

Georgia Letter Ruling: LR SUT-2019-10
Topic: Sales Price
Date Issued: November 6, 2019

This letter is in response to your request for guidance on the application of Georgia sales and use tax to certain bundled transactions.

Facts Presented by Taxpayer

Taxpayer is a technology company that develops and sells consumer electronics, computer software, online services, and related support. Taxpayer also sells a range of third-party digital content and applications. Taxpayer sells its products and services either at its brick and mortar retail locations or online through various company websites and smartphone applications.

Preselected Product and Service Package Subscription Offering

Taxpayer plans to offer consumers new ways to purchase existing products, services, and support that Taxpayer has traditionally offered on a stand-alone basis. Taxpayer will begin allowing customers to access a package of preselected products and service (“Preselected Package”) offerings for a set monthly subscription price. Preselected Packages must be purchased intact and cannot be broken down by the customer. In many instances, the price for the Preselected Package subscription will include a discount as an incentive for customers to bundle their purchases.

Custom Product and Service Package Subscription Offering

In the future, Taxpayer intends for customers to be able to “mix and match” individual product and service offerings resulting in a custom product and service subscription package (“Custom Package”). In many instances, Taxpayer will include a discount as an incentive for customers to bundle their purchases. The discount will not be set ahead of time and will likely vary based on what is bundled and how much is bundled.

Taxpayer anticipates that some of its subscription packages may include discounts while others may not. In marketing its packages, Taxpayer could conceivably change which products or packages would include discounts and which would remain full price, based on Taxpayer’s sales or marketing objectives. As discussed above, each of the packages Taxpayer is selling, regardless of whether a discount is included, will be sold for “one non-itemized price.” There will be no individual price assigned to any item in the bundle on any sales invoice, receipt, contract or other agreement with the customer as it relates to the sale of a package. It may be possible for certain packages to have the same total price as the individual products that compose the package if they were to be purchased separately

Taxpayer confirms that all subscription packages are optional in that they are not required to either purchase a device, or to make a device operational. With the exception one package which contains a device, all other packages contain content that is only delivered electronically.

Taxpayer does not have a reasonable means to identify and allocate the charges between taxable and nontaxable items in each package. As Taxpayer begins to expand the breadth of items included in its packages, applying an allocation method would become increasingly difficult, if not commercially impracticable. Therefore, Taxpayer will not be identifying the charges between taxable and non-taxable items in each package, it follows that Taxpayer’s packages are subject to sales tax based on the full sales price to the extent that a single item included in the package is taxable.

Issues

1. Pursuant to O.C.G.A. § 48-8-2(3)(A), do the packages described above meet the definition of a “bundled transaction” when the items included in the package(s) are all “distinct and identifiable,” offered for one, non-itemized price and meet no statutory exceptions under O.C.G.A. § 48-8-2(3)(D) apply?

2. Pursuant to O.C.G.A. § 48-8-2(3)(A), do the packages described above continue to meet the definition of a “bundled transaction” when they include items that are “distinct and identifiable,” offered for one, non-itemized price, but are offered only as part of the package and not sold separately?
3. Pursuant to O.C.G.A. § 48-8-2(3)(A), do the packages described above continue to meet the definition of a “bundled transaction” when the items included in the package(s) are all “distinct and identifiable,” offered for one, non-itemized price but the customer is offered no discount when compared to buying each component separately?
4. Pursuant to O.C.G.A. § 48-8-2(31), does Georgia sales tax apply to the full charge of a bundled transaction when one of the items included in the bundle is subject to the sales tax and the customer will be charged one, non-itemized price for the bundle?

Analysis

Bundled Transactions

“Bundled transaction” means the retail sale of two or more products, except real property and services to real property, where the products are otherwise distinct and identifiable, and the products are sold for one nonitemized price. A bundled transaction does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction. The term “distinct and identifiable products” does not include packaging, products provided free of charge, or certain items included in the definition of “sales price”. The term “one nonitemized price” does not include a price that is separately identified by product on sales related documentation made available to the customer in either paper or electronic form.¹

The sale of a package having distinct and identifiable products that is sold for a single charge is a bundled sale when the customer does not receive documentation in either electronic or tangible format showing a price for an individual product included in the package, and the price of the package does not vary based on the selection of products made by the purchaser.

Price Attributable to Products that are Taxable and Products that are Nontaxable

If the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products may be subject to tax unless the provider can identify by reasonable and verifiable standards such portion from its books and records that are kept in the regular course of business.² If the seller cannot maintain adequately detailed records, the seller must collect tax on the total price of the package.³

Rulings

1. Pursuant to O.C.G.A. § 48-8-2(3)(A), Taxpayer’s Preselected Packages meet the definition of a “bundled transaction” when the items included in the package(s) are all “distinct and identifiable,” offered for one, non-itemized price and meet no statutory exceptions under O.C.G.A. § 48-8-2(3)(D). The statutory definition of “bundled transaction” specifically excludes transactions in which the sales price varies based on selections made by the purchaser of the products included in the transaction. Because the sales price of Taxpayer’s Custom Packages varies based on the selection of products made by the purchaser, Taxpayer’s Custom Packages are not bundled transactions.

¹ O.C.G.A. § 48-8-2(3)(A)-(C).

² O.C.G.A. § 48-8-2 (31)(G).

³ O.C.G.A. § 48-8-2 (31)(G).

2. Pursuant to O.C.G.A. § 48-8-2(3)(A), Taxpayer's Preselected Packages will continue to meet the definition of a "bundled transaction" when they include items that are "distinct and identifiable," offered for one, non-itemized price, and are offered only as part of a package and not sold separately.
3. Pursuant to O.C.G.A. § 48-8-2(3)(A), Taxpayer's Preselected Packages will continue to meet the definition of a "bundled transaction" when the items included in the package(s) are all "distinct and identifiable," offered for one, non-itemized price and the customer does not receive a discount when compared to buying each component separately.
4. Pursuant to O.C.G.A. § 48-8-2(31), when the sales price of either Taxpayer's Preselected Package or Taxpayer's Custom Package offering is attributable to both taxable and nontaxable products, then Taxpayer must collect tax on the total sales price of the package unless Taxpayer can maintain books and records sufficient to determine which portion of the single charge is attributable to taxable item(s). If Taxpayer cannot maintain adequately detailed records, then Taxpayer must collect tax on the total sales price of the package.

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.