

Georgia Letter Ruling number: LR SUT-2018-04
Topic: Admissions, Fine Arts
Dated: May 4, 2018

This letter is in response to your request for guidance on the application of Georgia sales and use tax to sales of tickets for admission to certain theatrical productions.

Facts Presented by Taxpayer

[Redacted] (“Taxpayer”) is a for-profit organization that has been presenting and producing touring productions in Georgia since 1981.

Performances are conducted within a venue, which is owned and operated by a Georgia nonprofit corporation that is exempt from federal income taxation under I.R.C. § 501(c)(3). Tickets for theatrical productions conducted within the venue bear a charge for admission and do not reflect any amount of sales tax.¹

The venue is a Georgia nonprofit corporation, which is exempt from federal income taxation under I.R.C. § 501(c)(3). It also operates educational programs.

Issues

1. Are sales of tickets for admission to fine arts performances conducted within the Co-Presenter’s venue, which is owned and operated by a Georgia nonprofit corporation that is exempt from federal income taxation under I.R.C. § 501(c)(3), exempt from Georgia sales and use tax under O.C.G.A. § 48-8-3(100) when the fine arts performances are co-presented by Co-Presenter and Taxpayer, a for-profit organization?
2. Should the exemptions under section 48-8-3(100) and 48-8-3(99) be read in conjunction with each other such that each is dependent upon the other, or does each paragraph stand on its own as an independent exemption that should not be read in conjunction with other exemptions?

Analysis

When enacting Article 1 (state sales and use tax) of Chapter 8 of Title 48, the Georgia General Assembly expressed its intent to “exercise its full and complete power to tax the retail purchase, retail sale, rental, storage, use, and consumption of tangible personal property and the services described in this article except to the extent prohibited by the Constitutions of the United States and of this state and except to the extent of specific exemptions provided in this article.”² Georgia sales and use tax is levied and imposed (subject to certain specific exemptions) on the retail purchase, retail sale, storage, use, or consumption of tangible personal property, certain enumerated services, and utilities.³ “Retail sale” means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent. The term “retail sale” includes sales of tickets, fees, or charges made for admission to places of amusement, sports, or entertainment including, but not limited to, any place at which any exhibition, display, amusement, or entertainment is offered to the public or any other place where an admission fee is charged.⁴

From April 25, 2017 until July 1, 2020, sales of tickets, fees, or charges for admission to certain fine arts performances or exhibitions are exempt from sales and use tax.⁵ To satisfy the requirements of this exemption, the fine arts performance or exhibition must be performed or exhibited by, or within a facility owned by, a tax exempt 501(c)(3) organization or a museum of cultural significance, if such organization’s or museum’s primary mission is to advance the arts in this state and to provide arts, educational, and culturally significant programming and exhibits for the benefit and enrichment of the citizens of this state. As used in this exemption, “fine arts” means music performed by a

¹ Taxpayer included a copy of a sample ticket.

² O.C.G.A. § 48-8-1.

³ O.C.G.A. §§ 48-8-1, 48-8-2(31)(A), and 48-8-30(a).

⁴ O.C.G.A. § 48-8-2(31).

⁵ O.C.G.A. § 48-8-3(100).

symphony orchestra, poetry, photography, ballet, dance, opera, theater, dramatic arts, painting, sculpture, ceramics, drawing, watercolor, graphics, printmaking, and architecture.⁶

In this case, Taxpayer does not dispute that sales of tickets to the Performance are retail sales since the tickets are for admission to a place where entertainment is offered. To determine whether the sales of tickets at issue fall within the above exemption, the Department must consider the nature of the performance as well as the performance venue's status and mission. The performances referenced above are both qualifying "fine arts" performances as either theater or dramatic arts. The performances are to be conducted within a Georgia facility which is both owned and operated by [Redacted], an organization exempt from taxation under I.R.C. § 501(c)(3). Thus, the performances are conducted/performed or exhibited within a facility owned by a tax exempt 501(c)(3) organization. Finally, the venue qualifies as an organization whose primary mission is to advance the arts⁷ in Georgia and to provide arts, educational, and culturally significant programming and exhibits for the benefit and enrichment of the citizens of Georgia.

Rulings

1. Because the performances referenced above are fine arts performances that are performed in a venue that is owned and operated by an exempt 501(c)(3) organization with a primary mission that falls within the requirements set forth in O.C.G.A. § 48-8-3(100), sales of tickets for admission to fine arts performances are exempt from sales and use tax.
2. The exemptions in O.C.G.A. § 48-8-3(99) and (100) are separate exemptions and are not dependent on each other.

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.

⁶ *Id.*; Georgia Department of Revenue Policy Bulletin SUT-2017-07.

⁷ It should be noted that while the exemption uses the language "fine arts" and defines that term, it uses the broader term "the arts" in the context of defining the organization's mission, but does not define "the arts". It hosts a wide range of performances. Such offerings fall under the broad umbrella of "the arts" and can be deemed arts, educational, and culturally significant programming and exhibits for the benefit and enrichment of the citizens of Georgia. In addition, the venue provides educational programs to Georgia citizens.