

Georgia Letter Ruling: LR SUT-2020-01
Topic: Accommodations, Exempt Transactions
Date Issued: January 28, 2020

This letter is in response to your letter ruling request dated December 17, 2018, regarding the application of Georgia's sales tax to certain purchases.

Facts as Presented by Taxpayer

Taxpayer provides hotel site selection services for clients needing guest rooms for meetings and group travel. Taxpayer does not own or operate a hotel and does not provide accommodations directly. In a typical transaction, Taxpayer will enter into an agreement with a client to provide hotel rooms in a certain area, for a specific number of days, during a particular period, at a contractually agreed upon daily room rate. Currently, all of Taxpayer's Georgia hotel room transactions are for federal government clients, and these federal government transactions were Taxpayer's primary concern in seeking this ruling.

Taxpayer will locate a suitable hotel and contract with the hotel for the rooms to be provided to the client. The hotel bills Taxpayer for all hotel rooms provided and receives payment directly from Taxpayer. Taxpayer then bills the client for the number of hotel rooms at the contracted rate. Taxpayer may sell rooms to the client at the same rate, a higher rate, or a lower rate than was paid by Taxpayer to the hotel. As compensation, Taxpayer receives directly from the hotel a commission, which is a percentage of the sale. Taxpayer does not come to Georgia at any time; all services are provided remotely. If there is a problem with the accommodations provided, the client will contact Taxpayer who acts as the liaison to the hotel. In most contracts, the client is prohibited from contacting the hotel directly.

Given the transaction's fact pattern, Taxpayer believes its purchases of hotel room accommodations are purchases made for resale and, thus, tax free.

Issues

1. Are Taxpayer's purchases of hotel rooms tax-free purchases made for resale?
2. Can Taxpayer purchase hotel rooms for resale without the payment of Georgia's State Hotel-Motel Fee?

Analysis

Purchases Made for Resale

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

"Retail sale" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.² The term "retail sale" includes the sale or charges for any room, lodging, or accommodation furnished to transients by any hotel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients for a consideration.³ When a sale of tangible personal property or taxable service is made for resale, it is not a retail sale and, accordingly, not subject to sales and use tax.

Every person purchasing or receiving any service within this state, the purchase of which is a retail sale, shall be liable for tax on the purchase at the rate of 4 percent (plus applicable local tax) of the sales price of the purchase. The tax shall be paid by the person purchasing or receiving the service to the person furnishing the service. The person furnishing the service, as a dealer, shall remit the tax to the Department. Every person furnishing a service, the purchase of which is a retail sale, shall be a dealer and shall be liable for a tax on the sale at the rate of 4 percent (plus applicable local tax) of the sales price made for furnishing the service, or the amount of taxes collected by him from the person to whom the service as furnished, whichever is greater.⁴

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(31)(B).

⁴ O.C.G.A. § 48-8-30(f)(1).

All gross sales of a retailer are subject to sales and use tax until the contrary is established. The burden of proving that a sale of tangible personal property or a taxable service is not a retail sale is upon the seller unless the seller, in good faith, accepts from the purchaser a certificate of exemption stating that the property or service is purchased for resale or is otherwise tax exempt.⁵

State Hotel-Motel Fee

The state hotel-motel fee is a \$5.00 fee imposed pursuant to O.C.G.A. § 48-13-50.3 and Rule 560-13-2-.01 for each calendar night a hotel room is rented or leased, subject to certain exemptions and exclusions, e.g., the federal government, foreign diplomats, student housing, special care facilities, and certain rooms used by the hotel.⁶ Innkeepers are required to collect the fee from the customer at the time of sale and then to pay such fee to the Department on a monthly basis.⁷

Rulings

1. Taxpayer has a Georgia sales tax account and a hotel-motel fee account and is engaged in the sale of hotel room accommodations. Taxpayer's purchases of hotel rooms from hotel operators are not subject to sales tax as they are purchases made for resale. As a business engaged in the sale of hotel room accommodations, Taxpayer may purchase the hotel rooms for resale tax free by providing the hotel operator a properly executed resale certificate. As the ultimate seller of the hotel rooms to end users, Taxpayer must remit tax on the sale price charged by Taxpayer to the end users (unless an exemption applies).
2. Taxpayer does not fall within the scope of one of the specific hotel-motel fee exemptions or exclusions. Thus, Taxpayer is generally liable for payment of the state hotel-motel fee on all hotel rooms purchased for resale. However, when Taxpayer knows ahead of time that it is acquiring rooms for resale to the federal government, the rooms are in fact resold to the federal government, and the federal government pays Taxpayer directly by warrant on appropriated government funds, Taxpayer does not have to pay the state hotel-motel fee on its purchase or sale of the rooms.

Taxpayer should maintain documentation to support the tax treatment of all transactions.

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.

⁵ O.C.G.A. § 48-8-38(a).

⁶ Ga. Comp. R. & Regs. r. 560-13-2-.01(7)(a)-(f).

⁷ O.C.G.A. § 48-13-50.3(b).