

This letter is in response to your letter ruling request regarding the application of Georgia sales and use tax to advertising materials purchased and used in this state.

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

[Redacted] (“Taxpayer”) is a dealer of off-road parts for certain vehicles. Taxpayer has retail locations in Georgia. On occasion, Taxpayer purchases and distributes printed advertising materials (“Advertisements”) to inform customers of new products, sale items, promotional events, etc. Advertisements are distributed to customers at Taxpayer’s own retail locations as well as at third party retailers’ locations, such as car wash facilities. Advertisements are also distributed by mail to individual customer addresses. In all cases, Advertisements are purchased by Taxpayer and provided free of charge to the recipient. Advertisements are shipped by United States Postal Service or common carrier directly from the printer to the receiving location based on an address list provided by Taxpayer. Currently, Taxpayer is purchasing Advertisements from an out of state printing company that is not collecting tax and claims to have no nexus in Georgia. Taxpayer is seeking guidance as to the correct application of tax on its purchases and use of Advertisements in this state.

### **Issues**

1. How is tax applied to Taxpayer’s purchases of Advertisements delivered to individual customer addresses when the printer utilizes a mailing list provided by Taxpayer?
2. How is tax applied to Taxpayer’s purchases of Advertisements delivered to Taxpayer’s own retail stores?
3. How is tax applied to Taxpayer’s purchases of Advertisements delivered to unrelated retailers?
4. How is tax applied to Taxpayer’s purchases of Advertisements having a bar code (commonly known as a “QR Code”) in lieu of written product price and description?
5. Are posters and banners that show/promote Taxpayer’s products considered Advertisements?
6. Would the tax treatment change if Taxpayer purchased its Advertisements from an in-state printing company (i.e., any printing company that is obligated to collect Georgia sales and use tax)?

### **Analysis**

#### *Sales and Use Tax*

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 a sale of tangible personal property or taxable services to any person other than for resale.<sup>2</sup> “Use” means the exercise of any right or power over tangible personal property incident to the ownership of the property.<sup>3</sup>

Georgia imposes a tax on the retail purchase of tangible personal property as well as on the use of tangible personal property in this state.<sup>4</sup> Use tax is a complement to sales tax and is due when sales tax was not fully collected on a retail purchase of taxable personal property that is used, stored, distributed, or consumed in Georgia. The tax is imposed regardless of whether the sale of the property occurs in Georgia or outside of Georgia.<sup>5</sup> However, use tax is not meant to be a duplication of the payment of tax and, therefore, is subject to credit for like taxes previously paid.<sup>6</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. § 48-8-2(40).

<sup>4</sup> O.C.G.A. § 48-8-30.

<sup>5</sup> O.C.G.A. § 48-8-30(c) and (c.1)(1). Subsection (c) addresses use, consumption, distribution, or storage within this state and, unlike subsection (c.1), imposes a tax liability on the Georgia user without imposing a corollary collection or remittance obligation on an out-of-state seller.

<sup>6</sup> O.C.G.A. § 48-8-30(c)(3) and (c.1)(2).

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.<sup>7</sup> The tax applies to retail sales and uses of tangible personal property commonly known as commercial advertising, including but not limited to catalogs, calendars, handbills, novelties, etc.<sup>8</sup> The tax applies to purchases and uses of tangible personal property to be given away by persons in advertising for the business or products.<sup>9</sup>

#### *Amount Subject to Tax*

Sales and use tax is calculated on the sales price of the property purchased (i.e., the purchase price).<sup>10</sup> This amount is the total amount of consideration for which the property is sold without any deduction for delivery charges.<sup>11</sup> Delivery charges are part of the taxable sales price regardless of whether the charge is optional (i.e., not required to complete the underlying sale of the tangible personal property) or separately stated.<sup>12</sup>

The term “delivery charges” means charges by the seller for preparation and delivery to a location designated by the purchaser. These charges include charges for shipping, handling, or freight. “Delivery charges” do not include postage charges for the delivery of direct mail (i.e., printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the costs of the items are not billed directly to the recipients) when the postage charge is passed on dollar-for-dollar without being marked up to the purchaser of the direct mail and is separately stated on an invoice or other similar billing document given to the purchaser.<sup>13</sup> In other words, these specified postage charges for direct mail delivery are not included in the sales price.

#### *Sourcing Rules*

Generally, sales of tangible personal property are sourced to the location where the purchaser, or the purchaser’s donee, receives or takes delivery of the property.<sup>14</sup> Specifically, sales of advertising and promotional direct mail are sourced to the jurisdiction to which the mail is to be delivered.<sup>15</sup>

#### *Taxpayer’s Advertisements*

Generally, the retail sale of printed materials – including printed materials used as advertising – is the sale of tangible personal property and subject to the tax. Such sales are subject to sales and use tax regardless of the size or content of the printed materials, unless a specific exemption applies. Additionally, such sales are subject to sales and use tax regardless of whether Taxpayer directs materials to be shipped to Georgia residents, its own Georgia stores, or other Georgia business locations. Accordingly, Taxpayer is liable for tax on its purchase and use of Advertisements, and, typically, the tax rate is determined by the jurisdiction where the materials are delivered.

If the appropriate amount of tax is not paid by Taxpayer to the seller at the time of purchase, Taxpayer must accrue and remit use tax on the sales price of the purchase. Delivery charges associated with the purchase of Advertisements are part of the sales price and subject to the tax. Postage charges associated with the purchase of direct mail are not subject to tax when the printer passes on the postage charge dollar-for-dollar without being marked up to Taxpayer and the charge is separately stated on the invoice or billing document issued to Taxpayer.

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<sup>7</sup> Ga. Comp. R. & Regs. r. 560-12-2-.75(b).

<sup>8</sup> Ga. Comp. R. & Regs. r. 560-12-2-.02(7). But see O.C.G.A. § 48-8-3(61) (printed advertising inserts or advertising supplements distributed in this state in or as part of any newspaper for resale are exempt from sales and use tax).

<sup>9</sup> Ga. Comp. R. & Regs. r. 560-12-2-.02(8).

<sup>10</sup> O.C.G.A. § 48-8-2(30). The terms “sales price” and “purchase price” have the same meaning.

<sup>11</sup> O.C.G.A. § 48-8-2(34).

<sup>12</sup> O.C.G.A. § 48-8-2(34)(A); Ga. Comp. R. & Regs. r. 560-12-2-.45.

<sup>13</sup> O.C.G.A. § 48-8-2(10) and (12); Ga. Comp. R. & Regs. r. 560-12-2-.45(1).

<sup>14</sup> O.C.G.A. § 48-8-77(b)(1).

<sup>15</sup> O.C.G.A. § 48-8-77(d)(1)(C).

### **Rulings**

1. Taxpayer is liable for the tax on Taxpayer's purchase and use of Advertisements delivered to individual customers at Georgia addresses provided by Taxpayer. The sales price, which includes any associated delivery charges, is subject to tax at the rate of the jurisdiction where the materials are delivered (the customer's address). If Georgia sales tax is not fully collected by the seller (printing company), Taxpayer must remit use tax to the Department.
2. Taxpayer is liable for the tax on Taxpayer's purchase and use of Advertisements delivered to Taxpayer's own Georgia retail stores. The sales price, which includes any associated delivery charges, is subject to tax at the rate of the jurisdiction where the materials are delivered (the store). If Georgia sales tax is not fully collected by the seller (printing company), Taxpayer must remit use tax to the Department.
3. Taxpayer is liable for the tax on Taxpayer's purchase and use of Advertisements delivered directly to third party retailer locations in Georgia. The sales price, which includes any associated delivery charges, is subject to tax at the rate of the jurisdiction where the materials are delivered (the retailer location). If Georgia sales tax is not fully collected by the seller (printing company), Taxpayer must remit use tax to the Department.
4. The retail sale and use of printed materials is subject to the tax, unless a specific exemption applies to the transaction. Taxpayer's purchase and use of printed materials is subject to the tax regardless of whether the materials include a product price and/or description. Accordingly, the tax applies to the retail sale of Advertisements having a QR Code.
5. The retail sale and use of printed materials is subject to the tax, unless a specific exemption applies to the transaction. Taxpayer's purchase and use of printed materials is subject to the tax regardless of whether the materials are calendars, cards, or flyers. Thus, the tax applies to the retail sale of Advertisements including posters and banners.
6. Because sales and use tax is levied and imposed on the retail purchase, retail sale, rental, storage, use, or consumption of tangible personal property, Taxpayer's liability, as the purchaser, for the tax in the above-described transactions remains the same regardless of whether the seller (printing company) is located in Georgia or out of state. If a seller collects the appropriate amount of tax from Taxpayer on a retail transaction, Taxpayer owes no additional tax with respect to that transaction.

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.