

Georgia Letter Ruling: LR SUT-2017-10
Dated: April 26, 2017
Topic: Miscellaneous Transactions – Human Tissue

This letter is in response to your letter ruling request dated June 15, 2016 regarding the application of Georgia sales and use tax to certain sales made by your client, [Redacted] (Taxpayer).

Facts as Presented by Taxpayer

Taxpayer provides human tissue for medical research and training. Taxpayer's customers include medical facilities, hospitals, universities, academic medical centers, medical training organizations and medical device manufacturers, amongst others. Taxpayer receives donated human bodies shortly after the time of death in order to provide the medical community with either complete, intact cadavers, or portions of human tissue according to its customers' specific needs associated with their training and research requirements. Taxpayer makes no payments to a donor's estate or family for the donated remains. Highly skilled experts are used to remove parts in such a way as to preserve the integrity and usefulness of those bodies and requested tissue for specific training and research purposes. Any tissues that are not recovered for a qualified use are cremated and either disposed of or returned to the next of kin upon request.

In general, public policy and social norms rule out establishing a marketplace for the sale of vital human organs and body tissue. This has resulted in federal and state statutes and regulations outlawing the sale of human tissue under certain circumstances. Specifically, the National Organ Transplant Act (“NOTA”) of 1984 bans the sale of human organs and tissue for transplant, but allows tissue banks to charge fees for tissue and services associated with procuring and preparing tissue. In addition, 42 U.S. Code § 274e(a) provides that “[i]t shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human organ for valuable consideration for use in human transplantation if the transfer affects interstate commerce.” Further, the federal Public Health Service Act prohibits the sale of human fetal tissue as stated in 42 U.S. Code § 289g-2(a), “It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human fetal tissue for valuable consideration if the transfer affects interstate commerce.” Additionally, the Uniform Anatomical Gift Act (reflected under O.C.G.A. § 16-12-160), governs both tissue for transplantation into living patients as well as the making of anatomical gifts for the advancement of science. Section 16 of the Uniform Anatomical Gift Act (2006) states that “A person may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part.”

These legal parameters have shaped the manner in which human bodies are gathered and then, in whole or in part, distributed, with no distinction on whether the parts are used for purposes of research or transplanting. As is customary for the industry, Taxpayer charges fees to its customers in order to recover the costs associated with the acquisition, storage, preservation, preparation and distribution of the tissue. Cost-plus pricing, rather than supply-demand metrics, establish charges invoiced to Taxpayer's customers. The Georgia legislature has seen fit to also address this topic in O.C.G.A. § 16-12-160, which, like the Uniform Anatomical Gift Act above, provides:

(a) It shall be unlawful, except as provided in subsection (b) of this Code section, for any person, firm, or corporation to buy or sell, to offer to buy or sell, or to assist another in buying or selling or offering to buy or sell a human body or any part of a human body or buy or sell a human fetus or any part thereof.

(b) The prohibition contained in subsection (a) of this Code section shall not apply to:

(1) The purchase or sale of whole blood, blood plasma, blood products, blood derivatives, other self-replicating body fluids, or hair;

(2) A gift or donation of a human body or any part of a human body or any procedure connected therewith as provided in Article 6 of Chapter 5 of Title 44 or to the payment of a fee in connection with such gift or donation pursuant to subsection (b) of Code Section 44-5-154 if such fee is paid to a procurement organization, as that term is defined in Code Section 44-5-141;

- (3) The reimbursement of actual expenses, including medical costs, lost income, and travel expenses, incurred by a living person in giving or donating a part of the person's body;
- (4) The payment of financial assistance under a plan of insurance or other health care coverage;
- (5) The purchase or sale of human tissue, organs, or other parts of the human body for health sciences education; or
- (6) The payment of reasonable costs associated with the removal, storage, or transportation of a human body or any part of a human body given or donated for medical or scientific purposes.

(c) Any person, firm, or corporation convicted of violating subsection (a) of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine not exceeding \$5,000.00 or by imprisonment for not less than one year nor more than five years, or both.

The fees that Taxpayer lists and charges are an aggregate reflection of the services it provides related to its tissue removal, processing, preservation, storage, transportation and disposal, and are allowable under Georgia Statutes.

With this in mind, Taxpayer believes it is not involved in a sale, is not a retailer and should not be taxable under O.C.G.A. § 48-8-2, or any other sales or use tax definitions. Taxpayer believes it is a service provider, and should not be required to collect sales or use tax on its charges to its clients. Based on the information above, and the fact that Taxpayer's customers are billed on a cost-plus basis, Taxpayer believes that the transactions involving the provision of a human body or body parts to a third party for research and/or medical advancement purposes should be exempt from the Georgia sales tax.

Taxpayer understands that there may be other exemptions from the Georgia sales tax available to the services in question, including customer exemptions for transactions involving tissue transfers to hospitals, universities, and medical research facilities, and possible research and development exemptions for sales to medical device manufacturers. In this instance, Taxpayer is requesting the Department's opinion on the taxability of these transfers of tissue overall, and the position that Taxpayer should be treated as a service provider and not a retailer, without considering customer specific exemptions.

Issue

How does Georgia sales and use tax apply to the transactions described above?

Analysis

Georgia levies and imposes a tax (subject to certain exemptions) on the retail purchase, retail sale, rental, storage, use, or consumption of tangible personal property and on certain enumerated services.¹ Every purchaser (including a lessee or renter) of tangible personal property or taxable services at retail in this state is liable for sales and use tax.² Whenever a purchaser (including a lessee or renter) of tangible personal property or taxable services does not pay the tax imposed upon him or her to the retailer, lessor, or dealer who involved in the taxable transaction, the purchaser, the Department of Revenue may assess and collect the tax directly against and from the purchaser.³

¹ O.C.G.A. §§ 48-3-1 and 48-8-30.

² O.C.G.A. § 48-8-30(a) and (f).

³ O.C.G.A. § 48-8-30(g).

Ruling

The Department has determined that, due to the nature of the property, the non-transplantable human tissue described above is not tangible personal property for purposes of Georgia's Sales and Use Tax Act. Thus, the charges for the reimbursement of reasonable costs associated with the subject transactions do not rise to the level of a retail sale of tangible personal property as contemplated by the General Assembly. Accordingly, these charges are not subject to Georgia sales and use tax. Taxpayer is liable for payment of sales and use tax on the purchase price of all tangible personal property and taxable services it purchases or uses.

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. In addition, subsequent statutory or administrative rule changes or judicial interpretations of the statutes or rules upon which this advice is based may subject similar future transactions to a different tax treatment than that expressed in this ruling.