

Georgia Letter Ruling: LR SUT-2017-05
Dated: February 23, 2017
Topic: Maintenance Plan

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

Facts Presented by Taxpayer

Taxpayer designs, manufactures, and markets consumer electronics, including mobile devices. The devices are available for purchase directly from Taxpayer or from an authorized retailer. Device prices vary from \$[Redacted] to \$[Redacted] based on model and storage. Each device comes with one year of hardware repair coverage and up to ninety days of complementary technical support through Taxpayer’s manufacturer’s warranty.

An Extended Warranty (“Extended Warranty”) can be purchased separately for \$[Redacted]. It extends the warranty coverage on the applicable device to two years from the original purchase date. The Extended Warranty applies to the device, battery, and included earbuds and accessories. Coverage under the Extended Warranty entitles the purchaser to direct access to experts for technical support and troubleshooting, mail-in repair, carry-in repair to a retail store or authorized provider, and express replacement service. It provides repair and replacement coverage, both parts and labor, from Taxpayer-authorized technicians for up to two incidents of accidental damage coverage, although each incident is subject to a service fee plus applicable tax.

Recently, Taxpayer began an Upgrade Program. The Upgrade Program is designed for customers who want the newest model device every year. To enroll in the Upgrade Program, a customer must do the following:

- Have a valid U.S.-issued personal credit card;
- Apply for and enter a 24-month installment loan (“Installment Loan”) for the full retail price of a new, eligible device (“Financed Device”);
- Purchase the Extended Warranty applicable to the Financed Device (the cost of the Extended Warranty is added to the principal amount of the Installment Loan); and
- Activate the Financed Device on a wireless service plan with an eligible carrier under the carrier’s terms.

A customer may purchase a Financed Device and an applicable Extended Warranty in separate transactions, but that customer would not be eligible for enrollment in the Upgrade Program. If the Financed Device and the Extended Warranty are purchased together, enrollment in the Upgrade Program is free and automatic upon meeting the eligibility requirements. Enrollment in the Upgrade Program is not listed on the customer invoice, which states the cost of the Financed Device at its full price and separately states the cost of the Extended Warranty at its full price.

Under the terms of the Upgrade Program, the customer is responsible for paying for all applicable taxes and fees with the first installment payment. If the Installment Loan is terminated, either the customer or the lender must separately cancel the Extended Warranty.

Upgrade Program participants have the option (“Upgrade Option”) to trade a Financed Device for a new eligible device. The Financed Device, upon the exercise of the Upgrade Option, is accepted as repayment for the amount due on the Installment Loan. The exercise of the Upgrade Option to purchase a new device is subject to the following conditions:

- The Upgrade Option must be exercised prior to the expiration date of the Installment Loan;
- The customer must have paid the equivalent of at least twelve installment payments under the Installment Loan plus any taxes and fees at the time of enrollment;
- The Extended Warranty contract must have been continuously maintained with the Financed Device;
- The original Financed Device must be turned in and in good condition; and
- The customer must enroll in a new Upgrade Program which includes a new Installment Loan on the new Financed Device as well as a new Extended Warranty.

If a customer wants an upgrade but the Financed Device is in poor condition, the customer must use the Extended Warranty to repair the Financed Device, with applicable charges and taxes assessed to the customer.

Issues

1. Are Taxpayer's sales of Extended Warranty contracts subject to Georgia sales and use tax?
2. If not, is a customer's enrollment in the Upgrade Program, which requires the purchase of an Extended Warranty, 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 and on certain services.¹

Extended Warranty

Typically, an extended warranty is a contract to provide repairs or maintenance, not tangible personal property. Thus, the execution of an extended warranty agreement is not subject to tax, provided that the charge for the warranty is itemized on the dealer's invoice.² However, when a repair is performed under an optional extended warranty and the invoice for the repair work does not state separately the price of the materials used, the tax will apply to the total charge for materials and labor.³

Here, the Extended Warranty is an optional service that a customer may purchase. The cost of the Extended Warranty is in addition to the purchase price of a device. Regardless of whether a customer elects to participate in the Upgrade Program, the charge for the Extended Warranty is separately stated on the customer's invoice. Based on Taxpayer's billing practices and the nature of the agreement at issue, sales of Extended Warranty contracts are not subject to sales and use tax. Since Taxpayer charges customers a non-itemized fee to perform repairs under the Extended Warranty, the repair fee is taxable.

Upgrade Program

Enrollment in the Upgrade Program consists of distinct components, including the purchase of a taxable Financed Device and the purchase of a nontaxable Extended Warranty. The products are billed separately, and cancellation of the Upgrade Program does not automatically cancel the Extended Warranty. If enrolled in the Upgrade Program, a customer receives a promise that a Financed Device in good condition will be accepted back by Taxpayer in satisfaction for the remaining balance of the Installment Loan. The Upgrade Program does not have purchase requirements. If a customer chooses to exercise the Upgrade Option, the price of the new device is subject to sales tax. The billing method, cancellation requirements, and upgrade conditions demonstrate that the Upgrade Program is a combination of distinct transactions rather than a sale of tangible personal property.

Rulings

1. Taxpayer's sales of Extended Warranty Contracts are sales of a service and consequently not subject to Georgia sales and use tax. However, if a repair is provided under the Extended Warranty, the non-itemized service fee charged by Taxpayer is subject to the tax.
2. Enrollment in the Upgrade Program is not subject to sales and use tax. This Program is a combination of two distinct products in which Taxpayer does not sell any additional tangible personal property. Provided the device and Extended Warranty are separately stated on the invoice, enrollment in the Upgrade Program does not alter the taxability of each individual component or create a bundled transaction.

¹ O.C.G.A. §§ 48-8-1 and 48-8-30(a).

² Ga. Comp. R. & Regs. r. 560-12-1-.14(7)(h)(i); *see* Ga. Comp. R. & Regs. r. 560-12-2-.09(6)(d) (while this regulation is applicable to motor vehicles, the principles regarding extended warranties provide insight into the general tax treatment of warranties and the associated repairs).

³ Ga. Comp. R. & Regs. r. 560-12-2-.78.

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.