

Georgia Letter Ruling: LR SUT-2019-07
Topic: Retail Sale; Car Charging Stations
Date Issued: September 25, 2019

This letter is in response to your request for guidance on the application of Georgia sales and use tax to certain transactions entered into by “Taxpayer” in the state of Georgia.

Facts Presented by Taxpayer

Taxpayer owns and operates electric vehicle charging stations in Georgia. Customers pay for charging time, plus a \$ ___ session fee. Additional charges apply for “idling”, which is leaving the vehicle connected to the charger after the charge is complete (not including a specified grace period). The service is not sold by kilowatt-hour (kWh) at this time. Currently, no resale exemptions are being taken by Taxpayer on its purchases of electricity from the utility company.

In the future, subject to utility regulatory approval, Taxpayer may begin to charge by kWh instead of charging for time.

Issues

1. What is the appropriate sales and use tax treatment for Taxpayer’s current transactions where Taxpayer charges customers at charging stations for time?
2. What is the appropriate sales and use tax treatment for transactions where Taxpayer charges customers by kWh (assuming Taxpayer properly obtains all regulatory approval to charge by kWh)?

Analysis

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.¹ A “retail sale” is any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.² “Tangible personal property” means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses. Tangible personal property includes electricity, water, gas, steam, and prewritten computer software.”³

Charges for time vs. charges for electricity

In Georgia, a “utility” is defined as “any person who supplies, furnishes or sells a natural gas or electric service.”⁴ Anyone that provides a utility service is subject the jurisdiction of the Georgia Public Service Commission (“PSC”).⁵ More particularly, an electric supplier is defined to be within the PSC’s jurisdiction.⁶ Therefore if Taxpayer is “selling” electricity it would be subject to the jurisdiction of the PSC. If Taxpayer is “selling” electricity, it would be required to obtain a certificate of public convenience and necessity from the PSC prior to constructing, selling, or increasing or decreasing the capacity of a supply-side option. Further, the Georgia Territorial Electric Service Act, O.C.G.A. §§ 46-3-1 through 15, designates exclusive territories to utilities that furnish electricity at retail. Once a territory has been assigned to a utility, there are only limited exceptions that would allow another utility to sell within the territory.

Based on the above, Taxpayer’s current activity does not constitute “selling” electricity such that Taxpayer falls within the jurisdiction of the PSC. Therefore, Taxpayer does not sell electricity at retail and Taxpayer’s charges for are not subject to the tax.

¹ O.C.G.A. §§ 48-8-1 and 48-8-30.

² O.C.G.A. § 48-8-2(31).

³ O.C.G.A. § 48-8-2(37).

⁴ O.C.G.A. § 46-2-70(3).

⁵ O.C.G.A. § 46-2-7-(4).

⁶ O.C.G.A. § 46-3-3(3).

Were Taxpayer to comply with the relevant requirements and become subject to PSC jurisdiction and obtain the necessary certification to sell electricity, Taxpayer may purchase electricity tax-free for resale and make taxable retail sales of electricity. Such retail sales of electricity would be subject to sales tax (unless a specific exemption applies).

Service providers

Service providers are deemed to be the consumers of tangible personal property used or consumed during the provision of a service.⁷ Under its current practice of billing by time, Taxpayer is effectively a service provider and is liable (like any other purchaser at retail) for sales and use tax on all retail purchases of tangible personal property it purchases to be used and/or consumed in the provision of its service.

Rulings

1. The Department does not consider Taxpayer to be making retail sales of electricity, and thus its charges for time are not subject to the tax. Taxpayer is liable for sales and use tax on all tangible personal property it purchases at retail for use and consumption in the provision of its service.
2. If Taxpayer were to legally and properly purchase electricity tax-free for resale and then charge retail customers by kWh for that electricity, such charges by kWh (and any other charges necessary to complete the sale) would be subject to the 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.

⁷ Ga. Comp. R. & Regs. r. 560-12-1-.14(7)(d).