

Georgia Letter Ruling Number: LR SUT-2017-16  
Topic: Exemption Documentation  
Date Issued: November 30, 2017

This letter is in response to your letter ruling request dated September 22, 2016 regarding the application of Georgia sales and use tax to certain sales made by [Redacted] (“Taxpayer”).

### **Facts as Presented by Taxpayer**

Taxpayer is a producer of truck bodies that are built and installed on the customer’s chassis. Taxpayer maintains parts and service centers throughout the country that provide service and repairs for all truck bodies including truck bodies produced by competitors.

Taxpayer has a customer, [Redacted] (“Customer”), who is not registered to collect sales and use tax in Georgia. Customer coordinates repairs for truck body owners (“Owner(s)”). When a repair is needed, the Owner will contact Customer who will then coordinate the repair with Taxpayer. When the repair is complete, Taxpayer will invoice Customer for repair labor and parts. Customer then invoices the Owner. Customer coordinates truck body repairs and does not own, touch, or use the truck being repaired.

### **Issue**

Can Taxpayer, by accepting a resale certificate from Customer or by accepting an Owner’s exemption certificate from Customer, establish that Taxpayer is not required to collect from Customer Georgia sales and use tax on the above repair transactions?

### **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.<sup>1</sup> “Retail sale” means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent. Sales for resale must be made in strict compliance with the Department’s rules and regulations. Any dealer making a sale for resale which is not in strict compliance with the Department’s rules and regulations will be liable for and must pay the tax.<sup>2</sup>

All gross sales of a retailer are subject to sales and use tax until the contrary is established. The burden of proving that a sale is not a sale at retail is upon the seller unless the seller, in good faith, accepts from the purchaser a certificate of exemption stating that the property is purchased for resale or is otherwise tax exempt.<sup>3</sup>

A certificate is taken in good faith when a seller obtains from the purchaser a certificate:

- That is fully completed, including, but not limited to, the name, address, sales tax number, and signature of the taxpayer when required;
- In a form appropriate for the type of exemption claimed;
- Claiming an exemption statutorily available on the date of the transaction in the jurisdiction where the transaction is sourced;
- Claiming an exemption that could be applicable to the item being purchased; and
- Claiming an exemption that is reasonable for the purchaser’s type of business.<sup>4</sup>

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<sup>1</sup> O.C.G.A. §§ 48-3-1 and 48-8-30.

<sup>2</sup> O.C.G.A. § 48-8-2(31).

<sup>3</sup> O.C.G.A. § 48-8-38(a).

<sup>4</sup> O.C.G.A. § 48-8-38(b).

A certificate is taken in good faith and relieves the seller from the burden of proof on sales made for resale when the seller acquires a properly completed certificate from the purchaser and the purchaser:

- Is engaged in the business of selling tangible personal property;
- Has a valid sales tax registration number at the time of purchase and has listed his or her sales tax number on the certificate; and
- The seller has no reason to believe that the purchaser does not intend to resell it in his or her regular course of business.<sup>5</sup>

An exemption certificate must include information as determined by the commissioner and must be signed by the purchaser if it is a paper exemption certificate. A seller must obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurred.<sup>6</sup> Dealers must maintain records to support all purchases and sales for a period of no less than three years.<sup>7</sup>

As the seller, Taxpayer bears the burden of proving that a sale is a tax-free sale for resale or an exempt sale unless Taxpayer takes from the purchaser a properly completed certificate pursuant to Georgia's good faith standard. Based on the facts provided, Taxpayer could not accept a resale certificate from Customer in good faith because Customer is not engaged in the business of selling repairs or repair parts and because Customer does not have a valid Georgia sales tax registration number to list on the sales tax number on the certificate.<sup>8</sup>

Further, Taxpayer transacts business with Customer, not with Owners. Since a seller can only accept in good faith properly completed exemption certificates *from the purchaser* under certain circumstances, Taxpayer could not, in good faith, accept from Customer an exemption certificate which supports a third party's exemption.

### **Ruling**

Based on the facts provided, Taxpayer cannot, in good faith, accept a resale certificate from Customer because Customer cannot fully complete the certificate and does not appear to be engaged in the business of making taxable sales. Moreover, Taxpayer cannot, in good faith, accept an exemption certificate from Customer, the purchaser, if the exemption certificate asserts an Owner's exemption because Customer, not Owner, is the purchaser. Since Taxpayer cannot acquire such certificates in good faith, Taxpayer cannot use these documents to establish that Taxpayer is not required to collect sales and use tax from 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. The facts herein are those presented by the taxpayer, and the Department accepts them as true for this ruling. If the facts presented herein change, are not true, are different, or material facts have been omitted, the conclusions reached in this ruling may change. 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.

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<sup>5</sup> O.C.G.A. § 48-8-38(c).

<sup>6</sup> O.C.G.A. § 48-8-38(d) and (e).

<sup>7</sup> O.C.G.A. § 48-8-52.

<sup>8</sup> To verify the validity of the Georgia sales tax number on a certificate, a seller must use the Department's Sales Tax Verification Tool, by selecting the "Sales Tax IDs" search option on the Georgia Tax Center (<https://gtc.dor.ga.gov>). In addition, the seller must keep a copy of the verification with the exemption document.