Georgia Letter Ruling: LR SUT-2019-05
Topic: Contractors; Sign Construction, Installation
Date Issued: July 16, 2019

This letter is in response to your request for guidance on the proper application of Georgia sales and use tax to sales of signs and sign installation.

Facts as Presented by Taxpayer

Taxpayer is in the business of designing, producing, installing, and servicing custom signs. When providing a sign, Taxpayer's representative surveys the installation site and determines what type of sign is needed. Taxpayer then has its artists design a proposed sign to meet the customer's requirements. Once the customer accepts the proposal, Taxpayer produces the sign at facilities located outside of Georgia. Materials used in the production of signs include, but are not limited to, plastic, aluminum, steel, lamps, ballasts, transformers, neon, paint, bolts, screws, and vinyl. Taxpayer sells and installs different types of signage: towers, pylons, wall signs, interior signs, menu board, directional signs, and neon tubing.

Methods of installation vary depending on the type of sign. All signs are produced by Taxpayer and installed by a sub-contractor. No signs are sold to any other contractor, fabricator, wholesaler, or retailer. Taxpayer does not keep an inventory of completed product; each sign is custom designed and produced.

When Taxpayer contracts with a customer to provide signs, Taxpayer charges the customer for time and materials including the sign itself, installation, freight, and if applicable: survey, engineering stamp fee, and permit fees. The customer is billed by Taxpayer and makes no separate payment to the installer.

Taxpayer also performs repair and maintenance services to signs, which may include repairs to broken or damaged parts, the replacement of burned out bulbs, neon repair, ballasts, or transformer replacements, cleaning/washing, or painting. Taxpayer provides the labor and parts necessary to repair and maintain the sign and bills the customer accordingly.

Taxpayer makes, installs, and services different types of signs with varying installation methods. The most common types of signs and methods of installation are as follows:

(1) Towers are standalone structures that are not attached to buildings. Towers are bolted into foundations and may be removed without being damaged or damaging the real estate into which they are bolted.
(2) Advertising pylons are free standing structures that may be bolted into a foundation or embedded or cemented into the ground. In the latter instance, the pylons may or may not be removed from the real estate without being damaged.
(3) Wall signs are business signs that are attached parallel to the outside wall of a building. These signs are mounted by means of screws, bolts, and removal would result in varying degrees of damage to the building fascia. Additionally, individual letters may be mounted on a raceway that is used to reduce the damage to building fascia, but may result in some damage.
(4) Interior sign can be mounted with bolts and screws or with adhesive tape. Damage might or might not occur to the wall upon removal of the sign.
(5) Menu boards associated with drive through windows and oriented toward drive through window traffic. The usual installation method is to install the sign in concrete base, or anchor bolt method.
(6) Directional signs giving directions, instruction, or facility information such as parking loading, entrance or exit, and usually are not more than three feet tall. Typically, these signs are installed into a concrete base.
(7) Neon border tubing used to accent and illuminate building fascia that is attached by means of bolts and screws around the perimeter of a building.

At times, one aspect of making the signs entails applying vinyl lettering to the faces of the signs. This step generally takes place at Taxpayer's plant prior to the sign being shipped for install.

Issues

1. For sales and use tax purposes, how should Taxpayer distinguish between the sale of tangible personal property and the performance of a real property contract?

2. How does sales and use tax apply to the sale and repair of a freestanding sign?

3. How does sales and use tax apply to the sale and repair of a sign incorporated into real property?

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 a sale of tangible personal property for any purpose other than for resale.[2] "Sale" means any transfer of title or possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner, by any means of any kind of tangible personal property for a consideration.[3] "Tangible personal property" is personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses.[4]

Georgia also imposes a tax on the first instance of use, consumption, distribution, or storage in Georgia of tangible personal property purchased at retail (or fabricated) outside Georgia.[5] Each person who contracts to furnish tangible personal property and to perform services under a contract in this state is deemed a contractor. Contractors are end users and consumers of the tangible personal property they buy, use, or consume in the performance of contracts, and such property is not considered to be resold by the contractor. Moreover, tangible personal property incorporated into real property loses its identity as tangible personal property and is statutorily deemed to be used up and consumed by the installer. As end users and consumers, contractors are liable for the tax on the purchase price of all tangible personal property used and consumed by them in the performance of a contract.[6]

Distinguishing Between Real Property and Tangible Personal Property[7]

Whether or not tangible personal property is incorporated into and becomes part of real property indicates if a particular transaction is a retail sale or is a use by a contractor. In certain instances, materials or items that are attached to real property may retain their identity as tangible personal property after installation. If items remain freestanding after installation, the items will be classified as tangible personal property after being installed on land or in buildings or structures attached to land. Items that remain tangible personal property include those held in place only by force of gravity and not otherwise constrained from moving. For example, plugging an item, such as a washing machine or refrigerator ice maker, into an electrical outlet or water line will not cause the item to lose its identity as tangible personal property. In the same vein, attaching an item of tangible personal property to real property only for the purpose of preventing theft does not cause the item to lose its identity as tangible personal property.[8]

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[1] O.C.G.A. §§ 48-8-1, 48-8-2(31)(A), and 48-8-30.
[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] O.C.G.A. §§ 48-8-1 and 48-8-30(c).
[6] O.C.G.A. § 48-8-63. Ga. Comp. R. & Regs. r. 560-12-2-.26(1). See *J. W. Meadors & Co. v. State*, 89 Ga. App. 583 (1954) (a contractor when fabricating personalty into realty neither sells, resells, nor can he be considered a retailer); *Troup Roofing Co. v. Dealers Supply Co.*, 91 Ga. App. 880 (1955) (where building materials are purchased by contractor to be used in construction, improvement or repair of house of party who engages contractor, such materials are not bought for purposes of resale so as to be exempt from sales tax).
[7] This guidance only applies to the application of sales and use tax and is not guidance for any other tax.
[8] For sales and use tax purposes, tangible personal usually includes, but is not limited to, the freestanding security equipment such as computers and monitors; freestanding cabinets, cupboards, counters, restaurant booths, bars, and back bar units; and pictures screwed or bolted to the wall in a hotel.

In contrast, real property means land and the buildings thereon and anything permanently attached to land or the buildings thereon.[9] Real property includes fixtures, which are tangible personal property that has been installed or attached to land or to any building thereon and that is intended to remain permanently in its place.[10] The general rule of the common law is that anything intended to remain permanently in its place, though not actually attached to the land, such as a rail fence, is a part of the realty. Whether an article of tangible personal property has become part of real property is determined by looking at various factors, including the degree of attachment, removability of the item, and intent of the parties. An objective consideration for whether tangible property is a fixture is whether its removal would cause significant damage to such property or to the real property to which it is attached.[11]

For example, real property typically includes, but is not limited to, buildings; bridges; exterior shells of a structure; security systems that include wiring, cabling, or control equipment in walls; poles and towers for electric power or telecommunications services; building utility systems for heating, cooling, and plumbing; built-in appliances, cupboards, and counters; and theater or auditorium seating. For sales and use tax purposes, if an item is incorporated into a building or structure that is leased rather than owned, that detail does not necessarily affect the determination as to whether the item is real or personal property after installation.[12] As discussed above, for sales and use tax purposes, contractors are liable for the tax on the purchase price of all tangible personal property used and consumed by them in the performance of a contract.[13]

To distinguish between the sale of tangible personal property and the performance of a real property contract, Taxpayer should be guided by the definitions and examples above. Typically, a sign held in place only by the force of gravity remains tangible personal property after installation. A sign that is attached to real property and is intended to remain in place is deemed to be used in performance of a real property contract.

The term "sales price" is the amount subject to sales tax, and it is the total amount of consideration for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

(i) the seller's cost of the property sold;
(ii) the cost of materials used, labor, or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
(iii) charges by the seller for any services necessary to complete the sale; and
(iv) delivery charges;[14]

The term "sales price" does not include the following:

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[9] O.C.G.A. § 44-1-2(a). See also *Fayette County Bd. of Tax Assessors v. Ga. Utils. Co.*, 186 Ga. App. 723, 725 (1988) ("[R]eal property includes not only the land but all improvements thereon."); BLACK'S LAW DICTIONARY 1254 (8th ed. 2007) (defining "real property" as "[l]and and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land.").
[10] See O.C.G.A. §§ 44-1-6(a) and 48-8-3.2(a)(4) & (14).
[11] *Homac, Inc. v. Fort Wayne Mtg. Co.*, 577 F. Supp. 1065 (N.D. Ga. 1983); *Brown v. United States*, 512 F. Supp. 24, 25 (N.D. Ga. 1980). See *Consolidated Warehouse Co. v. Smith*, 55 Ga. App. 216 (1937) (platform-scale weighing 1500 pounds bolted to sills embedded in cement on three walls of brick and mortar under the warehouse floor was a permanent fixture and part of realty where scale was placed on and attached to a foundation under the floor of the warehouse constructed for this particular scale).
[12] See *State v. Dyson*, 89 Ga. App. 791 (1954) (rules pertaining to tenant's right to remove trade fixtures are not applicable to issues between the State and a purchaser).
[13] O.C.G.A. § 48-8-63. Ga. Comp. R. & Regs. r. 560-12-2-.26(1). See *J. W. Meadors & Co. v. State*, 89 Ga. App. 583 (1954) (a contractor when fabricating personalty into realty neither sells, resells, nor can he be considered a retailer); *Troup Roofing Co. v. Dealers Supply Co.*, 91 Ga. App. 880 (1955) (where building materials are purchased by contractor to be used in construction, improvement or repair of house of party who engages contractor, such materials are not bought for purposes of resale so as to be exempt from sales tax).
[14] O.C.G.A. § 48-8-2(34)(A).

(i) discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;
(ii) interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;
(iii) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser;
(iv) installation charges if they are separately stated on the invoice, billing, or similar document given to the purchaser;
(v) telecommunications nonrecurring charges if they are separately stated on the invoice, billing, or similar document; and
(vi) credit for any trade-in.[15]

The retail sale of signs, posters, and other advertising displays is subject to sales and use tax.[16] In general, sales are sourced to the location where the buyer takes delivery of the purchase. Sales of tangible personal property delivered to a buyer in this state are subject to Georgia sales tax regardless of any subsequent removal of the property from this state.[17] When Taxpayer sells a freestanding sign to a purchaser in Georgia, Taxpayer must collect and remit sales tax on the retail sale of the sign. Sales tax shall be collected based on Taxpayer's charges for the sign, including delivery charges and charges to cover any cost of materials or services required to complete the sale as it was made. Charges for installation labor associated with the sale of tangible personal property are not subject to tax when the charge is itemized on the customer's invoice.[18]

Calculating the Amount Subject to Sales and Use Tax – Sign Incorporated into Real Property
Repairs

Typically, repairs are comprised of repair labor and repair parts. Repair labor is a service that returns property to its original condition.[19] Charges made for labor to repair tangible personal property are exempt from tax when the charge is itemized on the customer's invoice or when the repairman is able to maintain books and records to support the portion of a single charge that is attributable to taxable items.[20] Charges made for the repair of real property are not subject to tax.[21]

Repair and replacement parts, materials, and supplies used or consumed by repairmen in repairing tangible personal property belonging to others are taxable either to the person performing the work or to the owner of the property being repaired.[22] If the repairman does not state separately, itemize, or segregate at a fixed or retail price the materials and supplies used in performing repairs, sales and use tax generally applies to the total charge for such materials and labor.[23] If the repairman does separate, itemize, and invoice at a retail selling price the parts, materials and supplies used, stating separately the amount for labor, sales and use tax will apply only to the retail selling price of the parts, materials, and supplies listed and itemized.[24] Like other items used or consumed by contractors, parts used to repair real property are taxable to the person performing the work.[25]

[15] O.C.G.A. § 48-8-2(34)(B).
[16] Ga. Comp. R. & Regs. 560-12-2-.82.
[17] O.C.G.A. § 48-8-77.
[18] O.C.G.A. § 48-8-2(34)(B)(iv).
[19] Ga. Comp. R. & Regs. r. 560-12-2-.78 and 560-12-2-.88(3).
[20] O.C.G.A. §§ 48-8-2(31)(G) and 48-8-3(23).
[21] O.C.G.A. § 48-8-30.
[22] Ga. Comp. R. & Regs. r. 560-12-2-.78(1).
[23] Ga. Comp. R. & Regs. r. 560-12-2-.78(1)(a).
[24] Ga. Comp. R. & Regs. r. 560-12-2-.78(1)(b).
[25] O.C.G.A. § 48-8-63(b); Ga. Comp. R. & Regs. r. 560-12-2-.26(1).

Rulings

1. A sign held in place only by the force of gravity is freely moving and as such remains tangible personal property after installation. A sign that is attached to real property to such a degree - screws, bolts, brackets, suspension chains/wire, concrete, etc. – that it is intended to remain permanently attached is deemed to be real property.

2. Freely moving signs sold at retail are sales of tangible personal property, and thus Taxpayer must collect tax on the sales price of the signs. Tax will be due at the rate in effect where the customer takes delivery of the sign. Installation labor charges associated with the sale of a freely moving sign are exempt from tax. Repair labor charges associated with the repair of a freestanding sign are exempt from tax. Parts used to repair freestanding signs are taxable to either Taxpayer or the owner of the sign repaired. Taxpayer may purchase freestanding signs and repair parts for freestanding signs exempt for resale using the Form ST-5 Certificate of Exemption. If Taxpayer pays permit fees, survey fees, engineering stamp fees, permit administration fees, or other similar charges, Taxpayer does not owe sales and use tax on such payments; however, if Taxpayer passes such charges on to Taxpayer's customer as necessary charges to complete a retail sales, the charges are part of the sales price of the sign (i.e., the charges are subject to sales tax).

3. A sign attached to a building or land to such a degree - screws, bolts, brackets, suspension chains/wire, concrete, etc. – that it is intended to remain permanently attached is considered real property. As the end user and consumer, Taxpayer is liable for tax on the purchase price of all materials used to provide, install or repair a sign incorporated into real property. Materials used by Taxpayer to provide, install, or repair a sign incorporated into real property may not be purchased exempt for resale. Charges made by Taxpayer for either the installation or repair of a sign incorporated into real property are not subject to sales and use tax. As mentioned in the previous conclusion, Taxpayer does not owe sales and use tax when Taxpayer pays permit fees, survey fees, engineering stamp fees, permit administration fees, or other similar charges. If Taxpayer passes such charges on to Taxpayer's customer in connection with a real property contract (i.e., in connection with the installation of a sign that is incorporated into real property), Taxpayer should not charge sales tax on these charges.

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.