

Date Issued: August 8, 2016
Georgia Letter Ruling: LR SUT-2016-17
Topic: Leases

This letter is in response to your request for guidance on the application of Georgia sales and use tax to calculating sales price.

Facts Presented by Taxpayer¹

Taxpayer is a third party servicing company. Taxpayer's clients are in business as lessors of tangible personal property. Taxpayer collects lease payments from lessees and remits sales tax on behalf of Taxpayer's clients, the lessors.

Taxpayer's clients use lease agreements in which the lessee pays a term of payments and has the option to purchase the property at the end of the lease. Each term of payments is stated in the agreement and invoiced as a single amount, not broken down by underlying charges. Underlying costs include charges for freight, installation, document fees, late fees, insurance, and collection costs. Although the lessee is provided only a non-itemized lease price, Taxpayer and lessor keep records that reflect a breakdown of charges.

Issue

When a lease payment is invoiced as a non-itemized payment amount, is the applicable sales and use tax calculated on the entire lease payment or just a portion of the payment?

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.² A "retail sale" is any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.³

Georgia imposes sales tax on the sales price of tangible personal property. "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 otherwise without any deduction for the following:

- (i) The seller's cost of the property sold;
- (ii) The cost of materials used, labor, or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- (iii) Charges by the seller for any services necessary to complete the sale; and
- (iv) Delivery charges.⁴

"Sales price" does not include the following:

- (i) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;
- (ii) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;
- (iii) 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;

¹ Facts were presented by Taxpayer in its letter ruling request and in a telephone call on August 1, 2016.

² O.C.G.A. §§ 48-8-1 and 48-8-30(a).

³ O.C.G.A. § 48-8-2(31).

⁴ O.C.G.A. § 48-8-2(34). "Delivery charges" are 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. O.C.G.A. § 48-8-2(10).

- (iv) Installation charges if they are separately stated on the invoice, billing, or similar document given to the purchaser;
- (v) Telecommunications nonrecurring charges if they are separately stated on the invoice, billing, or similar document; and
- (vi) Credit for any trade-in.⁵

Regardless of itemization, charges for delivery, commonly referred to as freight, are included in the sales price. Additionally, document fees, collection fees, and like charges are included in the sales price if they are for services necessary to complete the sale. In other words, any charges that a customer must pay to obtain the particular item purchased are subject to tax. In determining which services are necessary to complete a sale, the Department commonly considers multiple factors, including the following:

- (i) The extent of the relationship between the product and service;
- (ii) Whether a customer can purchase the service without the product;
- (iii) Whether a customer can purchase the product without the service; and
- (iv) Any difference in the cost of the service or the cost of the product when the service and product are purchased separately as opposed to together.

Typically, document fees and collection fees are not optional charges that a lessee could avoid, but rather these charges are merely a component of the lessor's cost of selling the property. If a lessee is not able to lease the tangible personal property as anticipated without paying such a fee, the fee would be considered to be included in the taxable sales price.⁶

Pursuant to the definition of "sales price," installation and carrying charges are not included in the taxable sales price only if the itemized cost is documented for the customer. In this case, because the lessees are not given an agreement, invoice, or other documentation that separately states such charges, those charges are included in the taxable sale price.

Ruling

As a general rule, when a lease payment is invoiced as one non-itemized amount, the entire invoiced amount is subject to tax. Furthermore, delivery charges and charges for services necessary to complete a sale (i.e., unavoidable charges and charges for services that are essentially components of the sale) are included in the taxable sales price, regardless of whether such charges are itemized.

Charges for installation and financing are excluded from the taxable sales price only if they are itemized for the customer. In the present case, such charges are included in the taxable sales price because lessees are provided a non-itemized payment amount. If a lessee received an invoice or other documentation that separately stated installation and carrying costs, such charges would be excluded from the sales price.

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.

⁵ O.C.G.A. § 48-8-2(34).

⁶ Conversely, if the price were attributable to products that are taxable and independent services (such as optional insurance) that are nontaxable, the portion of the non-itemized price attributable to the nontaxable services is not subject to tax if the provider can identify by reasonable and verifiable standards such portion from its books and records that are kept in the regular course of business. *See* O.C.G.A. § 48-8-2(31)(G).