

Georgia Letter Ruling Number: LR SUT-2017-11

Topic: Service Provider

Date Issued: July 19, 2017

This letter is in response to your request for guidance on the application of Georgia sales and use tax to charges by [Redacted] (“Taxpayer”), for market research reports and services.

Facts Presented by Taxpayer

Taxpayer is a market research company for the construction of new homes. Taxpayer is a [Redacted State] corporation with no offices in Georgia. Taxpayer has employees who come into Georgia to do market research and to meet with clients. Every 4 months, Taxpayer sends auditors to each market for a few days to collect data on building permits, new homes under construction, planning commission documents, etc. Taxpayer collects data by driving through all new single family homes subdivisions, getting home permit data, visiting courthouses, and checking planning commission notes.

At its corporate office, Taxpayer takes that data and compiles it into various reports. All the gathered data is entered into Taxpayer’s database. From the database, Taxpayer produces some [Redacted] reports (“Basic Reports”) that are generally printed and shipped to each client every 4 months. Clients who receive reports about Georgia are primarily located in Georgia but may be in other states as well.

Taxpayer also provides its clients with online services, including web access for additional report options. Each client receives log in instructions for Taxpayer’s website, so clients may see the reports and other reports in Portable Document Format (PDF) as well as create some reports themselves. Taxpayer also offers opportunities for private and group consulting meetings to better explain the data and help clients apply the information in the reports.

Three times a year, Taxpayer updates each market that it covers. Taxpayer reaches out to its clients in various ways after each update. Taxpayer sends webinars with an overview of the market using the latest data. Individual client meetings can be set up at the client’s office, and group client meetings are set up from time to time for a larger group with a presentation from a company representative on the status of the market. Plus, Taxpayer takes any phone calls and emails to answer client-specific questions. These calls and emails are generally handled from Taxpayer’s corporate office. Taxpayer charges one lump sum for the Basic Report with all the products listed above. For example, Taxpayer may charge a fee of \$[Redacted] for a housing and subdivision analysis report, web access, and consulting.

In addition to the Basic Reports, Taxpayer also performs custom site specific studies (“Custom Studies”) for clients as requested. These Custom Studies entail similar processes and data as the Basic Reports but usually are more detailed for one particular tract of land or subdivision. Taxpayer may include additional statistics not provided in the Basic Reports and may provide its client with projections, strategies, and concerns as requested by the client. Additionally, Taxpayer may travel to the site location to collect new and updated information. For the Custom Studies, Taxpayer generally produces a custom printed report and the clients receive multiple copies. A company representative will also generally meet with the client to review the findings and will do strategic consulting for them. The price for a Custom Study varies depending on the needs of the client.

Currently, Taxpayer pays sales tax on the supplies used in producing the reports. Taxpayer charges Georgia sales tax to Georgia clients based on the fact Taxpayer ships printed reports to the clients and Taxpayer considers the reports to be tangible personal property.

Issues

1. Is Taxpayer required to charge Georgia clients sales tax for Basic Reports?
2. Is Taxpayer required to charge Georgia clients sales tax for online services?
3. Is Taxpayer required to charge Georgia clients sales tax for Custom Studies?
4. Once a ruling is issued, how long is a letter ruling valid? How does Taxpayer ensure that, if there are changes to the law, the ruling remains valid? Will the ruling be updated?

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 A “retail sale” is any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.² A “sale” is any transfer of title and/or possession, exchange, barter, lease, or rental of any kind of tangible personal property for a consideration.³ For sales and use tax, “tangible personal property” means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses.⁴

Unless an exemption applies, when a retail sale is sourced to Georgia, sales and use tax is due. Because tax is only due on sales of tangible personal property, items sold in only digital/downloadable/electronic format are not subject to the tax.⁵ When a dealer sells items that are delivered electronically, the dealer’s invoice, purchase contract, or other documentation should indicate the method of delivery. If the method of delivery is not indicated on the dealer’s invoice, purchase contract, or other documentation, the burden will be upon the taxpayer to establish to the satisfaction of the Department that the item was delivered electronically.⁶

The measure subject to tax is the “sales price,” which is the total amount of consideration, including cash and credit, without any deduction for the cost of materials used, labor, transportation, and any other expense of the seller. The sales price includes any charges by the seller for services necessary to complete the sale.⁷ A dealer making a taxable sale must collect the tax from the purchaser and remit the tax collected to the Department.⁸ Any dealer who neglects, fails, or refuses to collect the tax is liable for and must pay the tax himself.⁹

Unlike sales of tangible personal property, which are generally presumed taxable, sales of services are not taxable unless specifically designated as such. Georgia law provides that sales and use tax does not apply to “[p]rofessional, insurance, or personal service transactions which involve sales as inconsequential elements for which no separate charges are made.”¹⁰ However, if a transaction is in substance the sale of tangible personal property, this exemption will not apply.

In determining whether a particular transfer of tangible personal property is an inconsequential element of a service transaction, the main consideration is the purpose of the customer.¹¹ If a customer is primarily interested in acquiring the tangible personal property, the sale is subject to sales and use tax. On the other hand, if a customer primarily wishes to purchase the skilled services of the service provider because the customer cannot perform such services for himself due to the lack of equipment, time, or skill, the sale or transfer of tangible personal property by the service provider is incidental to and but a means of providing the services that the customer wants, and the exception generally will apply.

The sale of printed or copied material delivered in a tangible medium is a sale of tangible personal property and thus subject to sales and use tax.¹² If a client pays Taxpayer for a canned product such as previously amassed and organized data (i.e., a comprehensive housing and subdivision analysis report three times a year), the client is not paying for the

¹ O.C.G.A. §§ 48-8-1, 48-8-2(31)(A), and 48-8-30(a).

² O.C.G.A. § 48-8-2(31).

³ O.C.G.A. § 48-8-2(33).

⁴ O.C.G.A. § 48-8-2(37).

⁵ See, e.g., Ga. Comp. R. & Regs. r. 560-12-2-.111 (providing that computer software delivered electronically is not a sale of tangible personal property and therefore is not subject to sales or use tax).

⁶ Ga. Comp. R. & Regs. r. 560-12-2-.111(4).

⁷ O.C.G.A. §§ 48-8-2(34).

⁸ O.C.G.A. § 48-8-30(b)(1).

⁹ O.C.G.A. § 48-8-35.

¹⁰ O.C.G.A. § 48-8-3(22).

¹¹ See *Craig-Tourial Leather Co. Inc. v. Reynolds*, 87 Ga. App. 360, 365 (1952).

¹² See generally Ga. Comp. R. & Regs. 560-12-2-.75. The sale of printing, including custom printing, is the sale of tangible personal property and is subject to tax on the total invoice charge made on the transaction.

professional skill and labor of Taxpayer but is purchasing a copy of a work that Taxpayer has already prepared.¹³ Like a book or movie sold in a tangible form, the sale of the Basic Reports is a taxable transaction, despite being the result of significant labor and skill. In this case, one lump sum is charged for the Basic Reports as well as web access and customer services. The Basic Reports are a predominant item in the transaction. Since the Basic Reports are taxable, the entire transaction is subject to tax.

Sales and use tax applies to transactions involving tangible personal property. Accordingly, the Department does not consider information or material delivered electronically to be a sale of tangible personal property when the client does not receive tangible personal property or the right to tangible personal property as part of the sale. As such, the sale of Basic Reports delivered solely in an electronic format (with no right to tangible personal property) is not subject to the tax. Likewise, in the event that Taxpayer separately charges for access to an online database where a client does not receive tangible personal property or the rights to tangible personal property as part of the sale, such online services are not subject to Georgia sales and use tax.

Taxpayer charges for Custom Studies, which are not canned products made for general distribution but rather are products and services customized to one client's specifications. While the Department considers charges for compiling and delivering records to be a retail sale of tangible personal property, appraisal and research services are typically considered professional services.

Clients who order Custom Studies primarily wish to purchase Taxpayer's market research skill and labor. In these transactions, Taxpayer is responding to the exact needs of the client. Because the client cannot perform such services for himself due to the lack of equipment, time, or skill, the delivery of a Custom Report by the service provider is incidental to the individualized professional service. Thus, the transfer of custom professional reports does not render taxable the charges for the professional service of creating the reports. Any paper, compact disc, or other tangible medium used to convey the report to a client is deemed to be an inconsequential, incidental element of the sale of the custom market research services.

Letter Rulings

The Department issues letter rulings to a person in response to such person's written inquiry about the tax effects of his or her acts or transactions. These rulings are written determinations based on applying the tax statutes, regulations, or other legal authority to such person's specific set of facts. Each ruling has no precedential value except to the person to whom the ruling is issued and then only for the specific transaction addressed in the ruling. To the extent that the transactions addressed in a letter ruling are carried out substantially as provided in the ruling, a taxpayer may rely on a ruling issued to that taxpayer unless and until the ruling is invalidated.

A letter ruling may become invalid by operation of law through a change in statute or regulation or by an order of a court or tribunal with jurisdiction over the Department. Also, a letter ruling may become invalid due to an Attorney General opinion or change to the Department's policies.¹⁴

Rulings

1. Taxpayer's charges for Basic Reports are subject to sales tax when such reports are delivered to a Georgia clients in a tangible format, such as a paper copy or a computer disc. For reports in disk or hard-copy format that Taxpayer sends to Georgia clients, Taxpayer must collect Georgia sales and use tax on the sales price of the lump sum charged to the client, even if the package includes incidental nontaxable products. Sales of Basic Reports delivered

¹³ See generally Ga. Comp. R. & Regs. 560-12-2-.111. Canned software is designed, prepared, or held for general distribution or repeated use. Canned software includes programs developed in-house and subsequently offered for repeated sale, lease, license, or use. Despite labor and skill in developing this product, canned software delivered in a tangible format is tangible personal property. On the contrary, custom software is designed and developed by the author to the specifications of a specific purchaser, and the purchase of custom software is considered a service.

¹⁴ O.C.G.A. § 48-2-15.2; Ga. Comp. R. & Regs. r. 560-1-1-.10.

solely in an electronic medium, such as an emailed PDF, are not subject to sales tax because there is no transfer of tangible personal property or the right to such property.

2. Charges made for online services as described by Taxpayer and for accessing records stored in an online database are not subject to the tax because there is no transfer of tangible personal property. However, if these charges are bundled with the retail sale of tangible personal property, the entire lump sum charge is generally taxable.
3. Custom Studies involve research and analysis done to the specification of a single client. Thus, charges for custom studies are charges either (a) for services not specifically enumerated as taxable or (b) for services that involve sales of tangible personal property as inconsequential elements for which no separate charges are made. Taxpayer is not required to collect Georgia sales and use tax on such charges, regardless of whether the custom report is delivered to the client electronically or in a tangible format. If Taxpayer itemizes charges for custom services and tangible (e.g., compact disc, paper) custom reports, Taxpayer must collect tax only on the charge made for the tangible report and its delivery.
4. It is incumbent on the Taxpayer to keep apprised of Georgia law or to request guidance in the event that Taxpayer's transactions vary from those described in the letter. This ruling will remain valid until it is deemed invalid by the Department or by operation of law.

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.