

## **GEORGIA DEPARTMENT OF REVENUE’S REVISED “FREIGHT AND DELIVERY CHARGES” REGULATION - EFFECTIVE AUGUST 14, 2014**

### **A. Overview of Freight and Delivery Charges**

Charges for transporting goods are exempt from sales tax. *See* O.C.G.A. § 48-8-3(18). But this rule becomes unclear where the transportation charges are tied to the sale of the materials or goods – where the seller uses its own delivery truck or where the seller arranges for transportation of the materials with a common carrier (a transport company that has a US DOT number). In such circumstances, the purchaser must turn to GA. COMP. R. & REGS. r. 560-12-2-.45.

The old regulation contained arcane language. The rule focused on where title passes and risk of loss, requiring a tax advisor to brush up on commercial trucking terminology and insurance issues.

The new rule is easier to understand and apply. It is effective August 3, 2014.

### **B. Old Rule – Risk of Loss/Passage of Title**

Under the prior rule, the moment of sale determined whether the transportation charges are subject to sales tax. Taxability depended upon whether the goods were shipped F.O.B. Shipping Point or F.O.B. Destination Point.

If items are shipped F.O.B. Shipping Point, the risk of loss is at seller’s dock. Under the prior rule, transportation charges are not subject to sales and use tax where (1) purchaser assumed risk at seller’s dock and (2) F&D did not appear on invoice as a charge. Under the prior rule, prepaid transportation costs are subject to sales and use tax if (1) the seller prepaid the transportation charges and (2) the seller charged the purchaser either on the invoice as an added charge OR on a separate invoice. Prepaid transportation costs are not subject to sales and use

tax, if (1) the seller secured transportation as purchaser's agent and (2) a satisfactory showing was made that the seller was acting as purchaser's agent in securing the transportation (prompting the need to get a stamp "Prepay and bill" or "ship best way").

Under F.O.B. Destination Point, title passes at delivery point. In such a scenario, under the prior rule, transportation costs are taxable. The charges are part of the sales price, even if the seller billed the transportation charges separately, and regardless of whether the seller arranges for transportation or delivers the property on the seller's own delivery truck.

**C. Revised GA. COMP. R. & REGS. r. 560-12-2-.45  
Freight, Delivery and Transportation**

Effective August 3, 2014, the revised regulation resolves issues/problems about transfer of title and risk of loss by removing such considerations. "Delivery charges" is defined in regulation as charges by seller of tangible personal property or services (1) for preparation and (2) delivery to location chosen by purchaser. Under the definition, delivery charges includes charges for (1) transportation, (2) shipping, (3) postage, (4) handling, (5) crating and packaging, (6) fuel surcharges, (7) split shipment charges (break up into two or more shipments, *i.e.*, portion to Vidalia and portion to Valdosta) and (8) small order charges.

Direct Mail Charges. "Delivery charges" excludes postage for direct mail. But the postage must be passed on dollar-for-dollar, with no markup. Also, the postage charge must be stated separately on the purchaser's invoice.

Seller-imposed delivery charge. These charges are taxable, even if the charge is optional and not required to make the sale, and even if charge is separately-stated on invoice. Careful planning can avoid overcharges for sales tax. If the seller charges for delivery and installation of the item, then the seller should separately state "delivery charges" from "installation charges."

The delivery charges are taxable, but the installation charges (or setup fees) are not taxable. Installation and setup fees are charges for labor and are not subject to Georgia sales tax.

Seller as Agent. Where the seller acts as purchaser's agent in securing transportation, the delivery charge is not taxable, so long as evidence exists of the agency relationship exists. The regulation has several conditions. First, the contract with the purchaser must state that purchaser is going to pay for shipping costs. Second, the contract with the purchaser must state that purchaser assumes responsibility of the tangible personal property at the seller's loading dock. Third, the seller must have an escrow account for purchaser for the delivery charges. Fourth, the contract with the purchaser requires that purchaser deposits into the escrow account the funds needed for F&D in advance of the delivery. Fifth, the seller must invoice the delivery charges separately and show deposits and withdrawals from the escrow account. Sixth, the seller must keep records that show the withdrawals from and customer deposits into the delivery escrow account. Seventh, the contract with the purchaser cannot include a provision for markup of freight and delivery charges and must prohibit financing the freight and delivery charges.

Reiteration of Exemption for Transportation Charges. The new regulation reiterates that charges for transportation of tangible personal property are not subject to tax when charges are not associated with taxable sale of tangible personal property. This rule is codified in O.C.G.A. § 48-8-3(18), which provides for an exemption from sales tax of charges for transportation of tangible personal property, except for delivery charges tied to the sale of the property being delivered.

Sale of Taxable Items with Nontaxable Items. Some sales include taxable and nontaxable items (for example, a computer distributor may buy several hundred computers for resale and also buy several hundred computers for use in its business). Here, the seller has two options.

First, the seller can charge tax on entire delivery charge. Second, and alternatively, the seller can charge sales tax on a portion of the delivery charge that is commensurate with sales price (taxable sales/total sales) or commensurate with weight (weight of taxable TPP/total weight of shipment). The seller must keep records to show the computation of the taxes on delivery charges. Note that where the sale of tangible personal property is exempt or is an excludible purchase for resale, then the delivery charges can never be taxable.

Examples. The new regulation provides several practical examples that are worth reviewing.

Litwin's 10 Rules on Freight and Delivery (F&D). Based on the regulation, we have 10 important rules related to freight and delivery charges.

- Rule 1: Charges for transportation of tangible personal property (TPP) are not taxable when not associated with taxable sale of TPP.
- Rule 2: If the underlying sale is not taxable (sale-for-resale or exempt), then F&D or shipping charges are not taxable.
- Rule 3: A seller-imposed delivery charge is taxable, even if the charge is optional to purchaser and even if the charge is separately-stated on the invoice. The seller must collect and purchaser must accrue tax (if seller is out of state).
- Rule 4: If seller acts as purchaser's agent to secure shipping/transportation, then the delivery charge is not taxable, but an "agency" r'p must exist and evidence must exist (see details above of the evidence required).
- Rule 5: Where the sale includes **taxable and nontaxable** items, together, the seller has the option to either charge tax on 100% of the delivery charge, or charge tax on part of delivery charge tied to the non-exempt items and based on sales price (taxable/total) or weight (taxable/total).
- Rule 6: If seller arranges for transportation and bills purchaser for transportation costs that

common carrier charged seller, then the transportation is taxable.

- Rule 7: If seller arranges for transportation but carrier bills purchaser, then the charge is not taxable.
- Rule 8: If purchaser arranges for transportation, and carrier charges purchaser for the transportation, then the charges are not taxable.
- Rule 9: Moving company charges are not taxable.