

Date Issued: April 15, 2016
Georgia Letter Ruling: LR SIT-2016-11
Topic: Retail Sales

This letter is in response to your request for guidance on the application of Georgia sales and use tax to [Redacted] (“Taxpayer”) sale and installation of closet organization products.

Facts Presented by Taxpayer

“Taxpayer” is a retailer introducing a product (“Product”) to help organize closets of its customers (“Customer”). Product is a floor-based system resting on the floor of a customer’s home but not connected or attached in any manner to the floor. It can be placed against walls or remain freestanding in the center of a closet. Product can be enhanced to include drawers, hanging rods, retractable dressing mirrors, tie and belt racks, jewelry trays, hampers, and other organizational amenities that the customer desires.

Product is designed to customer’s specifications using actual closet measurements from customer. Depending on customer’s preference, Product can be placed freestanding in the center of a room, located against a single wall, or configured against multiple walls to give the appearance of wall-to-wall, built-in cabinetry.

Product is assembled onsite at customer’s location by subcontractors working on behalf of Taxpayer. After assembly, Product is placed freestanding in the center of a room or against a wall according to design specifications. Wall-to-wall appearance is achieved by placing Product components adjacent to each other against each wall of the room. Decorative trim may be added across Product components to further have the appearance of built-in cabinetry.

When Product is placed against walls, it utilizes anti-tip brackets (resembling an L-bracket) to prevent damage and injury from tipping. The anti-tip bracket connects Product to the wall with two screws and generally consists of one anti-tip bracket per wall. Freestanding Product requires no anti-tip brackets connected to walls or additional safety features.

Product placed against a wall can be augmented with rear paneling of the same color and material as Product to give the appearance of an enclosed cabinet. If rear paneling is not chosen by customer, the wall against which Product is placed is visible between shelves.

Rear paneling is placed similar to Product in that it rests on the floor against the wall. Rather than an anti-tip bracket, it is secured using either two or four finishing nails, either one in each top corner or one in each of the four corners to prevent shifting and tipping. After the paneling is placed against the wall, Product is placed on the floor adjacent to the paneling to give the appearance of a complete cabinet. Product’s anti-tip bracket is secured after placement against the rear panel.

Issue

What is the proper application of sales and use tax to Taxpayer’s sale and installation of Product in existing and newly constructed structures?

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.¹ “Where raw materials are fabricated by a contractor into products to be installed and incorporated into realty, this constitutes a use or consumption by the contractor Sales to contractors are sales to consumers.”² Thus, if Taxpayer’s Product is incorporated into real property when installed, then Taxpayer is the end-user of Product and owes sales or use tax on it.

¹ O.C.G.A. §§ 48-8-1, 48-8-30(a).

² *Macon Machine Shop, Inc. v. Hawes*, 118 Ga. App. 280, 281-282 (1968) (punctuation and citation omitted).

Under Georgia law, anything that is intended to remain permanently in its place even if it is not actually attached to the land is a fixture which constitutes a part of the realty and passes with it.³ The determination of whether a particular article is a fixture generally requires a three-part inquiry: (a) can the article be removed without essential injury to the freehold or the article itself; (b) what is the intention of the parties with respect to the article's status; and (c) was there unity of title between the article and the realty at the time the article allegedly became a fixture.⁴

Taxpayer's Product is furniture and furniture accessories that are not intended to remain permanently in place. For safety purposes, the furniture can be attached to the wall using two easily removable screws, and the optional paneling can be secured with two to four finishing nails. The screws and nails can be removed with no damage to the furniture and negligible damage to the walls. The impermanent placement of Product indicates that it is not incorporated into real property. Taxpayer is, therefore, not a contractor, the end-user of Product. Instead, Taxpayer is merely a seller of tangible personal property and it may properly purchase such property for resale without the payment of tax.

In selling the Product, Taxpayer charges for the Product itself and installation. The taxable "[s]ales price shall not include . . . [i]nstallation charges if they are separately stated on the invoice, billing, or similar document given to the purchaser"⁵ Because Taxpayer separately states installation charges on customer invoices, sales tax applies to the sales price of Product, exclusive of installation charges. In addition to remitting tax collected from its customer on Product sales price, Taxpayer must pay sales or use tax on all tangible personal property used to perform the installation service.⁶

Ruling

Taxpayer is engaged in the sale and installation of tangible personal property, rather than the installation of real property fixtures. Taxpayer is, therefore, not the end-user of Product and may properly purchase Product for resale. The sales price of Product, exclusive of installation charges, is subject to tax. Because Taxpayer separately states installation charges on customer invoices, those charges are not subject to sales tax. Additionally, Taxpayer owes sales or use tax on all tangible personal property used in the performance of the installation service.

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.

³ *Homac, Inc. v. Ft. Wayne Mortg. Co.*, 577 F. Supp. 1065, 1069 (N.D. Ga. 1983) (citing O.C.G.A. §44-1-6(a)).

⁴ *Id.* at 1069-1070.

⁵ O.C.G.A. § 48-8-2(34)(B)(iv).

⁶ O.C.G.A. § 48-8-63(b).