

Georgia Letter Ruling: LR SUT-2020-02

Topic: Services, Retail Sales

Date Issued: January 28, 2020

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

Facts Presented by Taxpayer

Taxpayer is a franchisor in the business of [Redacted] through a network of franchisees. The franchisees deal directly with customers to provide maintenance and repairs and periodically deliver the miscellaneous supplies and light equipment needed by the customers between routine service visits by the franchisees.

Taxpayer and its franchisees execute Franchise Agreements. Pursuant to the Franchise Agreement, a prospective franchisee is issued a bill that must be paid prior to required training. If a potential franchisee is unwilling to pay the charges, they are not allowed to be a franchisee. The bill contains charges for direct mail marketing, truck outfitting, business outfitting, and operations outfitting (collectively, the “Start Up Charges”), as described below.

Direct Mail Marketing

Taxpayer purchases direct mail printed materials from an unrelated third-party printer and pays to have those materials mailed to customers and/or prospective customers of the various franchisees to aid the franchisees’ marketing efforts. Taxpayer pays the third-party printer for the direct mail materials and the related mailing costs and, in addition, remits all applicable sales taxes relating to those purchases and mailing costs. Taxpayer does not use any resale certificate with regard to these transactions. The franchisees have no involvement in the direct mail purchases/mailings other than to provide Taxpayer with a list of names and addresses of customers and prospective customers to receive the mailings. Each franchisee pays an initial local marketing expense fee to Taxpayer.

Truck Outfitting

Taxpayer purchases basic tools, equipment, and supplies for a new franchisee’s truck. These purchases are made by the Taxpayer from unrelated third-party sellers, and Taxpayer remits all applicable sales taxes associated with those purchases at the time of purchase. Taxpayer does not submit a resale certificate to the seller regarding these purchases. These basic tools, equipment, and supplies are provided to the new franchisees to get their trucks properly outfitted for beginning in business. Also included with this initial outfitting of the new franchisee’s truck are assistance and training in the assembling and use of the various tools, pieces of equipment, and supplies. Taxpayer charges each franchisee a one-time truck outfitting flat fee.

Business Outfitting

Taxpayer purchases various marketing materials (e.g., hats, shirts, cards, envelopes with Taxpayer’s name/logo) from unrelated third-party retailers and remits the applicable sales taxes at the time of the purchases. Taxpayer never gives a resale certificate to its vendor. Taxpayer has historically treated this “business outfitting” as part of the initial start-up services it provides to the new franchisees because this outfitting is done on a one-time basis for a new franchisee as the franchisee begins the business.

Operations Outfitting

As part of the orientation of new franchisees, Taxpayer provides a set number of hours of training regarding all the significant aspects of operating a franchise. This training is done over a 12-day period. As part of that training, the franchisee is provided with proprietary information, training manuals, and operating procedures on a one-time basis.

In addition to the Start Up Charges and the ongoing charges pursuant to the Franchise Agreement, Taxpayer makes sales to its franchisees from an online store. Taxpayer charges franchisees for branded apparel items and promotional items for customers. Franchisees do not purchase supplies for the business from the online store.

Issues

1. Does Georgia sales and use tax apply to the Start Up Charges?
2. Does Georgia sales and use tax apply to the additional apparel items and promotional items sold from Taxpayer's online store?

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 Unlike sales of tangible personal property, which are generally presumed taxable, sales of services are not subject to the tax unless the service is specifically designated as taxable.

A person who contracts to both furnish tangible personal property and perform services under a contract within this state is deemed to be the consumer of the tangible personal property furnished and used and shall pay the sales tax at the time of the purchase of such property.³ However, if such a person makes retail sales of tangible personal property, the sales are subject to tax.

The Start Up Charges cover tangible personal property as well as intangibles and services provided by Taxpayer as part of a larger franchise arrangement.

Taxpayer may purchase the property from its vendors tax free for resale, and Taxpayer must remit tax on the sale of such property to its customers/franchisees.

Rulings

1. In accordance with the Franchise Agreement, Taxpayer provides property and services to franchisees in exchange for payment of Start Up Charges and other fees. The charges to franchisees for Truck Outfitting and Business outfitting constitute taxable retail sales as they are specific charges solely for tangible personal property. The charges for Direct Mail Marketing and Operations Outfitting are for nontaxable services (and Taxpayer owes applicable sales and use tax on its purchases of any tangible personal property that it uses to provide these services).
2. When Taxpayer makes sales of tangible personal property, including sales of promotional items to franchisees through its online store, Taxpayer is making a retail sale, which is subject to sales and use tax. Taxpayer must remit state and local sales and use tax on all Georgia sales based on the retail sales price of the property.

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.

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. §§ 48-8-30 and 48-8-63. Such person is liable for sales or use tax if the sales tax was not paid at the time of purchase or at the time the sale occurred outside the state.