

Georgia Letter Ruling: LR SUT-2015-22
Dated: December 16, 2015
Topic: Hotel/Motel Rewards

This letter is in response to your letter ruling request dated April 13, 2012, regarding the application of Georgia sales and use tax to accommodations furnished in exchange for reward points.

Facts Presented by Taxpayer

Taxpayer owns, operates, and franchises hotels that sell accommodations in Georgia. Taxpayer's [Redacted] affiliate ("Affiliate") operates a marketing reward points program, referred to as [Redacted] ("Program"), which is designed to benefit guests who stay at participating Taxpayer hotels on a regular basis ("Members"). Membership in the Program is free.

Members earn reward points each time they stay at a participating Taxpayer hotel.¹ In addition, a Member can purchase up to [Redacted] points per year. The Program also sells points to certain partners, such as credit card and airline companies, which then issue points to Members. The Program does not collect sales tax on the sale of points to its Members or partners.

Members can exchange the points for complimentary or upgraded accommodations at participating Taxpayer hotels. The points have no dollar value and cannot be exchanged with Taxpayer or any of its hotels for cash or other credit. The points cannot be sold on the open market; however, a Member may transfer points to another Member for \$[Redacted] per # [Redacted] points transferred.² Members may redeem points for complimentary accommodations at participating Taxpayer hotels by making reservations online or through Taxpayer's phone reservation numbers.

Each time a Member earns points by staying at a participating Taxpayer hotel, approximately [Redacted] % of the room rate and certain incidental fees billed to the Member become a contribution owed by the hotel to the Program fund. The hotel must determine the total amount of contributions owed for all qualifying Member stays on a periodic basis ("Reporting Period"). When a Member redeems points for complimentary accommodations, the Program must reimburse the hotel. The amount of reimbursement varies depending on the particular hotel's brand and the number of reward points redeemed at that hotel. The type of room, number of beds, or actual cost of providing the room does not affect the reimbursement amount.

The Program calculates the hotel's reimbursement amount on an annual basis. For each Reporting Period, reimbursements payable to the hotel by the Program offset against the contributions owed by the hotel to the Program fund. If contributions owed are equal to or less than reimbursements payable for that Reporting Period, the hotel is not required to contribute to the Program fund for that period. If reimbursements payable exceed contributions owed, the Program pays out the excess reimbursement amount to the hotel. Currently, participating Taxpayer hotels pay sales tax on all reimbursements payable from the Program fund without deduction for contributions owed by the hotel.

Issues

1. Does Taxpayer owe sales tax on accommodations provided to guests in exchange for Program reward points?
2. Is the sale of Program reward points to Members and partners subject to tax?
3. Is Taxpayer due a refund of the sales taxes it paid on reimbursements payable from Program fund?

¹Approximately [Redacted] % of all reward points issued are for Members purchasing stays at Taxpayer hotels. Members and non-members pay the same price for the same room at participating Taxpayer hotels.

² The \$[Redacted] charge covers administrative costs.

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.³ The term “retail sale” includes the “sale or charges for any room, lodging, or accommodation furnished to transients by any hotel, inn, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients for a consideration.”⁴ A person furnishing a service, the purchase of which is a retail sale, is a dealer and is liable for tax at the rate of 4 percent, plus applicable local taxes, of the sales price made for the service, or the amount of taxes collected from the person to whom the service is furnished, whichever is greater.⁵ “Sales price” means the “total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise . . .”⁶

Accommodations Furnished for Reward Points

Taxpayer argues that it does not owe sales tax on accommodations provided in exchange for the Program reward points because neither the points nor the reimbursements payable to the hotels are consideration and thus no sale occurs. Consideration is not limited to cash but includes anything of value received.⁷ When a Member redeems points for a complimentary accommodation at a participating Taxpayer hotel, the hotel receives reimbursements from the Program. These reimbursements lower or eliminate the hotel’s contribution owed for that month and are paid out to the hotel if the reimbursements payable exceed the contributions owed by the hotel. The Department considers the reimbursements payable to be consideration, unless the hotel’s contributions to the Program fund are paid to the same legal entity as the hotel or are held in the Program fund pursuant to an agreement whereby the hotel remains the actual owner of the contributions and the other party merely holds the contributions in trust or as custodian or agent for the hotel.

Based on the facts and information presented here, it appears that the hotels’ contributions to the Program fund are to a third party, and that the third party does not hold the contributions in trust or as custodian or agent for the hotels. Accordingly, the accommodations provided in exchange for reward points are in fact “furnished . . . for a consideration,” and the tax is owed on the sales price of those accommodations.

Sales Price: Consideration Received From Third Parties

Generally, if a seller receives consideration from a party other than the purchaser, and the consideration directly results in a price reduction or discount on the underlying sale, the price reduction or discount is included in the taxable sales price of the item. Specifically, O.C.G.A. § 48-8-2(34) defines “sales price” to include consideration received from third parties if

- (i) The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to the price reduction or discount on the sale;
- (ii) The seller has an obligation to pass the price reduction or discount through to the purchaser;
- (iii) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and . . .

³ O.C.G.A. §§ 48-8-1, -30.

⁴ O.C.G.A. § 48-8-2(31).

⁵ O.C.G.A. § 48-8-30(f)(1).

⁶ O.C.G.A. § 48-8-2(34)(A).

⁷ *See id.*

(I) The purchaser presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented....⁸

The consideration received by a Taxpayer hotel in the form of reimbursements from the Program is from a third party. The reimbursement received by the hotel is directly related to the Member's "price reduction or discount on the sale" of the accommodation; the hotel is obligated by contract to pass the price reduction or discount through to the Member; and the amount of the credit attributable to the sale is fixed and determinable by the hotel at the time of the sale of the accommodation to the Member. The Member presents the Program documentation to the hotel to claim the complimentary accommodation, and the Program and the hotel understand that the hotel will receive the appropriate reimbursement. As a result, the sales price of the accommodation includes the consideration received by the hotel in the form of reimbursements payable by the Program, with no deduction for or offset of contributions owed by the hotel.

Sale of Reward Points

The tax is imposed on the retail sale of tangible personal property. "Tangible personal property" means "personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses."⁹ The tax does not apply to the sale of intangibles. Because the Program reward points that Taxpayer sells and that the Member or partner purchases constitute an intangible right to discounted or complimentary accommodations, the sale of such points is not subject to the tax.

Rulings

1. Based on the facts and information presented, when a Member redeems reward points for complimentary accommodations, and the hotel receives reimbursements, either as a payout from the Program or as an offset to the contributions owed by the hotel, the reimbursement is subject to Georgia sales tax. Even though a party other than the purchaser provides the reimbursement, the reimbursement amount is included in the taxable sales price of the accommodation as consideration received from a third party.
2. Sales of the Program reward points to Members or partners are not taxable because the points are intangible property not subject to the tax.
3. Based on the facts and information presented, the Taxpayer hotels properly remitted sales tax on the reimbursements payable without deduction for contributions owed by the hotel to the Program.

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.

⁸ O.C.G.A. § 48-8-2(34)(C).

⁹ O.C.G.A. § 48-8-2(37).