

Georgia Letter Ruling: LR SUT-2017-09
Dated: March 8, 2017
Topic: Motor Vehicle Leases – Sales Price

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

Facts Presented by Taxpayer

Taxpayer provides short-term motor vehicle rentals to business, leisure, and insurance/warranty replacement customers.

When a customer reserves a rental car, Taxpayer makes a notation in its records that the customer expressed the desire and intention to rent a vehicle of a class at a specified time and location for a specified duration on the terms imposed by Taxpayer. Generally, Taxpayer does not accept reservations for specific vehicles or even specific vehicle models.¹ If a customer does not show at the specified date and time, the allotted rental vehicle is made available to other customers. Taxpayer does not set aside a vehicle for the length of an unfulfilled reservation.

Taxpayer’s charges for motor vehicle rental include charges for time, mileage, fuel, liability waivers, personal accident insurance, navigation systems, taxes, fees, and cost recoveries. Taxpayer normally collects payment in satisfaction of rental charges at the time the car is returned, although in certain instances time and mileage charges are collected in advance.

Taxpayer intends to offer its customers additional payment options, including the following payment options:

- *Reservation Fee.* Taxpayer collects the Reservation Fee at the time the reservation is made. It varies in amount, but it will always be less than the total anticipated charges. The Reservation Fee will be applied to the total rental charges upon completion of the rental. The Reservation Fee may be refundable or non-refundable.
- *Advance Payment.* Taxpayer collects the Advance Payment at the time the reservation is made. This is payment in full of all rental charges, as long as the customer does not alter the terms of the rental contract. The Advance Payment may be refundable or non-refundable.

Issues

1. Is the Reservation Fee subject to sales and use tax? If so, at what time should tax be paid and remitted? Is the Reservation Fee subject to tax if the customer does not appear and forfeits a non-refundable fee?
2. Is the Advance Payment subject to sales and use tax? If so, at what time should tax be paid and remitted? Is the Advance Payment subject to tax if the customer does not appear and forfeits a non-refundable payment?

Analysis

Georgia levies and imposes a tax (subject to certain specific exemptions) on the retail purchase, retail sale, rental, storage, use, or consumption of tangible personal property and on certain services.² A “rental” is any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration.³ Therefore, tax is imposed on a car rental transaction at the time when consideration is paid in exchange for possession or control of a car.

¹ “Making Reservations – Legal” *Rental Qualifications and Requirements*. [Redacted Taxpayer’s website link]. Last accessed May 6, 2016.

² O.C.G.A. § 48-8-30(a). In addition, each county and municipality may levy rental car excise taxes. The imposition, payment, and collection of that tax are controlled by the applicable local government. O.C.G.A. § 48-13-90, *et seq.*

³ O.C.G.A. § 48-8-2(17).

Any person offering cars for rent in Georgia must register as a dealer. Every dealer renting tangible personal property at retail must add the proper amount of sales and use tax to the sales price.⁴ “Sales price” is “the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented...without any deduction for...[c]harges by the seller for any services necessary to complete the sale.”⁵

While not directly on point, the regulation regarding Georgia’s hotel-motel fee is instructive. It provides: “when the agreement between the customer and the hotel provides that the room will not be released or offered to other occupants even if the customer never occupies the room, the innkeeper must collect the state hotel-motel fee for every night for which the customer has reserved and paid for the room, regardless of whether the customer actually stays in the room.”⁶ In that instance, a taxable sale occurs if a room is held for the customer, regardless of whether it is used. Taxability of Reservation Fees and Advance Payments turns on whether a room is fully set aside for a customer.

Reservation Fees

Under the Reservation Fee payment option, a customer is able to exercise control and possession of a car by virtue of paying the Fee and agreeing to additional conditions, but the consideration required to complete the rental transaction is not determined until customer’s possession of the car concludes. The Reservation Fee holds the customer’s ability to rent a car until a time certain at the beginning of the reservation period. The Reservation Fee secures a potential right to rent a car, but that Fee does not guarantee, nor is it consideration for, the right to the use or possession of a specific car. Since events during customer’s possession, such as time and mileage, contribute to the determination of the sales price, the consideration for the rental cannot be determined until the customer returns the car to Taxpayer. At that time, the sales price is calculated and Taxpayer is required to collect the sales tax on the final sales price, the total rental charges to which the Reservation Fee is then applied.

If a Reservation Fee is paid but the rental car reservations are cancelled, either affirmatively or by the customer’s failure to appear to take possession of the car, no car is set aside for the customer. Applying the rationale set forth in the hotel-motel fee regulation, no taxable rental occurs if a customer does not have possession of, or the right to possession of the car. Since cancellation does not amount to or result in the rental of tangible personal property, any retained deposits or non-refundable fees imposed by Taxpayer are in the nature of a cancellation penalty and are not subject to tax.

Advance Payment

Unlike the Reservation Fee, the Advance Payment is made pursuant to an agreement stating that the amount of the Advance Payment will be the sales price unless the customer changes the terms of the rental. The Advance Payment is a predetermined sales price entitling the customer to certain terms for possession or control of a car, so the Payment is full consideration for the car rental upon the time of possession or control of a car. At the time consideration is exchanged for the right to control the vehicle, Taxpayer is required to collect the sales tax on the total rental charges. Thus, unless the rental agreement is modified, Taxpayer is required to collect the sales tax based on the Advance Payment since it will be the final sales price.

Sales and use tax is not levied or imposed unless there is a rental of tangible personal property.⁷ If no car rental occurs, any tax collected in anticipation of a future rental was erroneously collected. Such tax must be remitted to the Department unless properly refunded to the customer.⁸ Therefore, when a reservation is cancelled during a free cancellation period and Taxpayer refunds the Advance Payment to its customer, Taxpayer should also refund to the customer the corresponding amount of sales tax collected. When a reservation is cancelled and a cancellation fee, such

⁴ O.C.G.A. § 48-8-30(d); Ga. Comp. R. & Regs. r. 560-12-1-.11.

⁵ O.C.G.A. § 48-8-2(34)(A)(iii).

⁶ Ga. Comp. R. & Regs. r. 560-13-2-.01.

⁷ O.C.G.A. § 48-8-30.

⁸ See O.C.G.A. § 48-8-58 (if the purchaser returns property to a dealer and the dealer returns the collected taxes to the purchaser, the dealer is entitled to a credit for the refunded taxes).

as one in the amount of the Advance Payment, is imposed, Taxpayer must still refund to customer any sales tax already collected since there was no rental.⁹

Rulings

1. If a customer takes possession of a rental car for temporary use after paying a Reservation Fee, the sales price for this car rental is determined when the customer returns the vehicle to Taxpayer. Because the payment of a Reservation Fee reserves only the right to rent a car but does not result in a specific car being set aside for the customer for the entirety of the reserved period, the Reservation Fee is not consideration for rental of tangible personal property and, thus, is not subject to sales and use tax. The result is the same whether the fee is refundable or nonrefundable because in both cases no sale occurs.

Nevertheless, the entire sales price (to which the Reservation Fee may be applied as partial payment) is ultimately subject to sales and use tax. Since every dealer renting tangible personal property must add sales and use tax to the sales price, the tax should be collected from the customer when the sales price is calculated and charged.

2. The Advance Payment is the sales price of a prospective car rental, and it serves as consideration for the rental transaction. Since every dealer renting tangible personal property must add sales and use tax to the sales price, the tax should be collected when the customer makes the Advance Payment. In the event that no rental occurs, the collected tax should be refunded to the customer.

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.

⁹ In that situation, since the prepayment is not reimbursed and the customer receives no tangible personal property, any fees charged or retained are in the nature of a penalty rather than a charge for car rentals.