



Georgia Department of Revenue
Informational Bulletin SUT 2010-10-13 (Revised December 3, 2010,
September 1, 2012)
Conformity to Certain Provisions of the Streamlined Sales and Use
Tax Agreement as Amended Through August 17, 2010

- 1) *Purpose/Subject:* HB 1221 was passed by the 2010 Georgia General Assembly and signed into law by Governor Sonny Perdue to bring Georgia's sales and use tax statutory definitions and certain procedures into conformity with the Streamlined Sales and Use Tax Agreement adopted by the Streamlined Sales Tax Governing Board, as amended through August 17, 2010 (the "Agreement"). These changes were enacted so that Georgia could petition for membership in the Agreement. This Bulletin confirms that as of the Effective Date the Department of Revenue's administrative policies will also conform to the requirements of the Agreement.
- 2) *Effective Date:* Upon the effective date of Georgia's membership in the Agreement.
- 3) *Supersedes:* All previous documents and any oral directives in conflict.
- 4) *Authority:* O.C.G.A. §§ 48-8-59, 48-8-2, 48-8-77, 48-8-38, 48-8-49, 48-8-45, 48-8-76.
- 5) *Scope:* An informational bulletin is intended to provide guidance to the public and to Department personnel. It is a written statement issued to apply principles of law to a specific set of facts or a general category of taxpayers. An informational bulletin does not have the force or effect of law, and is not binding on the public. It is, however, the Department's position and is binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.
- 6) *Issue(s):* Administrative conformity with certain provisions of the Streamlined Sales and Use Tax Agreement.
- 7) *Discussion of Issues:*

Seller Registration:

A person appointed by a seller to represent the seller before the member states may register that seller in Georgia (the "State") under uniform procedures adopted by the states that are members of the Agreement.

Tax Rate Database:

The Department will provide and maintain a database that assigns each five and nine digit zip code within the state to the proper tax rate and jurisdiction. If an area within a five or nine digit zip code includes more than one tax rate, the Department of Revenue will apply the lowest combined tax rate imposed in that zip code area.

Consolidated Returns:

Effective January 1, 2011, any person operating more than one place of business as a dealer in this State may, upon providing notice to the Commissioner of Revenue, file one return for each reporting period showing the consolidated sales and use tax due for all of such dealer's places of business in this State.

Notice for State Tax Changes:

To lessen the difficulties faced by sellers when there is a change in a state sales or use tax rate or base, the Department will make a reasonable effort to:

- Provide sellers with as much advance notice as practicable of a rate change.
- Limit the effective date of any rate change to the first day of a calendar quarter.
- Notify sellers of changes in the tax base made by the Georgia General Assembly and of changes made by the Department to sales and use tax rules and regulations.

Local Rate and Boundary Change:

i) The Georgia legislature limited the effective date of local rate changes for all local sales and use taxes other than the education local option sales tax ("LOST") to the first day of a calendar quarter after a minimum of sixty days notice. As there is no specific statutory provision for the education LOST, the Department will treat the education LOST consistently with all other local sales and use taxes with respect to the effective date of rate changes.

ii) The Department applies the lowest combined tax rate imposed in the nine-digit zip code area if the area includes more than one tax rate in any level of taxing jurisdictions.

Telecommunications Sourcing Definitions:

To the extent that the following terms are relevant to the application of Georgia sales and use tax, the Department applies the following definitions:

- "Air-to-ground radiotelephone service" means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

- "Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls.
- "Communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.
- "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunication service, but this sentence only applies for the purpose of sourcing sales of telecommunications services under O.C.G.A. Section 48-8-77. "Customer" does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.
- "Customer channel termination point" means the location where the customer either inputs or receives the communications.
- "End user" means the person who utilizes the telecommunications service. In the case of an entity, "end user" means the individual who utilizes the service on behalf of the entity.
- "Home service provider" means the same as that term is defined in Section 124(5) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).
- "Mobile telecommunications service" means the same as that term is defined in Section 124(7) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).
- "Post-paid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service, except a prepaid wireless calling service, that would be a prepaid calling service except it is not exclusively a telecommunications service.
- "Private communication service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.
- "Service address" means:
 1. The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.

2. If the location in paragraph 1 (immediately above) is not known, service address means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

3. If the locations in paragraphs 1 and 2 are not known, the service address means the location of the customer's place of primary use.

Administration of Exemptions:

i) A seller shall use the standard form for claiming an exemption electronically as adopted by the SST Governing Board.

ii) A seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurred.

iii) The Department relieves a seller of the tax otherwise applicable if the seller obtains a fully completed exemption certificate or captures the relevant data elements required under the Agreement within ninety days subsequent to the date of sale.

iv) If the seller has not obtained a fully completed exemption certificate or all relevant data elements required under the Agreement within ninety days subsequent to the date of sale, the Department will provide the seller with 120 days subsequent to a request for substantiation to either:

a. Obtain a fully completed exemption certificate from the purchaser, taken in good faith which means that the seller obtain a certificate that claims an exemption that (i) was statutorily available on the date of the transaction in the jurisdiction where the transaction is sourced, (ii) could be applicable to the item being purchased, and (iii) is reasonable for the purchaser's type of business; or

b. Obtain other information establishing that the transaction was not subject to the tax.

v) The Department relieves a seller of the tax otherwise applicable if the seller obtains a blanket exemption certificate from a purchaser with which the seller has a recurring business relationship.

Uniform Tax Returns:

i) The Department does not require the submission of simplified electronic return part 2 information from a model 4 seller which has no legal requirement to register in Georgia.

ii) The Department does not require the filing of a return from a seller that is registered under the Agreement which has indicated at the time of registration that the seller anticipates making no sales which would be sourced to Georgia under the Agreement.

iii) The Department gives notice to a seller registered under this Agreement, which has no legal requirement to register in Georgia, of a failure to file a required return and a minimum

of thirty days to file thereafter prior to establishing a liability amount for taxes based solely on the seller's failure to timely file a return.

Simplified Electronic Return (SER):

i) Master Accounts. Any dealer with a master account will have its Streamlined Sales Tax Project Identification ("SSTPID") number linked to its Georgia Sales Tax Number ("STN"). However, such filers may not file a Simplified Electronic return.

ii) Motor fuel dealers may not file a Simplified Electronic Return.

Monetary Allowance to Model 2 Sellers:

i) All sellers shall receive a base rate for a period not to exceed twenty-four months following the commencement of participation by a seller. The base rate will be set after the base rate has been established for Model 1. This allowance will be in addition to any discount afforded at the time.

ii) The Department anticipates a monetary allowance to a Model 2 Seller based on the following:

a. For a period not to exceed twenty-four months following a voluntary seller's registration through the Agreement's central registration process, a percentage of tax Streamlined Sales and Use revenue generated for the state by the voluntary seller for each member state for which the seller does not have a requirement to register to collect the tax.

b. Following the conclusion of the twenty-four month period, a seller will only be entitled to a vendor discount afforded under Georgia's law at the time the base rate expires.

Uniform Rules for Recovery of Bad Debts:

i) The Department allows bad debts to be deducted on the return for the period during which the bad debt is written off as uncollectable in the claimant's books and records and is eligible to be deducted for federal income tax purposes.

ii) A claimant who is not required to file federal income tax returns may deduct a bad debt on a return filed for the period in which the bad debt is written off as uncollectable in the claimant's books and records and the claimant would be eligible for a bad debt deduction for federal income tax purposes if the claimant was required to file a federal income tax return.

iii) Where filing responsibilities have been assumed by a certified service provider ("CSP"), the Department allows the service provider to claim, on behalf of the seller, any bad debt allowance provided by O.C.G.A. section 48-8-45. The CSP must credit or refund the full amount of any bad debt allowance or refund received to the seller.

iv) For the purposes of reporting a payment received on a previously claimed bad debt, any payments made on a debt or account are applied first proportionally to the taxable price of the

property or service and the sales tax thereon, and secondly to interest, service charges, and any other charges.

v) Where the books and records of the party claiming the bad debt allowance support an allocation of the bad debts among the member states, the Department permits the allocation.

Confidentiality and Privacy Protection Under Model 1:

i) The Department will provide public notification to consumers, including their exempt purchasers, of the State's practices relating to the collection, use and retention of personally identifiable information.

ii) When any personally identifiable information that has been collected and retained is no longer required for the purposes set forth in section 321(D)(4) of the Agreement, such information shall no longer be retained by the State.

iii) When personally identifiable information regarding an individual is retained by or on behalf of the State, the State shall provide reasonable access by such individual to his or her own information in the State's possession and a right to correct any inaccurately recorded information.

iv) If anyone other than an SST member state, or a person authorized by any SST member state's law or the Agreement, seeks to discover personally identifiable information, the State will make a reasonable and timely effort to notify the individual of such request.

v) The privacy policy described above is subject to enforcement by Georgia's attorney general or other appropriate state government authority.

Rounding Rule:

The Department allows sellers to elect to compute the tax due on a transaction on either an item basis or an invoice basis, and allows the rounding rule contained in O.C.G.A. § 48-8-31 to be applied to the aggregated state and local taxes.

Seller Participation:

Should Georgia withdraw or be expelled from the Agreement, the State will not use a seller's registration with the central registration system and the collection of sales and use taxes in the State as factors in determining whether the seller has nexus with the State for any tax at any time.

Lease or Rental:

The definition of "lease or rental" contained in O.C.G.A. Section 48-8-2(17) will be applied only prospectively beginning January 1, 2011 and will have no retroactive impact. This definition shall neither impact the sales tax treatment of sale-leaseback transactions nor preclude the State from adopting a sale-leaseback exemption or exclusion after the effective date of the multistate Streamlined Sales and Use Tax Agreement, as amended. Furthermore, finance transactions that were previously (before January 1, 2011) considered nontaxable transactions will continue to be treated as nontaxable transactions. The definition of "lease or

rental” shall be used for sales and use tax purposes regardless if a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the Georgia Uniform Commercial Code, or other provisions of federal, state or local law. “Sales price” for leases and rentals is defined the same as for retail sales.

Leases of Motor Vehicles:

Leases of motor vehicles are sourced according to O.C.G.A. § 48-8-77(b)(3). All provisions contrary to O.C.G.A. Section 48-8-77 were repealed by 2010 GA H.B. 1221, which became effective on January 1, 2011.

Terminal Rental Adjustment Clause Leases:

The definition of “lease or rental” includes Agreements defined in 26 USC 7701(h)(1) covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property.

Exemption Certificates:

Full compliance with the exemption certificate requirements contained in 2010 GA H.B. 168 constitutes “strict compliance with the commissioner’s rules and regulations” under O.C.G.A. § 48-8-2(31).

Amnesty for Registration:

Subject to the limitations below, the Department will allow amnesty to sellers registered with the SST Centralized Registration System prior to when the State joins the Agreement:

- i) The Department shall provide amnesty for uncollected or unpaid sales or use tax to a seller who registers to pay or to collect and remit applicable sales or use tax on sales made to purchasers in the State in accordance with the terms of the Agreement, provided that the seller was not so registered in the State in the twelve-month period preceding the effective date of the State's participation in the Agreement.
- ii) The amnesty will preclude assessment for uncollected or unpaid sales or use tax together with penalty or interest for sales made during the period the seller was not registered in the State, provided registration occurs within twelve months of the effective date of the State's participation in the Agreement.
- iii) The amnesty is not available to a seller with respect to any matter or matters for which the seller received notice of the commencement of an audit and which audit is not yet finally resolved including any related administrative and judicial processes.
- iv) The amnesty is not available for sales or use taxes already paid or remitted to the State or to taxes collected by the seller.
- v) The amnesty is fully effective, absent the seller's fraud or intentional misrepresentation of a material fact, as long as the seller continues registration and continues payment or collection and remittance of applicable sales or use taxes for a period of at least thirty-six months. The State shall toll its statute of limitations applicable to asserting a tax liability during this thirty-six month period.

vi) The amnesty is applicable only to sales or use taxes due from a seller in its capacity as a seller and not to sales or use taxes due from a seller in its capacity as a buyer.

State Review and Approval of Certified Automated System Software and Certain Liability Relief:

i) The Department will relieve CSPs and model 2 sellers from liability to the State and local jurisdictions in the State for not collecting sales or use taxes resulting from the CSP or model 2 seller relying on the certification provided by the State.

ii) The Department will provide relief from liability to CSPs for not collecting sales and use taxes in the same manner as provided to sellers under the “Administration of Exemptions” section above.

iii) If the Department determines that an item or transaction is incorrectly classified as to the item or transaction's taxability, the Department shall notify the CSPs or model 2 sellers of the incorrect classification. The CSP or model 2 seller shall have ten (10) days to revise the classification after receipt of notice from the Department of the determination.

Communications Services:

Georgia taxes local telephone services, including charges made for local exchange telephone services, for mobile wireless telephone services (also known as “cellular telephone services”), and for the amount of the guaranteed charges for semi-public coin-box telephone services. Vertical services, which offer advanced calling features that allow customers to identify callers and to manage multiple calls and call connections offered in connection with local telephone service, are taxable. Private communication services are not taxable.

FOR MORE INFORMATION

For more information on this subject, contact the Taxpayer Services Division at 404-417-6601, from 8:00 am to 4:30 pm EST, Monday through Friday, excluding holidays, or send an e-mail to taxpayer.services@dor.ga.gov.

Persons with hearing or speech impairments may call our TDD number at 404-417-4302. For forms and other information, visit our website (www.dor.ga.gov).
