

Date Issued: November 25, 2015
Georgia Letter Ruling: LR SUT-2015-19
Topic: Sales Price

This letter is in response to your request for guidance on the application of sales and use tax to certain sales of bundled telecommunications services.

Facts as Presented by Taxpayer

Taxpayer is in the business of providing various telecommunications, video, and other services to customers located in Georgia. With respect to cellular telecommunications services, Taxpayer provides numerous product offerings, including voice-only plans, voice and text plans, voice and data plans, and voice, text, and data plans. The lowest price for any of Taxpayer's cellular plans in Georgia that provide access to the cellular network is \$xx.00 per month.

Taxpayer began offering a new cellular service product that allows multiple mobile devices (including cellular phones, smart phones, tablets, etc.) to be included on one plan with unlimited voice and text and sharing of a certain amount of data (collectively, the "Shared Plan"). Unlike the prices for Taxpayer's other cellular plans, which are based on the number of minutes used, the price for the Shared Plan is generally based on the amount of data to be shared among the devices and increases based on the number of devices added to the plan.

Taxpayer represents that the Shared Plans do not include an access-only plan with access to the cellular network, since the price for each Shared Plan is based principally on the amount of data that the customer purchases to share among the devices on the plan and each device added to the plan receives unlimited voice calling. If a customer wants access to the cellular network under a Shared Plan, the customer must purchase data.

Taxpayer currently includes a notation on all of its invoices to customers that purchase cellular plans other than Shared Plans that the lowest available purchase price for a plan with access to Taxpayer's cellular network is \$xx.00 per month.

Issues

1. Can the bundled/unbundled service rule in Ga. Comp. R. & Regs. 560-12-2-.24(2)(a)(1) apply to the Shared Plans if
 - a. the Shared Plans do not include an access-only plan,
 - b. all of the Shared Plans provide unlimited voice calling (as opposed to the "stated allowed airtime usage" within the meaning of the regulation), and/or
 - c. the Shared Plans provide voice, data, and texting capabilities (i.e., the Shared Plans provide more than "both access and a stated allowed airtime usage")?
2. Given that the lowest price for voice access to the cellular network under the Shared Plans in Georgia is \$yy.00 (the lowest Shared Plan data package, currently \$zz.00, plus one phone line, currently \$qq.00 for one line), and the lowest price for voice access to the cellular network under any of Taxpayer's other cellular telephone plans in Georgia that are not Shared Plans is \$xx.00, and assuming that the bundled/unbundled rule in Ga. Comp. R. & Regs. 560-12-2-.24(2)(a)(1) applies and Taxpayer decides to separately state the charges for the data and each phone line, what is the minimum amount of the telephone line charge that is subject to sales tax?
3. If the bundled/unbundled service rule in Issue 1 above does not apply, is the entire amount charged to a customer for the Shared Plan subject to tax?

Analysis

Georgia levies and imposes a tax (subject to certain exemptions) on the retail purchase, retail sale, rental, storage, use, or consumption of tangible personal property and on certain enumerated services.¹ “Retail sale” or “sale at retail” means a sale of tangible personal property for any purpose other than for resale.² Unlike sales of tangible personal property, which are generally presumed taxable, sales of services are not subject to the tax unless specifically designated as taxable.

For transactions that include both taxable and nontaxable products sold for one price, O.C.G.A. § 48-8-2-31(G) provides as follows:

If the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products may be subject to tax unless the provider can identify by reasonable and verifiable standards such portion from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, nontax purposes. If the price is attributable to products that are subject to tax at different tax rates, the total price may be treated as attributable to the products subject to tax at the highest tax rate unless the provider can identify by reasonable and verifiable standards the portion of the price attributable to the products subject to tax at the lower rate from the provider's books and records that are kept in the regular course of business for other purposes, including, but not limited to, nontax purposes[.]

Although most services are not subject to sales and use tax in Georgia, the sale of local telephone services and cellular telephone services is taxable in Georgia.³ As a general rule, monthly charges for the right to access the cellular system in the amount set forth on the cellular telephone provider's statement or bill to its customer or subscriber are subject to sales tax.⁴ If the monthly charge includes both access and a stated allowed airtime usage in a combined or bundled amount, tax is due on the entire combined or bundled amount, unless the charges are separately stated on the customer's bill.⁵ When unbundling the taxable amount, the minimum amount ascribed to monthly access must be no less than the minimum monthly access charge made by the cellular telephone provider to the general public for access to the cellular system (when no calls are placed by the customer and no airtime is utilized by the customer) that is in effect during the billing period.⁶

If Taxpayer makes a single charge that includes both access and airtime usage, Taxpayer must collect tax on the entire charge. However, if Taxpayer can reasonably identify the amount charged for the taxable voice service from its books and records kept in the ordinary course of business, Taxpayer may “unbundle” the monthly charge to determine the taxable component of the monthly charge. When unbundling the taxable amount, the minimum ascribed to monthly access must be no less than the minimum monthly access charge made by Taxpayer to the general public for access to the cellular system. In this case, that minimum amount is \$xx.00 (the lowest price available to any customer who wants voice access).

Rulings

1. As a general rule, when Taxpayer charges a lump sum for a shared plan (i.e., a plan allowing multiple mobile devices on one plan that included unlimited voice and texting and a certain shared amount of data), the entire charge is subject to tax. However, Taxpayer may use the bundled/unbundled rule to determine the taxable cellular system access charge on the customer's invoice regardless of whether the Taxpayer offers an access-

¹ O.C.G.A. §§ 48-3-1, -30(a).

² O.C.G.A. § 48-8-2(31).

³ O.C.G.A. § 48-8-2(31)(A); Ga. Comp. R. & Regs. 560-12-2-.24(1).

⁴ Ga. Comp. R. & Regs. 560-12-2-.24(2)(a)(1).

⁵ *Id.*

⁶ *Id.*

only plan. Pursuant to Rule 560-12-2-.24(2)(a)(1), “[w]hen unbundling the taxable amount, the minimum ascribed to monthly access must be no less than a minimum monthly access charge made by . . . [Taxpayer] to the general public for access to the cellular system.” In the present case, that minimum amount is \$xx.00 (the lowest price available to any customer who wants voice access). Thus, Taxpayer may collect tax on the access portion only of a single charge if Taxpayer maintains verifiable books and records to support the portion of the charge that is attributable to access and such amount attributable to access is not less than \$xx.00 .

2. If Taxpayer separately states the charges (for data and each voice line), and the separately stated charges for the voice lines are reasonable allocations and are supported by Taxpayer’s books and records, only the separately stated charges for voice lines are subject to sales and use tax (i.e., the separately stated charge is the minimum amount, and the actual amount, upon which tax should be charged).
3. As discussed above in ruling 1, the bundled/unbundled rule is allowed for the Shared Plans.

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 different tax treatment than expressed in this ruling.