

Georgia Letter Ruling: LR SUT-2016-04
Dated: February 15, 2016
Topic: Sales Price – Delivery Charges

This letter is in response to your request for guidance on the application of Georgia sales and use tax to delivery fees paid by [Redacted] (“Taxpayer”) to delivery contractors.

Facts as Presented by Taxpayer

Taxpayer is a tax-exempt organization under section 501(C)(3) of the Internal Revenue Code. It accepts donations of time, money, and [Redacted Products] to help support [Redacted] programs. Taxpayer holds fund raising events to help raise money for its initiative. As part of its fundraising efforts, Taxpayer sells items to consumers. After purchase, a consumer has the option to request delivery services. Accordingly, Taxpayer collects a delivery fee if a consumer chooses to exercise their option. After Taxpayer collects the fee, it arranges delivery with a delivery company, and pays 100% of the delivery fee the delivery contractor.

Issue(s)

Are the “delivery fees” Taxpayer charges consumers subsequent to a purchase subject to sales and use tax?

Analysis

Georgia levies and imposes a tax (subject to certain specific exemptions) on the retail purchase, retail sale, storage, use, or consumption of tangible personal property, certain enumerated services, and utilities.¹ Every purchaser of tangible personal property at retail in this state shall be liable for a tax on the purchase at the rate of 4 percent of the sales price of the purchase.² The charge at issue is the service charge associated with delivering an item upon purchase from the Taxpayer.

The term "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 otherwise³ without any deduction for delivery charges.⁴

“Delivery charges” generally means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing.⁵ When taxable tangible personal property is sold at retail and the seller makes a delivery charge, the charge is taxable regardless of whether the charge is optional (i.e., not required to complete the underlying sale of the tangible personal property) or separately stated.⁶ For example, if a seller of taxable tangible personal property arranges for a third party carrier to deliver items to the purchase, and the seller charges the purchaser the actual cost of delivery that the third party carrier charges the seller, then the delivery charge from the seller to the purchaser is a taxable charge.⁷

In the case at hand, Taxpayer charges a delivery fee if a customer chooses to have the purchased item delivered to a separate location subsequent to the purchase. The Taxpayer arranges delivery with a delivery company, pays 100% of the delivery fee to the delivery contractor, and then charges a delivery fee to the customer. The delivery fee charged by the Taxpayer will be subject to sales and use tax. If a transaction between Taxpayer and a customer includes both taxable items and nontaxable items, Taxpayer may either charge and collect tax on the entire delivery charge or charge tax on a portion of the delivery charge based on either (i) the percentage of the sales price of the taxable property compared to the total sales price of all property in the shipment, or (ii) the percentage of the total weight of the taxable

¹ O.C.G.A. §§ 48-8-1 and 48-8-30(a).

² O.C.G.A. §§ 48-8-1; 48-8-2(31); 48-8-30.

³ O.C.G.A. § 48-8-2(34).

⁴ O.C.G.A. § 48-8-2(34)(A)(iv).

⁵ O.C.G.A. § 48-8-2(10); Ga. Comp. R. & Regs. R. 560-12-2-.45(1).

⁶ Ga. Comp. R. & Regs. R. 560-12-2-.45(2).

⁷ Ga. Comp. R. & Regs. r. 560-12-2-.45(6)(a).

property compared to the total weight of all property in the shipment.⁸ Taxpayer must maintain records supporting the calculation of taxes on delivery charges.⁹

Ruling

When a seller of taxable tangible personal property makes a delivery charge to the customer, sales tax applies to the delivery charge. The charge is subject to tax regardless of whether it is optional and/or separately stated. Therefore, the “delivery fee” that Taxpayer charges customers is subject to sales and use tax.

Conclusion

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.

⁸ Ga. Comp. R. & Regs. r. 560-12-2-.45(5).

⁹ Id.