

This letter is in response to your request for guidance on the application of Georgia sales and use tax to certain information management solutions provided to Georgia customers.

**Facts Presented by Taxpayer**

Taxpayer is a national provider of lifecycle records and information management solutions. Taxpayer provides document storage in Georgia, data protection, digital/electronic document management, and certified destruction. Taxpayer offers digital document management solutions with the integration of traditional or legacy hard copy storage, supplying its customers with an integrated platform of services and information management solutions. Taxpayer does not have any ownership interest in the stored items. Taxpayer does not engage in the self-storage business.

Below is a list of revenue categories with descriptions. All revenue categories are separately stated on customer invoices.

1. **Boxes, Cases, & Packaging Materials:** These are storage container boxes, plastic bins, and cases as well as packaging materials sold to customers for the storage of their documents or other data storage items. These items are delivered to a customer's location in Georgia (Materials may include: folders, containers, tapes, CD, encrypted hard drives, etc.).
2. **Document Storage (Physical Storage):** This is the monthly recurring charge for the physical storage in the State of Georgia of customer materials which include: documents, books, manuscripts, and electronic data stored on CD, within a controlled environment with limited to no direct access by the customer.
3. **Vault Storage (Physical Storage):** This is the monthly recurring charge for the physical storage in the State of Georgia of customer materials which include: art, antiques, artifacts, sports or entertainment memorabilia, tapes, tape cases, all other magnetic media, within a climate-controlled facility with limited to no direct access by the customer.
4. **Document/Vault Storage Perm-Out:** This is the one-time labor and administrative fee that is charged to its customers when a customer has decided to end its storage contract in the State of Georgia and desires to have their stored items removed and transferred to another facility. This fee includes the cost of inventorying and verifying the completeness of the items to be removed and reassigning the locations within the system.
5. **Account Maintenance Fees for Document & Vault Storage:** This is a monthly administrative fee which varies based upon the specific customer's account size. This fee is charged for the monthly administration and inventory management of the client's documents and other items in the State of Georgia.
6. **Access and Refiling Fees:** This is the charge to retrieve or replace the customer's materials or to access or refile the storage containers which is separately stated on the invoice. There is no charge for the initial placement of storage items. This charge represents subsequent requests from the customer to access or refile their items. This charge is typically incurred along with Pick-up and Delivery Services.
7. **Pick-up and Delivery Services:** This is the charge for the pick-up and delivery of storage items to and from the customer's physical location in the State of Georgia and is stated separately on the invoice.
8. **Fuel Surcharges:** This is the charge for occasions when the cost of fuel has increased significantly and is required to be included on invoices which contain pick-up and delivery charges from the State of Georgia.
9. **Access Viewing Room:** This is the charge for a customer to come to Taxpayer's location and use an office to review their stored documents.
10. **Release of Information Services (Physical Delivery):** This is a charge for the retrieval, duplication and delivery of certain medical information to a third-party other than the client in the State of Georgia. This is confidential medical information and is handled and delivered in a secure manner. Taxpayer delivers these records to the third party via physical delivery in the State of Georgia or secure mail to a third-party with a Georgia address.

11. Release of Information Services (Electronic Delivery Method): This is a charge for the retrieval, duplication and delivery of certain medical information to a third-party other than the client, who has a State of Georgia address. This is confidential medical information and is handled and delivered in a secure manner. Taxpayer delivers these records to the third party via electronic or digital delivery via the internet.
12. Certified Shredding & Destruction: This is the charge for the certified destruction of documents, tapes or other materials. Taxpayer is requested to pick-up a sealed container, bin or console containing documents to be destroyed from the customer's location. Taxpayer picks up the sealed containers then brings them back to the Georgia office location. The materials are contained in Taxpayer's bins and consoles and are locked and sealed for security purposes during this entire process. The entire bin or console is transported to Taxpayer's Georgia location where they are transferred to a third-party who picks up the materials and brings them to their facility in Georgia for destruction.
13. Scanning & Digital Imaging: This is the charge for the conversion of a customer's materials to digital images by means of digital scanning for customers with a State of Georgia address.
14. Hosting Services: This is a monthly license fee calculated on a per user basis to access digital images stored in the customer's online virtual warehouse for customers with a State of Georgia address.
15. Workflow Automation Software: This is a monthly license fee charged on a per user basis to customers with a Georgia address to access work-flow automation software which permits a customer to scan a document and track its movement through various departments within their company. This software is accessed online.  
  
For example, in the case of an invoice in a customer's accounts payable department: (1) customer received a vendor invoice and the invoice is scanned and uploaded to the cloud platform, (2) the invoice is then electronically routed to the applicable department(s) for approval, (3) once approved the invoice is electronically routed back to accounts payable to be approved for payment. This software also includes a separate charge for the component related to the virtual warehouse for data storage in the cloud.
16. Online Research Tool: This is the monthly charge to customers with a Georgia address for the ability to access the online document retention guidelines by State and by discipline.
17. Electronic Digital Cloud Back-Up: This is a monthly charge to customers with a Georgia address for the 24/7 electronic back-up service. A customer's data is backed up via the internet and is stored on a remote server for emergency data recovery needs. Taxpayer uses a third-party vendor to perform this service.
18. Help Desk Support: This is the monthly charge to customers with a Georgia address for access to the telephone helpdesk to address issues that the customer may have with the online services.
19. Data Entry/Indexing: This is the charge to customers with a Georgia address for services related to data entry and indexing of such data previously scanned electronically to allow for future search or query abilities.

### **Issue**

How does sales and use tax apply to the above charges by Taxpayer to Georgia customers?<sup>1</sup>

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<sup>1</sup> This letter does not address use tax liability that may arise from a customer using and storing tangible personal property in this state.

### **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.<sup>2</sup> A “retail sale” is any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.<sup>3</sup>

#### *Tangible Personal Property*

“Sale” means any transfer of title or possession, exchange, barter, lease, or rental, in any manner or by any means, of any kind of tangible personal property for a consideration.<sup>4</sup> For example, the sale of custom printing (i.e., the production of printed material, in accordance with a customer’s order, for the customer’s use or consumption) is the sale of tangible personal property and is subject to sales tax on the total invoice charge made on the transaction.<sup>5</sup>

Taxpayer sells boxes, crates, and packaging materials to customers for storage purposes. Since such sales entail the transfer of title and possession of tangible personal property for consideration, the sales are subject to sales and use tax.<sup>6</sup>

Taxpayer charges for the retrieval, duplication, and delivery of certain medical information to a Georgia location. Since the sale of tangible personal property, including the sale of printed or copied material delivered in a tangible medium, is subject to sales and use tax, Taxpayer’s charges for the release of information services (physical delivery) are subject to the tax.

#### *Electronically Delivered and Online Products*

Unlike sales of tangible personal property, which are generally presumed taxable, sales of information or material delivered electronically are typically not considered taxable sales.<sup>7</sup> If the requesting party does not receive tangible property or the right to a tangible item as part of the sale, such sale is not subject to sales and use tax.

Here, Taxpayer charges for records that are delivered solely in an electronic format. Taxpayer also charges for hosting data online, electronic back-up to a remote server, and access to online/cloud information, data, and software. Since these charges are not in connection with sales of tangible personal property or sales of taxable services, such charges are not subject to sales and use tax.

#### *Transportation*

The term “retail sale” includes the sale of transportation when made to any purchaser for purposes other than resale.<sup>8</sup> While retail sales of transportation are subject to sales and use tax, Georgia law provides an exemption for charges made for the transportation of tangible personal property except delivery charges by the seller associated with the sale of taxable tangible personal property.<sup>9</sup>

Taxpayer charges for pick-up and delivery services when Taxpayer brings storage items to and from its storage facility and the customer’s location. Although these are charges for transportation, pick-up and delivery charges are merely fees for moving tangible personal property and are not otherwise associated with a sale of that property. Since these

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<sup>2</sup> O.C.G.A. §§ 48-8-1, 48-8-2(31), and 48-8-30(a).

<sup>3</sup> O.C.G.A. § 48-8-2(31).

<sup>4</sup> O.C.G.A. § 48-8-2(33)(A).

<sup>5</sup> Ga. Comp. R. & Regs. r. 560-12-2-.75(1).

<sup>6</sup> Although Georgia law provides a sales and use tax exemption for the sale, use, consumption, or storage of materials, containers, labels, sacks, or bags used for packaging tangible personal property for shipment or sale, the items sold by Taxpayer are not used for packaging tangible personal property for shipment or sale. O.C.G.A. § 48-8-3(94).

<sup>7</sup> See e.g., O.C.G.A. § 48-8-3(91) (providing a sales and use tax exemption for the sale of prewritten software which has been delivered to the purchaser electronically or by means of load and leave); Ga. Comp. R. & Regs. r. 560-12-2-.111(4)(a) (explaining that the sale of computer software delivered electronically is not subject to sales or use tax.)

<sup>8</sup> O.C.G.A. § 48-8-2(31).

<sup>9</sup> O.C.G.A. § 48-8-3(18).

transportation charges fall within the above exemption, pick-up and delivery service charges are exempt from sales and use tax.

Taxpayer may include fuel surcharges on an invoice with pick-up and delivery charges. Fuel surcharges are not sales of fuel and are not delivery charges associated with the sale of tangible personal property. Rather, fuel surcharges only serve to supplement pick-up and delivery charges. Because Taxpayer's fuel surcharges are transportation charges akin to Taxpayer's pick-up and delivery charges, fuel surcharges are also exempt from sales and use tax.

#### *Other Services*

Services are not subject to sale and use tax unless specifically designated as taxable. Specifically, Rule 560-12-2-.47 provides that storage warehousemen are primarily engaged in the business of moving, storing, packing, and delivering tangible personal property belonging to other persons and that these activities constitute services that are not subject to the tax.<sup>10</sup> Therefore, Taxpayer's charges for storage, maintenance, administration, access, viewing, refiling are for services that are not subject to sales and use tax.

In addition, charges for other services, such as shredding, scanning, indexing, and help desk support, are fees for Taxpayer's knowledge, specialized skills, and expertise. These services are not explicitly identified as taxable services under Georgia law, so charges made for these services are not subject to the tax.

#### **Ruling**

Georgia sales and use tax is levied and imposed on the retail sale of tangible personal property and enumerated services. Sales of information delivered electronically or accessed online and sales of non-enumerated services are not subject to sales and use tax. Based on Taxpayer's description of its revenue categories, charges for Boxes, Cases, & Packaging Materials and Release of Information Services (Physical Delivery) are sales of tangible personal property and, thus, subject to sales and use tax. The remainder of the revenue categories are exempt services, non-taxable services, and sales of property delivered electronically; therefore, such charges are not subject to 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.

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<sup>10</sup> Ga. Comp. R. & Regs. r. 560-12-2-.47.