direct mail.

Sales of direct mail are sourced in accordance with O.C.G.A. § 48-8-77, which distinguishes between "advertising and promotional direct mail" and "other direct mail" for purposes of sourcing. "Other direct mail" means "direct mail that is not advertising and promotional direct mail" and includes invoices, bills, statement of accounts, privacy notices, newsletters, and informational messages.⁶ Other direct mail does not include incidental data processing services.⁷ Other direct mail is sourced to the location of the purchaser's address available from the seller's business records

¹ O.C.G.A. §§ 48-8-1, -2(31)(A), -30(a).

² O.C.G.A. § 48-8-2(31).

³ O.C.G.A. § 48-8-2(33)(A).

⁴ See generally Ga. Comp. R. & Regs. 560-12-2-.75(1)(a)-(b).

⁵ O.C.G.A. § 48-8-2(12).

⁶ O.C.G.A. § 48-8-77(d)(3)(B).

⁷ *Id.*

maintained in the ordinary course of business when use of this address does not constitute bad faith.⁸ A seller of other direct mail is only required to collect or remit Georgia sales and use tax on transactions sourced to Georgia. Taxpayer's sale of other direct mail (the monthly statements) is sourced to its client's address available from Taxpayer's business records maintained in the ordinary course of business. In this case and based on the information provided, the client's address appears to be in Texas.

Ruling

Taxpayer's charges to its client are sales of direct mail, which are generally taxable in Georgia. However, Taxpayer must collect and remit Georgia sales and use tax only on transactions that are sourced to Georgia. If under the sourcing rules described above, Taxpayer's sale of direct mail is properly sourced to the client's business address in another location outside of Georgia, Taxpayer is not required to collect or remit Georgia tax on charges to its client for the other direct mail items delivered 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. 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 a different tax treatment than that expressed in this ruling.

⁸ O.C.G.A. § 48-8-77(d)(2)(A), (b)(1)(C). Alternatively, if a purchaser of other direct mail provides the seller with a direct pay permit or exemption certificate, the seller, in the absence of bad faith, is not required to collect and remit the sales tax on the sale of the other direct mail. O.C.G.A. § 48-8-77(d)(2)(B). In that situation, the purchaser must report and pay any tax due, and the sale is sourced to the jurisdiction to which the other direct mail is delivered. O.C.G.A. § 48-8-77(d)(2)(C).