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Georgia Sales and Use Tax Issues For Nonprofits Organizations

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Overview

- Application of Sales/Use Taxes to Nonprofits
- Scope of Sales/Use Taxes in General
- Potential Exemptions/Exclusions From Tax
- Analysis of Representative Transactions
- Administration of Tax
- Useful Forms and Websites



Application to Nonprofits

- Georgia sales tax law does **not** broadly exempt nonprofits from taxation
- Organization which are specifically exempt from tax are:
 - Nonprofit health centers
 - Nonprofit nursing homes, sanitariums and hospitals
 - Public library fundraising groups
 - Religious institutions (subject to certain conditions)
 - Nonprofit child service providers
 - Nonprofit blood banks
 - Private elementary and secondary schools and colleges
 - Parent teacher organizations
 - Rock Eagle 4H Centers and Daughters of the American Revolution
 - Georgia Medical Center Authority and other instrumentalities of the State
- Other kinds of nonprofits, including organizations exempt from federal income tax under IRC § 501(c)(3), are generally subject to sales/use tax



Scope of Sales/Use Taxes

- Georgia imposes sales tax on “retail sales of tangible personal property” and certain enumerated services
- Tangible personal property (“TPP”) is property that is perceptible to the senses and does not include real estate
- A “retail sale” is a sale to a non-exempt end user and not for resale
- A sale occurs in Georgia when either title or possession of TPP transfers in the state
- A “sale” includes barter transactions and leases of TPP
- A retail sales includes sales of tickets, fees or other charges for admission to, or voluntary contributions made to, places of amusement, sports or entertainment (*see infra*)



Scope of Sales/Use Taxes

- The sales tax is imposed on the gross proceeds from a sale without any deductions for the cost of the materials used, labor, services, transportation charges, or any other expenses
- Sales price does not include cash discounts
- Sales price does not include labor/service charges for installing, repairing, or remodeling TPP sold
- Sales tax is collected by the seller from the buyer and must be regularly remitted to the state
- Sales tax includes a state rate of 4% and a local rate, depending on where the sale takes place, up to an additional 4% for a potential combined rate of 8%



Scope of Sales/Use Taxes

- When sales tax is not collected by the seller on an otherwise taxable retail sale, the buyer becomes responsible for paying a “use tax” imposed at the same rate as the sales tax
- The base for the use tax is the cost price of the taxable property or service
- The buyer remits the use tax directly to the state
- The use tax is designed to capture sales that would otherwise escape the sales tax



Exclusions And Exemptions From Tax

- An occasional sale of TPP does not subject the seller to tax
- An occasional sale is a sale where:
 - The property is not held by the seller for use in the operation of a business or for resale, or
 - Sales of business property by the seller during the last 12 months do not exceed \$500, or
 - The sale is made in complete liquidation of the seller's business
- Note that just because an entity is a 501(c)(3) that does not mean that property purchased for resale by the entity is going to fall under the "casual sale" exclusion from tax
- Other exemption that might apply are:
 - Sales of food to be consumed off the premises (state tax only)
 - Sales to federal, state or local governments
 - Industrial materials to be fabricated or manufactured for resale

Representative Transactions

- Sales of T-shirts, hand crafted items, art and other TPP by a nonprofit are generally taxable so the nonprofit must collect sales tax from buyers; however, the nonprofit can purchase any materials for resale free of sales tax
- Raffles of TPP will generally be subject to sales tax
- Tickets or charges for admission to dinners, galas, balls, plays, or any other kind of entertainment or event will generally be subject to sales tax, even if some or all of the admission price is deemed to be a voluntary contribution
- Car wash and other service transactions where no TPP is sold to buyers are not subject to sales tax
- Sales of books will generally be subject to sales tax
- Sales of intrastate transportation services are generally subject to sales tax (but not for trips outside the state)
- Internet sales to Georgia residents are subject to Georgia sales tax (but not sales where the property is shipped to customers outside the state)
- Reimbursements for expenses are generally not deemed to be taxable sales



Administration of Tax

- Nonprofits making taxable sales must register as “dealers” with the Georgia Department of Revenue and get a sales tax number
- Thereafter, the Department will send the organization a tax packet including sales tax return forms to file
- The nonprofit will be required to file sales/use tax returns on a monthly, quarterly, or annual basis, depending on the volume of sales (monthly filing is the default)
- The nonprofit must track where sales take place and allocate proceeds amongst the various sales locations and track varying local sales tax rates
- When making a purchase or property for resale, the nonprofit must provide the vendor a “sale for resale certificate”
- When making a sale to a customer, the nonprofit must collect sales tax on retail sales of TPP unless the customer provides the nonprofit with a valid exemption certificate
- A valid exemption certificate should contain the buyer’s Georgia sales tax registration number
- An exemption certificate is only valid if accepted in good faith by the seller



Useful Forms and Websites

- State tax registration application (Form CRF-2002):
https://etax.dor.ga.gov/ctr/TSD_State_Tax_Registration_Application_CRF002.pdf
- Georgia Department of Revenue Sales tax forms:
https://etax.dor.ga.gov/salestax/st3forms/st3_indx.aspx
- Georgia sales tax return (Form ST-3):
https://etax.dor.ga.gov/salestax/st3forms/TSD_Sales_Tax_Master_Filer_Form_ST3c.pdf
- Sale for resale/Misc. exemption certificate (Form ST-5):
https://etax.dor.ga.gov/salestax/st3forms/tsd_sales_tax_dealer_or_purchaser_exemption_certificate_st5.pdf
- Out of state delivery exemption certificate:
https://etax.dor.ga.gov/salestax/st3forms/tsd_sales_tax_out_of_state_delivery_exemption_certificate_st6.pdf
- Georgia Department of Revenue (General Tax Information):
https://etax.dor.ga.gov/Business_Taxes.aspx
- Georgia Department of Revenue (Sales Tax Information):
https://etax.dor.ga.gov/BusTax_SalesTax.aspx