

Date Issued: April 6, 2015
Georgia Letter Ruling: LR SUT-2015-02
Topic: Service Provider-Educational Training

This letter is in response to your request for guidance on the application of Georgia sales and use tax to educational services. The facts contained herein are based on your initial written request and a phone conversation on February 20, 2015.

Facts Presented by Taxpayer

Taxpayer offers a training service. Taxpayer's clients are contracted and the service is delivered to the client's students. The service includes presentations, supplements, and incentives for the student. The student will be able to view but not retain rights to the presentations. Supplements will include digital content to be downloaded (to devices owned by the institution) and materials for student participation. Students may print a portion of the supplement's digital content (example: reference sheet). Materials, such as t-shirts, writing utensils, notebooks and flash drives will be purchased by Taxpayer for students to participate in the training. Some of these items will remain with the student when the training is complete, while Taxpayer will retain others.

Although certain items of tangible personal property will pass from Taxpayer to Taxpayer's clients (or the students), Taxpayer does not separately state the charge for such items. The only stated charge on the invoice to the customer is for training services.

Issue

Is Taxpayer's charge for training services subject to Georgia's sales and use tax?

Analysis

Sales tax is levied and imposed upon the retail purchase, retail sale, rental, storage, use, or consumption of tangible personal property and certain specified services in Georgia.¹ All retail purchases and sales of tangible personal property are taxable unless otherwise provided.²

Although certain services are subject to sales tax, Georgia law provides an exemption for "professional, insurance, or personal service transactions which involve sales as inconsequential elements for which no separate charges are made."³ In other words, if during the performance of a personal or professional service transaction, a service provider transfers an inconsequential element of tangible personal property, the transfer of that property is not subject to sales and use taxes in Georgia.

In interpreting this exemption, Georgia's tax administrators and courts have experienced great difficulty in determining the difference between taxable sales of tangible personal property and nontaxable sales of services, especially when any property transferred to the buyer is largely the result of professional or personal services or embodies substantial intangible value. In Georgia, the test for determining whether a particular transfer of tangible personal property falls within the exemption in Code Section 48-8-3(22) is the purpose or true object of the customer. In other words, the test is whether the customer is primarily interested in buying the services provided rather than the tangible personal property transferred in conjunction with the performance of the services.⁴

It seems clear in the present case that the paramount concern of Taxpayer's customers is to acquire training services. The provision of t-shirts and training materials is part of the services Taxpayer provides to its clients. Consequently, the transfer of any tangible personal property from Taxpayer to its clients or to its client's students is an inconsequential element of the service transaction, and since there is no separate charge for such tangible personal property, the transaction falls within the language of O.C.G.A. § 48-8-3(22).

¹ O.C.G.A. § 48-8-30(a).

² O.C.G.A. §§ 48-8-1 and 48-8-30.

³ O.C.G.A. § 48-8-3(22).

⁴ See Craig-Tourial Leather Co. v. Reynolds, 87 Ga. App. 360 (1952).

With respect to businesses that contract to perform services and furnish tangible personal property, O.C.G.A. § 48-8-63(b) provides as follows:

Each person who orally, in writing, or by purchase order contracts to furnish tangible personal property and to perform services under the contract within this state shall be deemed to be the consumer of the tangible personal property and shall pay the sales tax imposed by this article at the time of the purchase. Any person so contracting who fails to pay the sales tax at the time of the purchase or at the time the sale is consummated outside the limits of this state shall be liable for the payment of the sales or use tax. This Code section shall not relieve the dealer who made the sale from such dealer's liability to collect and pay the tax on purchases by a contractor.

In the present case, Taxpayer contracts to provide services and to provide whatever tangible personal property is needed to provide the service. Taxpayer's ownership and use of the tangible personal property is necessary in order to furnish its training services. The use of such tangible personal property, is a component of the service, and does not change the nature of underlying service. Under Code Section 48-8-63(b), quoted above, Taxpayer is the ultimate user or consumer of the tangible personal property within the meaning of Georgia's sales and use tax statutes and is, thus, responsible for the tax on such property.

Ruling

Taxpayer is the provider of a nontaxable service. In providing its service, Taxpayer is the user or consumer of certain tangible personal property, some of which is retained by Taxpayer and some of which is ultimately transferred to Taxpayer's clients or the client's students. As the consumer of such items, Taxpayer is responsible for paying any applicable sales and use tax on the items, but Taxpayer should not charge tax to its clients on the charge for training services.

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. Should the circumstances regarding the transactions change, or differ materially from those represented, then this ruling may become invalid. In addition, please be advised that 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 response.