

Georgia Letter Ruling Number: LR SUT-2018-14

Topic: Fine Arts

Date Issued: December 10, 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 performances.

Facts Presented by Taxpayer

[Redacted] (“Taxpayer”) is a political subdivision of the State of Georgia and a public charity pursuant to I.R.C. § 509(a)(1). Taxpayer is a body corporate and politic created by the Georgia General Assembly for the purpose of acquiring, constructing, and maintaining facilities for the general purpose of promoting cultural growth, education, and welfare. Taxpayer’s mission is to be the Southeast’s premier destination for mid-sized conventions, performing arts, and entertainment.

To further this mission, Taxpayer owns and operates the [Redacted] (the “Theater”), a Type I, I.R.C. § 509(a)(3)(B) public charity. The mission of the Theater is to create diverse cultural, educational and entertainment experiences that will promote accessibility to the arts; foster community partnerships that unify the region in support of the arts; fulfill the highest expectations of patrons, performers and employees; stimulate quality economic growth; and inspire individuals to continually increase their knowledge, patronage and financial support of the arts. As such, Taxpayer leases the Theater to third parties for the presentation of performances.

[Redacted] (“Performer”) is a not-for-profit, tax-exempt corporation pursuant to I.R.C. § 501(c)(3). Performer’s mission is to maintain a world-class school that trains young people in classical ballet and the allied arts; provide arts education, community outreach programs, and positive role models for all; and present a ballet company of African American and other racially diverse artists who perform the most demanding repertory at the highest level of quality. Taxpayer entered an agreement with Performer to perform a ballet production in the Theater from [Redacted] through [Redacted] (the “Performance”).

Tickets for admission to the Performance were sold to the general public. Ticket sales were handled through the Theater’s box office. Tickets for the Performance bear a charge for admission and do not reflect any amount of sales tax. As such, sales tax is not being collected from customers.

Issue

Are sales of tickets for admission to the Performance subject to Georgia sales and use tax?

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 “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.²

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.³ 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” includes ballet, dance, and music performed by a symphony orchestra.⁴

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. § 48-8-3(100).

⁴ *Id.*; Georgia Department of Revenue Policy Bulletin SUT-2017-07.

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 Performer's status and mission. The Performance is a ballet, which Georgia law expressly includes in the definition of "fine arts." Thus, the Performance is a qualifying fine arts performance. Performer is an organization exempt from taxation under I.R.C. § 501(c)(3). Further, Performer's mission is to provide performing arts education and ballet training as well as to bring audiences innovative, multi-cultural artistic expression. Accordingly, Performer's status and mission satisfy the remaining requirements set forth in the exemption.

Ruling

Because the Performance is a fine arts performance that is performed by a tax 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 the Performance at Taxpayer's Theater are exempt from sales and use tax.

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.