

Sales Tax Update – Rebirth of the Good-faith Requirement in Taking Resale Certificates and Exemption Certificates

Effective March 5, 2013, a new law imposes a tougher burden on sellers who take "resale" or "exemption" certificates from purchases that do not pay sales and use tax. After a brief period (January 1, 2011 through March 4, 2013) of an eased burden, the good-faith standard that existed prior to January 1, 2011 is back.

Background

In Georgia, a sale of tangible personal property is subject to sales and use tax and is presumed to be a taxable "retail sale," until the contrary is shown. The seller must show that the sale is not a retail sale and thus not subject to sales tax or show that the sale is exempt from sales tax. The seller is relieved of this burden, if the seller gets from the purchaser a properly completed resale or exemption certificate. Sellers often sell tangible personal property without getting a resale or exemption certificate at the time of the sale. The customer claims to be a reseller, and the volume of the purchases may make this fact obvious. Perhaps the customer provides a "tax identification number" only, with feigned assurances that the certificate will follow. Getting only a tax-exempt number was insufficient and does not establish that the transaction is not a retail sale subject to sales tax.

Up until December 31, 2010, the seller had to get the exemption or resale certificate in "good faith." For sale-for-resale, the seller had to verify that the purchaser was in the business of selling the goods at issue and that the purchaser planned to resale the goods. For exempt sales, the seller had to verify that the purchaser was indeed entitled to the exemption from sales tax.

On August 1, 2011, Georgia became the 24th full-member of the Streamlined Sales and Use Tax Agreement. As a condition to becoming a full-member, Georgia had to revise its tax laws to conform with the Streamlined Sales and Use Tax Agreement. In particular, the conformity requirements included easing the rules on taking resale and exemption certificates. The Georgia General Assembly passed the conforming legislation in 2010 and in 2011.

Change in Law Resulting from Streamlined Sales Tax Conformity Legislation

Before Georgia could become a full-member of the Streamlined Sales and Use Tax Agreement (SSUTA), Georgia had to enact legislation aimed at easing the burden of proof imposed on sellers. Effective January 1, 2011, the seller no longer had to look behind the resale/exemption certificate. Under the revised law, the seller merely had to get a "properly completed" resale or exemption certificate from the purchaser and get the certificate within 90 days of the sale. Otherwise, the seller had 120 days from a Department request (typically during an audit) to get a fully completed exemption certificate from purchaser, taken in "good faith."

Rebirth of Good Faith

Effective March 5, 2013, the General Assembly has restored the good-faith rule and even added to the pre-SSUTA burdens imposed on sellers taking resale and exemption certificates. Now, a seller is relieved of the burden of proving that a sale is not a retail sale or is exempt from sales tax only if the seller (1) gets a properly-completed certificate and (2) takes the certificate in good faith.

As to exemption certificates, the seller must get a fully completed certificate from the purchaser. The certificate must contain specific information about the purchaser and the purchase. Also, the purchaser must use the proper exemption form.

As to resale certificates, the seller must get a properly completed resale certificate. Further, the purchaser must be engaged in business of selling tangible personal property, have a valid sales tax registration number at the time of the purchase and write/type his sales tax number on the certificate. Finally, the seller must show that at the time of the sale the seller has no reason to think that purchaser does not intend to resell the item in his/her regular course of business.

Conclusion

The rigorous burdens imposed on sellers reflect the concern about possible abuse in the past and the State of Georgia's effort to tighten controls over the use of exemption/resale certificates in general. Sellers should be aware of these new rules when taking resale certificates and when taking exemption certificates.