

Georgia Letter Ruling: LR-SUT-2015-20  
Dated: December 11, 2015  
Topic: Aircraft

### **Facts as Provided by Taxpayer<sup>1</sup>**

On [redacted date\_1], Taxpayer purchased a [redacted make/model] (the "Aircraft"). The Aircraft was purchased outside of Georgia and first used in Georgia on [redacted date\_1]. Taxpayer paid Georgia use tax on the full purchase price of the Aircraft at the [Redacted] County rate. The use tax payment was submitted by Taxpayer to the Department on [redacted date\_2].

Taxpayer has owned and operated the Aircraft for transportation purposes within and outside the State of Georgia and the United States in the ordinary course of Taxpayer's business. Taxpayer has maintained and hangered the Aircraft in Georgia. However, in [redacted date\_3] Taxpayer determined that it must re-register the Aircraft in order to comply with federal law that allows an aircraft owned by a corporation organized under the laws of a U.S. state to be registered in the United States only if (1) the president and at least two-thirds of the board of directors of the corporation are U.S. citizens, and (2) at least 75 % of the voting interest in the corporation is controlled by persons that are U.S. citizens. As a subsidiary of a foreign company, Taxpayer does not meet these requirements. An aircraft owned by a non-U.S. citizen corporation is subject to the restriction that at least 60% of all flights must originate and end within the United States. Such a restriction on Taxpayer's ability to use the Aircraft would severely restrict Taxpayer's business operations.

Consequently, on [redacted date\_4], Taxpayer formed a revocable trust<sup>2</sup> (the "Trust") "for the purpose of acquiring title" to the Aircraft, naming itself as grantor and sole beneficiary.<sup>3</sup> [redacted name] ("Trustee") was named as the trustee of the Trust.<sup>4</sup> The general terms of the Trust are as follows:

- Taxpayer will convey title to the Aircraft to Trustee.
- Trustee will hold the title for the use and benefit of Taxpayer.
- Taxpayer shall reimburse Trustee for all reasonable costs and expenses incurred in operating the Trust.
- Trustee will not have a duty to insure the Aircraft or pay taxes assessed related to the Aircraft.
- Trustee must maintain all money received as separate Trust Funds.
- Trustee cannot act in an individual capacity at any time.
- Trustee will not be required incur any expenses associated with the transaction.
- Trustee will not be liable to Taxpayer other than for the performance of its duties under the Trust.
- Trustee must distribute any payments received as directed by Trustee.
- Taxpayer will indemnify Trustee from and against any and all liability, obligations, losses, damages, penalties, taxes, etc. relating to or arising out of the Trust.
- Upon termination of the Trust, Trustee must convey Trust Estate to Taxpayer.

For the purpose of operating the Aircraft, Trustee executed an Aviation Operating Agreement<sup>5</sup> ("AOA") with Taxpayer for Taxpayer to act as operator of the Aircraft. The AOA was signed on the same day that the Trust was formed: [redacted date\_5]. The effective date of the AOA was [redacted date\_5]. As the operator of the Aircraft, Taxpayer will transport its employees in and maintain and manage the Aircraft. The AOA requires Taxpayer to provide the following Aircraft services:

- Provide and supervise pilots, mechanics, and flight operations personnel.

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<sup>1</sup> Citations to Exhibits are references to documents provided by [redacted name] to Georgia Department of Revenue.

<sup>2</sup> The Trust Agreement is governed by [redacted state] law, pursuant to Section [redacted] of the Agreement. In [redacted state], the term "Revocable, as applied to a trust, means *revocable by the settlor without the consent of the trustee* or a person holding an adverse interest." [redacted state] Code § [redacted code] (emphasis added). Taxpayer is the settlor in this case. [redacted state] § [redacted code].

<sup>3</sup> Exhibit B.

<sup>4</sup> *Id.*

<sup>5</sup> Exhibit D.

- Arrange and supervise the Aircraft maintenance.
- Obtain and maintain the insurance required of Trustee.
- Liaise with aviation regulatory agencies.
- Provide flight and maintenance scheduling and communications.
- Arrange for hangar and office space at the Aircraft's operating base.
- Provide storage for the Aircraft at temporary operating bases and other locations.
- Provide travel support services associated with the daily operation, maintenance, flight schedule, and administration of the Aircraft.
- Supervise and update the log books, records, reports, and subscriptions of or for the Aircraft.
- Provide bookkeeping and accounting services.
- Provide other services as may be agreed to by the parties.

Flights are only provided to Taxpayer's employees. All payments due under the AOA are made directly by Taxpayer.

### Issue

Is Taxpayer liable for Georgia sales and use tax as a result of the transfer of title to the Aircraft by Taxpayer to Trustee or as a result of any subsequent use, storage, or maintenance of the Aircraft in Georgia?

### Analysis

Georgia levies and imposes a tax (subject to certain exemptions) on the retail purchase, retail sale, storage, use, or consumption of tangible personal property and on certain enumerated services.<sup>6</sup> Every purchaser of tangible personal property at retail in Georgia is liable for a tax on the purchase at a rate of 4 percent of the sales price of the purchase plus any applicable local sales taxes. The dealer making the taxable sale must collect the tax from the purchaser and remit the tax to the Department.<sup>7</sup> Thus, unless a specific exemption applies, the sale/purchase of tangible personal property is subject to tax.

Georgia also imposes tax on the storage, use, or consumption of tangible personal property in Georgia if Georgia sales tax was not paid on the purchase of the particular property.<sup>8</sup> O.C.G.A. § 48-8-30(c)(1) specifically 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 . . ."<sup>9</sup> (emphasis added). Use of the word "shall" denotes a mandatory intent on the part of the legislature.<sup>10</sup> Thus, when a person purchases property outside Georgia and subsequently brings the property into Georgia, that individual is liable for Georgia use tax, and a credit is allowed for like taxes previously paid in another state.<sup>11</sup>

For sales and use tax purposes, the substance of a transaction controls its tax treatment rather than the appellation chosen by the parties.<sup>12</sup> In a trust relationship, ownership is divided into two elements, with the trustee possessing legal title, and the beneficiary possessing equitable title. In this case, Trustee holds legal title to the Aircraft, but it does not appear to possess any of the rights or obligations generally associated with property ownership. It holds bare legal title only. Taxpayer is the sole beneficiary of the Trust and its rights in the Aircraft amount to nearly full ownership. The following indicate that Taxpayer, and not Trustee, is in substance contracting with itself in the AOA

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<sup>6</sup> O.C.G.A. §§ 48-8-1, -30(a).

<sup>7</sup> O.C.G.A. § 48-8-30(b)(1).

<sup>8</sup> See generally O.C.G.A. § 48-8-30.

<sup>9</sup> If the item were 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).

<sup>10</sup> *Hancock County Bd. Of Tax Assessors v. Dickens et al.*, 208 Ga. App. 742 (1993).

<sup>11</sup> O.C.G.A. § 48-8-30(c)(3).

<sup>12</sup> *Footpress Corp. v. Strickland*, 242 Ga. 686 (1978) (citing *Grantham Transfer Co. v. Hawes*, 225 Ga. 436 (1969) and *Hays v. Jordan & Co.*, 85 Ga. 741 (1889)).

and is in substance the owner of the Aircraft:

- In practice, Taxpayer uses the aircraft as its corporate plane (*e.g.*, for use by Taxpayer management).
- Taxpayer has exclusive possession and use of the Aircraft and does not have to pay rent, license fees, or any other form of payment for such exclusive possession and use of the Aircraft.
- No cash or other form of payment was made in consideration for the transfer of legal title to the Aircraft from Taxpayer to Trustee.
- The AOA sets forth numerous contractual obligations, such as monthly services fees, which appear to be owed by Taxpayer. Trustee has no duties under the AOA other than to hold title to the Aircraft and place exterior or interior labels, tags, or other notifications of Trustee's ownership as may be required by applicable laws, rules, and regulations.
- Taxpayer assumes all risk of loss associated with the use or operation of the Aircraft from any cause whatsoever.
- Trustee has no power, right, or authority to manage, control, use, sell, dispose of or otherwise deal with the aircraft.
- Taxpayer, not Trustee or the Trust, pays directly for AOA services.

In short, Taxpayer is the true owner, albeit not the legal title holder, of the aircraft in question. Trustee has no autonomy in the relevant transactions: Taxpayer maintains complete control of the Aircraft, possesses all rights of ownership of the Aircraft, and is burdened by all obligations of ownership of the Aircraft. Trustee may have entered into the AOA, but it did so solely in its capacity as Trustee under the Trust. Taxpayer is the actual party liable for performance under the AOA.

### **Ruling**

The series of transactions vested only bare legal title in Trustee in the Trust that is controlled by Taxpayer. Separating the legal ownership interest from the equitable ownership interest did not amount to a sale. Taxpayer enjoys the exact same property rights and owes the exact same contractual obligations that it would have if it held legal title directly. Because the substance of the transaction controls, and the sole purpose of the transfer of the Aircraft was to comply with FAA rules and regulations regarding the international use of aircraft, Taxpayer would be treated as the owner of the Aircraft for purposes of the imposition of use tax under O.C.G.A. § 48-8-30. Because Taxpayer paid Georgia use tax on the full purchase price of the Aircraft at the [Redacted] County rate and submitted payment to the Department on [redacted date\_6], no additional sales or use tax is due on the Aircraft.

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.