Georgia Letter Ruling: LR SUT-2017-03

Dated: February 21, 2017

Topic: Motor Vehicle Leases - International Registration Plan

This letter is in response to your request for guidance as to the proper application of Georgia sales and use tax and title ad valorem tax to transactions by your client, [Redacted] ("Taxpayer").

Facts as Presented by Taxpayer

Business Activities

Taxpayer is in the business of leasing commercial tractor trucks ("trucks"), non-motorized trailers ("trailers"), or a combination thereof. The leased trucks are generally Class 8 trucks, 1 and the leased trailers do not have a front axle. A tractor trailer is a combination trucking unit, consisting of a Class 8 truck hooked up to a trailer. In addition to trucks and trailers, Taxpayer, on occasion, leases other types of commercially titled vehicles such as dump trucks and delivery trucks.

All leases are true leases and not finance arrangements. The amount for which Taxpayer purchases a truck or trailer (collectively "equipment") to place on lease with a customer is less than the sum of payments collected during the lease term. All leases have a residual, which is either fair market value or a pre-negotiated purchase price in excess of 10% of the original funded amount. The lessee can renew, purchase, or return the equipment at the end of the lease.

Transactions

Transactions generally occur in the following manner:

When a business desires to lease equipment, the business contacts Taxpayer for assistance in acquiring use of the equipment and completes an application. Once the application is approved, the lessee works with a dealer to select the needed equipment and to negotiate the price. Taxpayer is not the primary party in these negotiations.

Thereafter, the lessee and Taxpayer agree to final terms, and a lease agreement is executed. Once the final terms are agreed upon and the lease agreement is executed, funds are sent from Taxpayer to the dealer to purchase the equipment. Taxpayer works with the appropriate Georgia County to title the equipment under a related statutory trust. Most trailers are pulled by trucks that are registered under the International Registration Plan ("IRP").

The lessee is responsible for major repairs on the leased equipment pursuant to the lease agreement; however, if the lessee needs help funding the repairs, an application for a wrap lease can be submitted for Taxpayer to fund the repair cost and incorporate the repair cost into the lease through revised payment terms. Currently, Georgia sales and use tax is paid to the person performing the repair for the parts.

<u>Issues</u>

- 1. Are trucks purchased by Taxpayer and leased to lessees in Georgia subject to title ad valorem tax ("TAVT")?
- 2. Are trucks purchased by Taxpayer and leased to lessees in Georgia subject to Georgia sales and use tax?
- 3. Are trailers purchased by Taxpayer and leased to lessees in Georgia subject to TAVT?
- 4. Are trailers purchased by Taxpayer and leased to lessees in Georgia subject to Georgia sales and use tax?
- 5. Are trucks registered under the IRP subject to TAVT?
- 6. Are trucks registered under the IRP subject to Georgia sales and use tax?

¹ The Class 8 truck is a vehicle with a gross vehicle weight rating exceeding 33,000 pounds.

- 7. Are leased trailers that are pulled by trucks registered under the IRP subject to TAVT?
- 8. Are leased trailers that are pulled by trucks registered under the IRP subject to the Georgia sales and use tax?
- 9. What is the appropriate sales and use tax application for repair parts purchased from and installed by unrelated mechanics? Can the parts be purchased for resale by Taxpayer?
- 10. For each of the situations above where Taxpayer is exempt from either TAVT or sales and use tax, what documentation should Taxpayer keep on file to adequately support the exemption during an audit?
- 11. Are document fees, late fees, non-sufficient funds fees, security deposits, and advance payments exempt from Georgia sales and use tax?

Analysis

Sales and Use Tax

Georgia levies and imposes a tax (subject to certain specific exemptions) on the retail purchase, retail sale, storage, use, or consumption of tangible personal property, certain enumerated services, and utilities.² A "retail sale" is any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.³ A "sale" occurs when there is a transfer of title or possession, transfer of title and possession, exchange, barter, lease, or rental, conditional or otherwise, of any kind of tangible personal property for a consideration.⁴

When Taxpayer purchases a truck or trailer for the purpose of leasing such equipment to a lessee, that purchase transaction is a non-taxable sale for resale rather than a taxable retail sale. The subsequent lease is a retail sale of tangible personal property subject to sales and use tax unless exempt.

Georgia law provides a sales and use tax exemption for the sale or purchase of any motor vehicle titled in Georgia on or after March 1, 2013, pursuant to Code Section 48-5C-1 (i.e., any motor vehicle subject to TAVT as described below).⁵ Under this exemption, lease payments for a motor vehicle for which TAVT is paid are also exempt from sales and use tax if the motor vehicle is leased for more than 31 consecutive days.⁶ Additionally, Georgia sales and use tax does not apply to motor vehicles and their major components that will be used principally to cross the borders of this state in the service of transporting passengers or cargo by common carriers and by carriers who hold common carrier and contract carrier authority in interstate or foreign commerce under authority granted by the United States government.⁷

If sales and use tax is due on a lease or rental transaction, the person to whom tangible personal property is leased is liable for sales and use tax on the lease at the applicable rate multiplied by the "sales price." The tax shall be paid to the lessor by the lessee.

² O.C.G.A. §§ 48-8-1, 48-8-2(31)(A), and 48-8-30.

³ O.C.G.A. § 48-8-2(31).

⁴ O.C.G.A. § 48-8-2(33)(A).

⁵ O.C.G.A. § 48-8-3(95).

⁶ O.C.G.A. § 48-8-3(95). This sales and use tax exemption does not apply to the rental of motor vehicles for period of 31 or fewer consecutive days.

⁷ O.C.G.A. § 48-8-3(33)(A); Ga. Comp. R. & Regs. r. 560-12-2-.19(3). The exemption also applies to replacement parts which become an integral part of a common carrier's equipment or vehicles. Common carriers purchasing tangible personal property under this exemption must register and file sales and use tax returns and must furnish each supplier of exempt tangible property with a certificate of exemption. Ga. Comp. R. & Regs. r. 560-12-2-.19.

⁸ O.C.G.A. § 48-8-30(d)(1).

⁹ *Id*.

The term "sales price" means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the seller's expenses, charges by the seller for any services necessary to complete the sale, and delivery charges. "Sales price" also includes document fees, security deposits, and advance payments that are necessary for the completion of the sale. Additional charges for insurance that is not required by the seller, late fees, and insufficient funds fees passed on from a bank are not required to complete the sale and are not subject to sales tax if separately stated. "Sales price" also excludes interest, financing, and carrying charges from credit extended on the sale of personal property, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser. "

Sales and Use Tax Sourcing of Lease Transactions

A lease of transportation equipment is sourced in the same manner as a retail sale, meaning it is generally sourced to the location where receipt by the purchaser occurs. ¹² "Transportation equipment" includes trucks and truck-tractors with a Gross Vehicle Weight Rating of 10,001 pounds or greater, trailers, semitrailers, or passenger buses that are registered through the International Registration Plan and operated under authority of a carrier authorized and certificated by the U.S. Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce. ¹³ Thus, Taxpayer's Class 8 trucks, which are vehicles that exceed 33,000 pounds, will generally be sourced to the location where receipt by the purchaser occurs, so long as the vehicle is registered through the IRP and operated under authority of a carrier properly authorized and certificated to engage in the carriage of persons or property in interstate commerce.

A lease of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment is sourced to the primary property location if the lease is one that requires recurring periodic payments. ¹⁴ The primary property location is indicated by an address for the property provided by the lessee that is available to the lessor from records maintained in the ordinary course of business. This location will not be altered by intermittent use at different locations. ¹⁵

Sales and Use Taxation of Repair Parts

Taxpayer, as lessor, may purchase tax free for resale any automobiles, trucks, trailers, repair parts, tires and accessories that become a part of the vehicles to be leased to other persons. ¹⁶ This rule applies regardless of whether the subsequent lease qualifies for a sales and use tax exemption.

When lessees repair leased vehicles, the replacement parts, materials, and supplies used or consumed by repairmen are taxable either to the repairman or to the lessees. ¹⁷ If the repairman does not state separately, itemize, or segregate at a fixed or retail price the materials and supplies used in performing repairs, sales and use tax generally applies to the total charge for such materials and labor. ¹⁸ If the repairman <u>does</u> separate, itemize, and invoice at a retail selling price the parts, materials and supplies used, stating separately the amount for labor, sales and use tax will apply <u>only</u>

¹⁰ O.C.G.A. § 48-8-2(34)(A).

¹¹ O.C.G.A. §§ 48-8-2(34)(B) and 48-8-30.

¹² O.C.G.A. § 48-8-77(b)(1) and (4).

¹³ O.C.G.A. § 48-8-77(b)(4)(B).

¹⁴ O.C.G.A. § 48-8-77(b)(3)(A).

¹⁵ *Id*.

¹⁶ Ga. Comp. R. & Regs. r. 560-12-2-.10(2).

¹⁷ Ga. Comp. R. & Regs. r. 560-12-2-.78(1). Even when a transaction is otherwise taxable to the lessee, that lessee may assert a sales and use tax exemption, if applicable. For example, a common carrier may make exempt purchases of vehicles and major components of vehicles when the item will be used principally to cross the borders of this state in transporting passengers or cargo. In such a case, the lessee asserting the exemption must present a properly completed certificate of exemption to the repairman.

¹⁸ Ga. Comp. R. & Regs. r. 560-12-2-.78(1)(a).

to the retail selling price of the parts, materials and supplies listed and itemized.¹⁹

Sales and Use Tax Documentation

All sales are subject to sales and use tax until the contrary is established. The burden of proof that a sale is not subject to the tax is upon the person who makes the sale, unless he takes from the purchaser a valid certificate of exemption.²⁰ The certificate relieves the seller from the burden of proof if the seller, in good faith, acquires from the purchaser a properly completed certificate. A properly completed certificate taken in good faith means a seller must obtain a certificate: (i) that is fully completed, including, but not limited to, the name, address, a valid sales tax number (when a sales tax number is required), and signature of the taxpayer (when required); (ii) in a form appropriate for the type of exemption claimed; (iii) claiming an exemption that was statutorily available on the date of the transaction in the jurisdiction where the transaction is sourced; (iv) claiming an exemption that could be applicable to the item being purchased; and (v) claiming an exemption that is reasonable for the purchaser's type of business.²¹

The certificate relieves the seller from the burden of proof on sales for resale if the seller acquires from the purchaser a properly completed certificate, taken in good faith, from a purchaser who (i) is engaged in the business of selling tangible personal property; (ii) has a valid sales tax registration number at the time of purchase and has listed his or her sales tax number on the certificate; and (iii) at the time of purchasing the tangible personal property, the seller has no reason to believe that the purchaser does not intend to resell it in his or her regular course of business. ²² Dealers must maintain records to support all purchases and sales for a period of no less than three years. ²³

Title Ad Valorem Tax

Motor vehicles that are required to be registered and titled in Georgia under O.C.G.A. §§ 40-2-8 and 40-2-20 on or after March 1, 2013 are subject to a state and local TAVT pursuant to O.C.G.A. § 48-5C-1.²⁴ As discussed above, the sale or purchase of a motor vehicle subject to TAVT is exempt from sales and use tax. "Motor vehicles," for purposes of TAVT, means all vehicles that are self-propelled.²⁵ Since TAVT only applies to self-propelled vehicles titled in Georgia, non-motorized trailers are not subject to TAVT and, thus, remain subject to sales and use tax unless otherwise exempt.²⁶

A lessee residing in Georgia who leases a motor vehicle for more than 31 consecutive days must register the motor vehicle with the tag agent in that lessee's county of residence within 30 days of the commencement of the lease of such motor vehicle or beginning residence in this state, whichever is later.²⁷

In the event that a lessee qualifies for a TAVT exemption as provided by statute, the exemption will flow from the lessee to Taxpayer as part of the lease. Accordingly, the title and corresponding payment of TAVT should be processed with said exemption. Phe documentation and procedures required to process these exemptions, or to claim a refund under this policy, are the same as the documentation required to process these exemptions as part of a sale or purchase. Page 19.

¹⁹ Ga. Comp. R. & Regs. r. 560-12-2-.78(1)(b).

²⁰ O.C.G.A. § 48-8-38(a).

²¹ O.C.G.A. § 48-8-38(b); *see also* Ga. Comp. R. & Regs. r. 560-3-2-.27 (the guidance related to electronic signatures for tax returns typically extends to certificates of exemption).

²² O.C.G.A. § 48-8-38(c).

²³ O.C.G.A. § 48-8-52(a)(1)(D).

²⁴ O.C.G.A. § 48-5C-1(b)(1)(A).

²⁵ Ga. Const. Art. VII, § I, Para. III(b)(3).

²⁶ O.C.G.A. §§ 48-5C-1(b)(1)(A) and 40-1-1(33); Ga. Comp. R. & Regs. r. 560-11-14-.01(1)(k).

²⁷ O.C.G.A. § 48-5C-1(d)(14)(B).

²⁸ Title Ad Valorem Tax Informational Bulletin Exemptions for Leases issued May 31, 2013.

²⁹ *Id*.

³⁰ *Id*.

International Registration Plan

The IRP is a reciprocity agreement between member states that allows vehicles travelling in multiple member states to register only with the member state where the vehicle is based. Motor vehicles registered under the IRP are not subject to TAVT but are subject to apportioned ad valorem taxation ("AAVT") and sales and use tax unless exempt. Although vehicles registered under the IRP are subject to sales and use tax, many of these vehicles, depending on their classification and use, may qualify for the common carrier sales and use tax exemption discussed above. 32

Rulings

1. When a truck is purchased by Taxpayer for the purpose of leasing it to third parties and subsequently is leased for over 31 days to a Georgia resident who is required to register and title that motor vehicle in Georgia, the truck is subject to TAVT unless the truck is registered under the IRP or otherwise exempt from TAVT.

If the lessee qualifies for a TAVT exemption, the exemption will flow from the lessee to the lessor as part of the lease, and the title should be processed with the appropriate exemption.

2. Taxpayer's purchase of the truck for the purposes of leasing it to third parties is a purchase for resale and, accordingly, not subject to sales and use tax. When Taxpayer leases the truck, the lease payments paid by lessees to Taxpayer are subject to sales and use tax unless an exemption applies. If the truck is subject to TAVT, as provided above, it is exempt from Georgia sales and use tax.

If a truck has a Gross Vehicle Weight Rating exceeding 10,001 pounds and is properly authorized and certificated to engage in interstate commerce, that equipment is considered transportation equipment, and the sales tax rate is determined according to the location where receipt by the purchaser occurs. If the leased vehicle does not qualify as transportation equipment, its sales and use tax rate is determined by primary property location if the lease requires recurring periodic payments.

A lessee who qualifies for a sales and use tax exemption, such as the common carrier exemption, must provide Taxpayer a properly executed certificate of exemption that is accepted in good faith by Taxpayer.

- 3. For TAVT purposes, non-motorized trailers are not motor vehicles and thus are not subject to TAVT. Taxpayer should maintain documentation to show that the property leased is a non-motorized trailer.
- 4. Because Taxpayer purchases non-motorized trailers to be leased, this purchase is for resale and thus not subject to sales and use tax. Taxpayer's subsequent lease of a non-motorized trailer to a lessee is subject to sales and use tax unless otherwise exempt. A lessee qualifying for sales and use tax exemption must provide Taxpayer a properly executed exemption document that is accepted in good faith by Taxpayer.
- 5. A truck registered under the IRP is not subject to TAVT. Such a vehicle remains subject to AAVT while registered under the IRP.
- 6. A leased truck registered under the IRP is subject to Georgia sales and use tax unless an exemption applies. When Taxpayer purchases trucks for the purpose of leasing such equipment to lessees, that purchase is a non-taxable sale for resale rather than a taxable retail sale. The subsequent lease is a retail sale of tangible personal property subject to sales and use tax unless exempt. A lessee qualifying for sales and use tax exemption must provide Taxpayer a properly executed certificate of exemption that is accepted in good faith by Taxpayer.
- 7. For TAVT purposes, non-motorized trailers are not motor vehicles and thus are not subject to TAVT regardless of whether the non-motorized trailer is pulled by a truck registered under the IRP.

³¹ O.C.G.A. §§ 48-5-442.1, 48-5C-1(b)(1)(A), and 48-8-3.

³² O.C.G.A. § 48-8-3(33)(A); Ga. Comp. R. & Regs. r. 560-12-2-.19(3).

- 8. Because Taxpayer purchases non-motorized trailers to be leased to third parties, these purchases are for resale and thus not subject to sales and use tax. Regardless of whether the non-motorized trailer is pulled by a truck registered under the IRP, Taxpayer's lease of a non-motorized trailer to a lessee is subject to sales and use tax unless otherwise exempt. A lessee qualifying for sales and use tax exemption must provide Taxpayer a properly executed certificate of exemption that is accepted in good faith by Taxpayer.
- 9. Based on the facts provided, Taxpayer may purchase repair parts tax free for resale when the parts purchased will become part of a truck or trailer held in Taxpayer's lease inventory. To purchase repair parts exempt for resale, Taxpayer must provide the seller with a properly executed certificate of exemption that is accepted by the seller in good faith. Taxpayer should keep invoices documenting such purchases.
 - If purchased by a lessee, repair parts are taxable to lessee unless otherwise exempt. If the repair invoice separately states the cost of labor, sales and use tax only applies to the repair parts. If the repair invoice has one charge, sales and use tax generally applies to the total charge for repair parts and labor. Lessees should keep invoices documenting such purchases.
- 10. In addition to the documentation indicated above, Taxpayer should keep invoices and proof of payment for purchases of trucks and trailers, proof of title and registration, invoices and proof of payment for repair parts, proof of payment of TAVT, proof of IRP registration (paid IRP invoice or valid current cab card), copies of all agreements concerning the purchase and lease of any truck or trailer, and proof of any application or registration submitted to the Department or other agency. With respect to the TAVT exemption for IRP vehicles titled in Georgia, Form T-146 must be completed and attached to the application for the certificate of title, and Taxpayer should maintain a copy of the T-146 or the title receipt reflecting the IRP exemption to TAVT.
- 11. Georgia's statutory definition of "sales price" requires that mandatory charges made by the seller be included in sales and use tax base of the associated sale. Thus, document fees, security deposits, and advance payments must be included in the sales price and are taxable in the same manner as the associated sale. Likewise, late fees and non-sufficient funds fees, which are akin to interest or carrying charges rather than charges for the purchase of the property, are not subject to sales and use tax so long as they are separately stated on documentation provided to the lessee. Further, any refund of a security deposit should include the amount of tax associated with the amount of the security deposit refunded.

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.