

Georgia Letter Ruling: LR SUT-2019-06
Topic: Equipment Leasing
Date Issued: August 2, 2019

This letter is in response to your request for guidance dated September 7, 2018, regarding the application of Georgia sales and use tax to certain charges made by Taxpayer.

Facts as Presented by Taxpayer

Taxpayer is an equipment leasing company. Taxpayer leases various assets, including vehicles, trucks, and rail cars. Several of Taxpayer's contracts are true leases – the equipment remains the property of Taxpayer with the customer using the equipment for a specific period of time making monthly payments. At the end of the lease, the customer has the option to either return the equipment to Taxpayer, or to purchase the equipment for Fair Market Value.

On occasion, during the lease term equipment is destroyed in an accident. In these cases, the customer is charged for the remaining rent, casualty value, and other expenses and the title to the destroyed asset is transferred from Taxpayer to the customer. The contract between Taxpayer and the customer reads as follows -

10. **LOSS AND DAMAGE.** (a) Risk of Loss. During the entire Lease Term with respect to the Equipment covered by a Lease Schedule and until all of such Equipment is returned to Lessor, or if applicable, purchased by Lessee, in accordance with the subject Lease, Lessee shall bear the risk of the occurrence of a Casualty to Equipment and LESSEE SHALL NOT BE RELEASED FROM ITS OBLIGATIONS UNDER THE SUBJECT LEASE IF A CASUALTY OCCURS.

(b) Casualty Notice. Lessee shall provide prompt written notice to Lessor of any Casualty to any Equipment where the repairs or replacement costs are likely to exceed \$100,000.00. Each such notice must be provided together with any damage reports provided to any governmental authority, the insurer or Supplier, and any documents pertaining to the repair of such Casualty, including copies of work orders, and all invoices for related charges.

(c) Casualty Cure. In the event a Casualty occurs with respect to any Equipment

(1) if Lessor determines the Casualty does not constitute a Total Loss, then Lessee shall promptly repair the Casualty Equipment by utilizing Replacement Parts in accordance with Section 8(b) above or

(2) if Lessor determines the Casualty constitutes a Total Loss, on the Loss Payment Date, Lessee shall pay to Lessor:

(A) the Basic Rent (or Renewal Rent, if the Total Loss occurs during a Renewal Term) due on the Loss Payment Date, plus

(B) the Stipulated Loss Value of the Casualty Equipment as of the Loss Payment Date, plus

(C) all Other Payments then due. Upon full and indefeasible payment to Lessor of the sum described in clause (2) of the preceding sentence (x) Lessee's obligation to pay future Basic Rent (or Renewal Rent, as applicable) shall terminate solely with respect to the Casualty Equipment so paid for, but Lessee shall remain liable for, and pay, all Other Payments, if any, whenever arising connected with the Casualty Equipment and all Rent related to the remainder of the Equipment as and when due, and (y) Lessor, without further action, shall be deemed to have conveyed to Lessee all of Lessor's right, title and interest in the Casualty Equipment **AS IS, WHERE IS**, but subject to the requirements of any third party insurance carrier in order to settle an insurance claim.

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Taxpayer now asks the Department's opinion as to whether, based on the contractual language provided above, a casualty loss event constitutes a sale and whether the casualty loss event is subject to sales and use tax.

Issues

- 1.) Based on the contractual language provided, does the casualty loss event constitute a sale?
- 2.) Is this loss event subject to sales and use tax?
- 3.) Is Taxpayer obligated to charge tax on proceeds received from the customer as part of a loss event?

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.² For purposes of this tax, "retail sale" means a sale of tangible personal property for any purpose other than for resale.³

"Sale" mean 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.⁴ In the event of a retail sale, a dealer must add the amount of the tax to the sales price (unless he or she absorbs the tax in compliance with O.C.G.A. § 48-8-36), and any dealer who neglect, fails, or refuses to collect the tax shall be liable for and shall pay the tax himself.⁵

The "sales price" is the amount subject to tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise.⁶ All gross sales of a dealer are subject to the tax imposed by this article until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the dealer unless the dealer, in good faith, accepts from the purchaser a certificate of exemption stating that the property is purchased for resale or is otherwise tax exempt.⁷

Based on the provisions in paragraph (c) quoted above, in the case of a Total Loss, Lessee is required to pay certain amounts to Lessor. In exchange, Lessee obtains title to the Casualty Equipment and Lessee is relieved of its future obligations to pay Rent. Such a transaction constitutes a "sale" and a "retail sale", both as defined in O.C.G.A. § 48-8-2.

Rulings

- 1.) Taxpayer's contract stipulates that in the event of a total loss, the lessee must pay to the lessor the total amount due under the contract and in exchange for such payment, the lessor will convey all rights, title, and interest in the property to the lessee. The statutory definition of the term "sale" can be summarized as the exchange of

¹ Citizens Commercial Banking Asset Finance Master Lease Agreement.

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

³ O.C.G.A. § 48-8-2(31).

⁴ O.C.G.A. § 48-8-2(33).

⁵ O.C.G.A. § 48-8-35.

⁶ O.C.G.A. § 48-8-2(34).

⁷ O.C.G.A. § 48-8-38(a).

tangible personal property for a consideration. Thus, a sale occurs when Taxpayer conveys title to property to the lessee in exchange for payments due under the contract. Taxpayer's loss event is a sale.

- 2.) Georgia taxes the retail sales price of tangible personal property. All sales are retail unless the seller accepts in good faith a certificate of exemption from the purchaser. Thus, any retail sale of tangible property made pursuant to the contract will be subject to tax unless Taxpayer accepts a certificate of exemption from the buyer meeting the good faith standard.
- 3.) Dealers must add tax to the sales price charged to the customer (unless the dealer absorbs the tax in compliance with O.C.G.A. § 48-8-36). As the seller in the above described retail sale, Taxpayer is obligated to charge tax (or absorb the tax) on the sales price (i.e., proceeds received from the customer as part of a loss event).

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.