Date Issued: November 1, 2016
Georgia Letter Ruling: LR SUT-2016-23
Topic: Games and Amusement

This letter is in response to your request for guidance on the application of Georgia sales and use tax to certain sales made by your client, [Redacted] ("Taxpayer").

Facts Provided by Taxpayer[1]

Taxpayer is a facility offering customers the opportunity to practice golfing and batting techniques. The golfing amenities include a driving range, practice green, and bunker. Customers pay for various sizes of buckets of game balls for the ability use of the golf facilities. Charges vary according to the number of game balls in each bucket. While customers typically bring their own golf clubs, Taxpayer has golf clubs available for customer use at no additional charge. Taxpayer also offers individual or group golf instruction provided by a golf professional, and fees for this instruction vary according to class size and instruction time. In addition, the facility offers batting cages, where customer pays for tokens that equal a certain number of pitches.

Issues

1. Are Taxpayer's charges for golf balls and the use of a driving range and other golfing amenities taxable?
2. Are Taxpayer's charges for tokens and the use of a batting cage taxable?
3. Are Taxpayer's charges for golf lessons provided by a golf professional taxable?

Analysis

Georgia levies and imposes sales and use tax (subject to certain specific exemptions) on the retail purchase, retail sale, storage, use, or consumption of tangible personal property and on certain enumerated services.[2] "Retail sale" includes any sale, lease, or rental unless for resale, and "retail sale" specifically includes charges for participation in games and amusement activities.[3]

Taxpayer's fees for use of golf balls are effectively charges to play golf.[4] Likewise, Taxpayer's fees for tokens necessary to operate pitching machines are effectively charges to play baseball. These charges are for a customer to actively play a part of a traditional game with limited instruction. Additionally, the parts of games played in Taxpayer's facilities appear to be generally for amusement purposes since they are akin to typical carnival games. Although a customer may not complete a full golf or baseball game, the use of a driving range or batting cage, in this circumstance, constitutes participation in a game of amusement activity.[5] Therefore, such charges are taxable retail sales.

Unlike sales of tangible personal property, which are generally taxable, sales of services are exempt unless the service is specifically designated as taxable. Personal services and professional services are not taxable.[6] Moreover, sports instruction is not a service identified as taxable by statute or regulation. Thus, charges for golf lessons are nontaxable charges for services. However, service providers are end users of tangible personal property and are liable for tax on all tangible personal property used by them to perform the service.[7] Accordingly, Taxpayer's purchase of golf clubs, golf balls, and baseballs provided to the customer at no charge are subject to sales and use tax.

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[1] The facts herein are based on information in Taxpayer's letter ruling request, email correspondence with Taxpayer on [Redacted Date], and Taxpayer's website, last accessed [Redacted Date]).
[2] O.C.G.A. §§ 48-8-1, 48-8-30.
[3] O.C.G.A. § 48-8-2(31).
[4] Plainly, Taxpayer's charges for the use of golf balls are the temporary transfer of tangible personal property to a customer in exchange for payment. Viewed in this manner, such transactions are leases or rentals that are included within the terms "retail sale." *See* O.C.G.A. § 48-8-2(17).
[5] While not directly on point, rules requiring collection of tax on fees at hunting preserves and clubs provide additional insight into the applicability of sale and use tax to Taxpayer's charges. Like hunting preserves, Taxpayer's facilities provide customers with outdoor areas to practice and improve recreational skills. *See* Ga. Comp. R. & Regs. r. 560-12-2-.113(3)(a) (hunting preserves and clubs allowing the general public to hunt animals in a designated area for a charge or fee must collect tax on fees for outdoor recreational activities related to hunting animals, such as hunting stocked and/or wild game, target range shooting, and gear rental).
[6] O.C.G.A. § 48-8-3(22).
[7] O.C.G.A. § 48-8-63(b); Ga. Comp. R. & Regs. R. 560-12-1-.14(7)(d).

Rulings

1. Taxpayer's charges to customers to use golfing facilities are charges made for participation in a game or amusement activity and, thus, constitute retail sales subject to sales and use tax.

2. Likewise, Taxpayer's charges to customers to use batting cages are subject to sales and use tax since they are charges made for participation in a game or amusement activity.

3. Sports instruction is not a taxable service. For this reason, Taxpayer's charges for instruction and lessons provided by a professional are not subject to sales tax. Nevertheless, Taxpayer is liable for sales and use tax on the purchase price of all tangible personal property used to provide this instruction service.

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, 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 ruling.