

Georgia Letter Ruling Number: LR SUT-2017-18
Topic: Admission Charges
Date Issued: December 14, 2017

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

Facts Presented by Taxpayer

Pursuant to section 501(c)(3) of the Internal Revenue Code of 1986, as amended (“I.R.C.”), [Redacted] (“Taxpayer”) is exempt from federal income taxation.

[Redacted] (the “Theater Owner”) owns and operates [Redacted] (the “Theater”), a performing arts venue in Georgia. The Theater Owner is a nonprofit corporation, which is exempt from federal income taxation under I.R.C. § 501(c)(3). The Theater Owner leases the Theater to third parties, such as Taxpayer, for the presentation of performances.

The Theater Owner and Taxpayer entered an agreement whereby Taxpayer has agreed to perform in the Theater a production (the “Performance”). Tickets are being sold for admission to the Performance. Tickets sales are handled through the Theater’s box office. The Theater provides to Taxpayer the net proceeds from ticket sales, less any expenses to be paid to the Theater and others, as provided by contract. Tickets for the Performance bear a charge for admission and do not reflect any amount of sales tax. As such, sales tax is not being collected from customers.

Issue

Are sales of tickets for admission to the Performance subject to Georgia sales and use tax?

Analysis

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.¹ “Retail sale” means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent. The term “retail sale” includes sales of tickets, fees, or charges made for admission to places of amusement, sports, or entertainment including, but not limited to, any place at which any exhibition, display, amusement, or entertainment is offered to the public or any other place where an admission fee is charged.²

From April 25, 2017 until July 1, 2020, sales of tickets, fees, or charges for admission to certain fine arts performances or exhibitions are exempt from sales and use tax.³ To satisfy the requirements of this exemption, the fine arts performance or exhibition must be performed or exhibited by, or within a facility owned by, a tax exempt 501(c)(3) organization or a museum of cultural significance, if such organization’s or museum’s primary mission is to advance the arts in this state and to provide arts, educational, and culturally significant programming and exhibits for the benefit and enrichment of the citizens of this state. As used in this exemption, “fine arts” includes ballet, dance, and music performed by a symphony orchestra.⁴

In this case, Taxpayer does not dispute that sales of tickets to the Performance are retail sales since the tickets are for admission to a place where entertainment is offered. To determine whether the sales of tickets at issue fall within the above exemption, the Department must consider the nature of the Performance as well as Taxpayer’s status and mission. The Performance is a ballet, which Georgia law expressly includes in the definition of “fine arts.” Thus, the Performance is a qualifying fine arts performance. Taxpayer, the performing entity, is an organization exempt from taxation under I.R.C. § 501(c)(3). Further, Taxpayer’s mission is to serve a Georgia community by providing arts education, a range of fine arts performances, honor the past, and contribute to the legacy of ballet. Accordingly, Taxpayer’s status and mission satisfy the remaining requirements set forth in the exemption.

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

² O.C.G.A. § 48-8-2(31).

³ O.C.G.A. § 48-8-3(100).

⁴ *Id.*; Georgia Department of Revenue Policy Bulletin SUT-2017-07.

Ruling

Because Taxpayer's Performance is a fine arts performance that is performed by a tax exempt 501(c)(3) organization with a primary mission that falls within the requirements set forth in O.C.G.A. § 48-8-3(100), sales of tickets for admission to Taxpayer's Performance are exempt from sales and use tax.

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.