

Georgia Letter Ruling: LR SUT-2015-23  
Dated: December 16, 2015  
Topic: Motor Vehicle

This letter is in response to your request for guidance on the application of the transportation special purpose local option sales and use tax to certain lease transactions.

### **Facts**

[Redacted] ("Taxpayer") is an equipment leasing company, primarily leasing equipment to customers in the United States. Taxpayer also occasionally leases titled motor vehicles. Taxpayer hopes to gain a better understanding of the transportation special purpose local option sales and use tax ("TSPLOST") and how it applies to leases of motor vehicles. Due to certain system disadvantages, Taxpayer requests help in determining how to properly collect and remit TSPLOST on certain leases.

### **Issues**

1. How does the TSPLOST apply to Taxpayer's motor vehicle leases?
2. How does the TSPLOST apply in the following situations?:
  - a. Assets in a lease transaction are located in both a TSPLOST county and a non-TSPLOST county.
  - b. Assets in a lease transaction are located in multiple different TSPLOST counties.

### **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.<sup>1</sup> "Retail sale" means a sale to any person for any purpose other than for resale.<sup>2</sup> Generally, rentals and leases of tangible personal property are subject to sales tax<sup>3</sup>, and the lessor must collect the tax from the lessee on the rental price.<sup>4</sup>

#### *TSPLOST*

The Transportation Investment Act of 2010 created 12 special districts for purposes of imposing, subject to voter approval, a 1% special district transportation sales and use tax.<sup>5</sup> Effective January 1, 2013, voters in certain counties approved imposition of the TSPLOST.<sup>6</sup> Sellers must collect the TSPLOST, in addition to all other sales taxes, and remit the tax to the Georgia Department of Revenue.<sup>7</sup> The TSPLOST is only imposed on the first \$5,000 of any transaction involving the sale or lease of a motor vehicle.<sup>8</sup> Except as discussed otherwise below, the TSPLOST is imposed on the first \$5,000 of lease payments made for each motor vehicle leased, even if multiple vehicles are under one lease with one lease payment.

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

<sup>2</sup> O.C.G.A. § 48-8-2(31).

<sup>3</sup> O.C.G.A. §§ 48-8-2(33), -30(a).

<sup>4</sup> O.C.G.A. §§ 48-8-2(8)(C)-(D), -30(d); Ga. Comp. R. & Regs. 560-12-1-.21.

<sup>5</sup> O.C.G.A. § 48-8-241(a)-(b). These districts correspond with the 12 regional commissions provided for in O.C.G.A. § 50-8-4. O.C.G.A. § 48-8-241(a).

<sup>6</sup> The counties in which the TSPLOST was approved are Appling; Bleckley; Burke; Candler; Chattahoochee; Clay; Columbia; Crisp; Dodge; Dooly; Emanuel; Evans; Glascock; Hancock; Harris; Jeff Davis; Jefferson; Jenkins; Johnson; Laurens; Lincoln; Macon; Marion; McDuffie; Montgomery; Muscogee; Quitman; Randolph; Richmond; Schley; Stewart; Sumter; Talbot; Taliaferro; Tattall; Taylor; Telfair; Toombs; Treutlen; Warren; Washington; Wayne; Webster; Wheeler; Wilcox; and Wilkes.

<sup>7</sup> O.C.G.A. § 48-8-30(d).

<sup>8</sup> O.C.G.A. § 48-8-241(d).

Where the TSPLOST has been paid with respect to certain tangible personal property, a credit may be allowed against the same tax due in another special district or jurisdiction upon the same property.<sup>9</sup> If the amount of sales or use tax so paid is less than the amount of the tax due, the purchaser pays the difference.<sup>10</sup> Leases or rentals of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment are sourced as follows:

For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations.<sup>11</sup>

For leases or rentals of other tangible personal property<sup>12</sup>, periodic payments are sourced in the same manner except that the first periodic payment is sourced as a retail sale.<sup>13</sup>

#### *TAVT*

Motor vehicles titled in Georgia on or after March 1, 2013 are subject to title ad valorem tax ("TAVT"). Effective March 1, 2013<sup>14</sup>, sales and use taxes, including the TSPLOST, and the annual ad valorem tax (the birthday tax) are no longer imposed on motor vehicles titled in Georgia on or after March 1, 2013 and upon which TAVT has been paid.<sup>15</sup> Lease payments for leases longer than 31 consecutive days of motor vehicles on which TAVT has been paid are exempt from the full sales and use tax, including the TSPLOST.<sup>16</sup>

#### *Motor Vehicle Leases*

The following guidance applies to (1) lease payments made on or after January 1, 2013 for leases of motor vehicles on which TAVT was not due or has not been paid and (2) rentals of motor vehicles for a period of 31 or fewer consecutive days:

When a motor vehicle with a primary location in a TSPLOST county is leased, the TSPLOST must be collected on lease payments made beginning January 1, 2013, even when the lease began prior to January 1, 2013. The TSPLOST must be collected on each monthly lease payment in the same manner as and in addition to any other sales and use tax, up to the \$5,000 limitation. The TSPLOST is not collected in full up front but is instead collected on each lease payment.

When a motor vehicle with a primary location in a non-TSPLOST county is leased and the lessee then moves the vehicle's primary location to a TSPLOST county, the TSPLOST must be collected on each lease payment made during the time the vehicle is in a TSPLOST county, up to the \$5,000 limitation.

When a motor vehicle with a primary location in a TSPLOST county is leased and the lessee then moves the vehicle's primary location to a non-TSPLOST county, the TSPLOST will no longer be due on lease payments made during the time the vehicle is in a non-TSPLOST county.

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<sup>9</sup> O.C.G.A. § 48-8-252.

<sup>10</sup> *Id.*

<sup>11</sup> O.C.G.A. § 48-8-77(b)(3)(A).

<sup>12</sup> Other than transportation equipment.

<sup>13</sup> O.C.G.A. § 48-8-77(b)(2)(A).

<sup>14</sup> Although the law exempting motor vehicle purchases and leases from the TSPLOST was signed by the Governor on March 5, 2013, the Department has interpreted the exemption to be retroactive to March 1, 2013.

<sup>15</sup> O.C.G.A. §§ 48-5C-1(b)(1)(A), -8-3(95).

<sup>16</sup> O.C.G.A. §§ 48-5B-1(b)(1)(A), -5-441.1, -8-3(95). Sales tax still applies to rentals of motor vehicles for periods of 31 or fewer consecutive days. O.C.G.A. § 48-8-3(95). Specific TAVT requirements apply to these motor vehicle rentals. O.C.G.A. § 48-5C-1(d)(11)(A).

When a motor vehicle with a primary location in one TSPLOST county is leased and the lessee then moves the vehicle's primary location to a different TSPLOST county, the TSPLOST will be collected for the new TSPLOST county.

All lease payments, including capitalized cost reduction (down payment) and end-of-term lease payments, are subject to TSPLOST and are counted toward the \$5,000 limitation.

### **Rulings**

1. For motor vehicles on which TAVT was not yet due or has not been paid, the TSPLOST is due on the lease payments for leases of motor vehicles with a primary location in a TSPLOST county. The TSPLOST applies to the first \$5,000 of lease payments for each motor vehicle leased.
2. When a lease payment covers multiple assets included in a lease transaction, the TSPLOST applies as follows:
  - a. When assets in a single lease transaction have primary property locations in both TSPLOST and non-TSPLOST counties, the portion of each lease payment attributable to the assets in the TSPLOST counties is subject to the TSPLOST.
  - b. When assets in a single lease transaction have primary property locations in multiple different TSPLOST counties, the portion of the lease payment attributable to each particular TSPLOST county will be subject to the TSPLOST at the rate of that county.

**As noted above, these rulings are only applicable to motor vehicle leases and rentals that are still subject to sales tax.**

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.