

Georgia Letter Ruling: LR SUT-2016-02

Dated: January 5, 2016

Topic: Sales Price-Inclusion of Cobb County Recreational & Sports Tourism Service Fee

This letter is in response to your request for guidance on the application of Georgia sales and use tax to Cobb County's Recreational and Sports Tourism Service Fee.

### **Facts Presented by Taxpayer**

Effective January 1, 2015 Cobb County began imposing a Recreational and Sports Tourism Service Fee of \$3.00 per room night on all hotels located in the Cumberland Special Services District No. 1 as created by the Cobb County board of commissioners. Cobb County indicated this service fee is imposed on the guest and provided [Redacted] ("Taxpayer") the following example of how this fee should be presented on the folio Taxpayer provides its customers:

If a guest rents an overnight room and the rate is \$100.00 per night, the fees will be calculated as follows.

Room Revenue	\$100.00
Sales Tax @ 6%	6.00
County Occupancy Tax @ 8%	8.00
Sports and Tourism Fee	3.00
Total Due	\$117.00

### **Issues**

1. Is the Recreational and Sports Tourism Fee subject to sales and use tax?
2. Will sales and use tax exemptions for federal and state governmental entities apply to this fee?

### **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" includes "[t]he sale or charges for any room, lodging, or accommodation furnished to transients by any hotel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients for a consideration."<sup>2</sup>

The measure subject to tax is the "sales price," which 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 without any deduction for . . . *taxes imposed on the seller*, and any other expense of the seller . . .<sup>3</sup> (Emphasis added).

Sales price does not include any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.<sup>4</sup>

The following sections from the Official Code of Cobb County, Georgia are relevant for purposes of determining the appropriate tax treatment of the Recreational and Sports Tourism Fee (the "Fee").

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<sup>1</sup> O.C.G.A. §§ 48-8-1, -30.

<sup>2</sup> O.C.G.A. § 48-8-2(31)(B).

<sup>3</sup> O.C.G.A. §§ 48-8-30(b)(1), -2(34)(A)(ii).

<sup>4</sup> O.C.G.A. § 48-8-2(34)(B)(iii).

**Sec. 114-94. - Recreational and sports tourism services fee.**

A recreational and sports tourism services fee ("services fee" or "fee") is levied on the per night rate of all hotel rooms in the district to pay, wholly or partially, the cost of providing, supplementing or enhancing local government services within the district and to construct and maintain facilities therefor, which thereby will enhance recreation, sports, tourism and commercial opportunities for visitors to and guests of the district. The amount of this fee shall be fair and reasonable, bearing a substantial relationship to the services offered to all individuals or entities paying such fee. . .

**Sec. 114-96. - Recreational and sports tourism services fee rate; collection.**

The amount of the services fee shall be set by the board and from time to time may be modified by resolution as deemed necessary or prudent so as to fund the continued delivery of the local government services and facilities specified herein. The amount of the fee initially set by the board shall be \$3.00 per room per day charge for an overnight accommodation at a hotel in the district. *This fee shall be collected by the owner or operator of each hotel in addition to any other rates, fees, taxes, assessments or levies charged per night to each hotel room.* (Emphasis added)."

The italicized language above indicates that hotel owners and operators are obligated to collect the Fee from their customers. Consequently, for sales and use tax purposes, the Department of Revenue considers the Fee to be imposed directly on consumers. Because "sales price" (i.e., the amount subject to sales and use tax) does not include taxes legally imposed directly on the consumer that are separately stated on the invoice or similar document given to the purchaser, the Fee is not subject to sales tax as long as it is separately stated on the invoice or similar document provided to the hotel guest.

**Rulings**

1. Because the fee is imposed on the hotel guest, the fee is not subject to sales and use tax as long as the fee is separately stated on the invoice or similar document provided to the guest.
2. The Department of Revenue is unable to opine on Fee exemptions that may be available to government entities. A determination regarding Fee exemptions would be a matter for the Cobb County Board of Commissioners.

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 that expressed in this ruling.