

Date Issued: July 11, 2016  
Georgia Letter Ruling: LR SUT-2016-14  
Topic: Multi-level Marketing - Fees

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

### **Facts Presented by Taxpayer**

Taxpayer sells products through a multi-level network of independent distributors. Taxpayer is considered an “MLM” or multi-level marketer. Taxpayer’s only physical location is out of state. Taxpayer charges sales tax based upon the address to which it ships each product, and tax is assessed based on the suggested retail price of a product. Taxpayer files one consolidated sales tax return on behalf of itself and its distributors.

Distributors are required to renew their status annually. The annual renewal fee is paid by each distributor to remain in “active” status. All “active” distributors receive a magazine on a quarterly basis and maintain a wholesale discount on products purchased. Distributors earn a percentage discount off the retail price on the products purchased based on the distributor’s volume of products purchased. Active distributors are also eligible to receive distributor business support services and access to the Taxpayer’s website.

Customers are not required to pay a renewal fee, yet customers also receive the quarterly magazine. Additionally, customers also may be eligible to receive a percentage discount off the retail price on the products purchased based on varying promotions.

Distributors have the option of purchasing the online services and personal website, sold as a bundle. The distributor online service provides a distributor with immediate, 24/7 access to information on all activity on the distributorship and online tools to track and manage the business. A personal website allows a distributor to give product presentations through a mobile device. A personal website also enables a distributor to add customers and downline distributors to his own shopping cart and online sponsoring.

### **Issues**

1. Are charges by Taxpayer to renew distributor status subject to sales and use tax in Georgia?
2. Are charges by Taxpayer for the online services and personal website subject to sales and use tax in Georgia?

### **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 and on certain services.<sup>1</sup> “Retail sale” means a sale of tangible personal property or taxable services to any person other than for resale.<sup>2</sup>

#### *Distributor Renewal Fees*

Taxpayer’s distributors pay a fee for the right to purchase Taxpayer’s products for resale and for the possibility of receiving additional discount benefits. Distributors are not required to purchase a minimum amount of Taxpayer’s products, and the distributor fee is not applied toward future purchases. While a distributor with active status receives a company magazine, the same promotional magazine is provided to all customers. This magazine is incidental to the underlying transaction, a payment for the right to conduct business and receive benefits. Since the payment of the distributor renewal fee does not include the sale of tangible personal property or any service enumerated by law, Taxpayer’s fees are not subject to sales and use tax.

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

<sup>2</sup> O.C.G.A. § 48-8-2(31).

*Online services and Website Fees*

Only sales of tangible personal property and certain services are subject to sales and use tax. Digital products that are delivered electronically, i.e., by means other than tangible storage media, are not subject to sales and use tax.<sup>3</sup> Accordingly, a charge for access to a website and online services for tracking data and improving sales performance is not the sale of tangible personal property or a taxable service.

**Rulings**

1. Taxpayer's charges to renew distributor status are not subject to sales and use tax in Georgia. A charge for the right to sell products and receive discounts is not the sale of tangible personal property or services as contemplated in Georgia statutes or regulations, and thus would not be subject to Georgia sales and use tax.
2. Taxpayer's charges for the online services and personal website are not subject to sales and use tax in Georgia since they are charges for digital products or services delivered electronically and not charges for tangible personal property or taxable services.

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.

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<sup>3</sup> O.C.G.A. § 48-8-3(91); Ga. Comp. R. & Regs. r. 560-12-2-.111.