Georgia Letter Ruling: LR SUT-2017-04
Dated: February 23, 2017
Topic: Services, Software & Online Courses

This letter is in response to your request for guidance on the application of Georgia sales and use tax to certain products and services offered by [Redacted] ("Taxpayer").

Facts Presented by Taxpayer

Taxpayer offers software-based, online training products to serve as communications tools for organizations. Taxpayer sells licenses to its online educational courses and online course hosting services on its learning management system. A customer may purchase a course license or hosting as individual products or as a bundled transaction. Taxpayer also sells licenses for online courses owned by two other companies, and it similarly works with resellers that sell licenses to Taxpayer's online courses.

In addition, Taxpayer offers customization services. For a fee, Taxpayer will customize part of one of its courses for a particular customer or build a new course to customer specifications. Once a course has been changed, the customized version is not resold to another customer. For a customer who requests a course in a foreign language, Taxpayer charges the customer the cost of an external translator to translate one of Taxpayer's courses. Thereafter, the translated course remains available for use by other customers.

Issue

Are Taxpayer's sales of the products and services described above subject to Georgia 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] Unlike sales of tangible personal property, which are generally presumed taxable, sales of services are not taxable unless specifically designated as such.

The sale, license, or use of prewritten computer software is subject to sales and use tax when sold in a tangible medium.[2] Computer software delivered electronically is not a sale of tangible personal property and therefore is not subject to sales or use tax.[3] "Computer software" means:

> any computer data, program or routine, or any set of one or more programs or routines, which are used or intended for use to cause one or more computers, pieces of computer-related peripheral equipment, automatic processing equipment, or any combination thereof, to perform a task or set of tasks. Without limiting the generality of the foregoing, the term "computer software" shall include operating programs, application programs, system programs, and any other subdivisions (such as assemblers, compilers, generators, and utility programs).[4]

"Prewritten computer software" generally means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser.[5] Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the specific purchaser.[6]

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[1] O.C.G.A. §§ 48-8-1, 48-8-2(31)(A), and 48-8-30(a).
[2] Ga. Comp. R. & Regs. r. 560-12-2-.111(3). O.C.G.A. § 48-8-2(28.1).
[3] Ga. Comp. R. & Regs. r. 560-12-2-.111(4)(a). However, if a dealer delivers computer software electronically and also provides the same software to the purchaser in a tangible medium, the transaction is a taxable sale of tangible personal property. Ga. Comp. R. & Regs. r. 560-12-2-.111(4)(b).
[4] Ga. Comp. R. & Regs. r. 560-12-2-.111(2)(d).
[5] O.C.G.A. § 48-8-2(28.1).
[6] Id.

In a software transaction, the dealer's invoice, purchase contract, or other documentation must indicate the method of delivery. If the method of delivery is not indicated on the dealer's invoice, purchase contract, or other documentation, delivery will be presumed to have been made through a tangible medium, and the burden will be upon the taxpayer to establish to the satisfaction of the Department that the software was delivered electronically.[7]

Sales of services are not subject to the tax unless the service is specifically designated as taxable.[8] Georgia law does not identify software-related services, hosting services, or translation services as taxable services. Nevertheless, service providers are end-users and consumers of the materials they buy, use, or consume in providing a service and thus must pay the sales tax at the time of purchase of such materials.[9]

As described by Taxpayer, the courses are computer applications delivered via the internet rather than a tangible medium. Similarly, hosting services, in which Taxpayer sells the right to use its online platform, are the use of computer software via the internet. Taxpayer does not sell tangible personal property. Consequently, the sale of course licenses and hosting services are not subject to sales and use tax, as long as electronic delivery is clearly documented. Moreover, because the software customization, hosting services, and translation services are not specifically designated as subject to tax, sales and use tax should not be assessed on the charge for those services.

Ruling

Taxpayer's charges for sales of electronically-delivered software, online courses and hosting, are not subject to sales and use tax to the extent that the customer does not receive either prewritten computer software in a tangible medium or receive the vested right to receive prewritten computer software in a tangible medium. The customer's invoice or supporting documentation must indicate that the software was delivered to the customer exclusively in an electronic format.

Software-related services are not specifically identified in the Georgia Code as services subject to tax. Thus, charges made by Taxpayer for software-related services, including customization and translation, are not subject to the tax. However, Taxpayer is liable for tax on all tangible personal property used to provide its software-related 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.

[7] Ga. Comp. R. & Regs. r. 560-12-2-.111(4).
[8] O.C.G.A. §§ 48-8-3(22) and 48-8-30(a).
[9] Ga. Comp. R. & Regs. R. 560-12-1-.14(7)(d) (providing "[s]ervice providers are deemed to be the consumers of certain tangible personal property used or consumed during the provision of a service if the service provider does not separately charge for such property"); *See* O.C.G.A. § 48-8-63(b) and Ga. Comp. R. & Regs. r. 560-12-2-.26(1) (although these provisions specifically addresses contractors, they contain the general rule for all service providers).