

IN THE GEORGIA TAX TRIBUNAL  
STATE OF GEORGIA



OCT 31 2022

UBER TECHNOLOGIES, INC.,

Petitioner,

v.

ROBYN A. CRITTENDEN, in her official  
capacity as COMMISSIONER, GEORGIA  
DEPARTMENT OF REVENUE,

Respondent.

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Clara Davis, Tax Tribunal Administrator

Docket No. 1834258

**ORDER ON BOOKING FEE**

By agreement of the parties, this case was bifurcated as to the general determination of liability for sales tax and the amount due. The Tribunal previously granted summary judgement in favor of Respondent, Commissioner of the Georgia Department of Revenue (“Respondent” or the “Department”) and against Petitioner Uber Technologies, Inc. (“Petitioner” or “Uber”) as to the general determination of liability for sales tax. See Grant Order. This matter pertains only to the determination of whether Uber is required to collect sales tax on Booking Fee receipts during the Audit Period. After careful consideration of the parties’ motions and arguments and for the reasons set forth below, Petitioner’s Motion for a Ruling that the Booking Fee is Not Subject to Sales Tax is **DENIED** and Respondent’s supplemental motion for summary judgment on the Booking Fee is **GRANTED**.

**FINDINGS OF FACT**

1.

All facts and exhibits stipulated to in the parties’ Joint Partial Stipulations of Fact filed in this matter on October 29, 2021 are incorporated herein. (Second Joint Stipulation of Fact, Aug. 15, 2022 [hereinafter “Stip.” at ¶ 1.]

2.

Beginning on or about April 2014, Riders paid Uber a “Safe Rides Fee” on trips facilitated by through the Uber App. (Stip. at ¶ 2.)

3.

From July 23, 2012 until March 2014, Uber did not charge a Safe Rides Fee. (Stip. at ¶ 3.)

4.

Uber charged the Safe Rides Fee to recover costs Uber incurred to improve the safety of its platform. These costs included regulatory compliance, insurance, Driver background checks, motor vehicle records checks, development of safety features in the Uber App, incident response, and Driver safety education, among other things. (Stip. at ¶ 4.)

5.

The Safe Rides Fee was not part of the fare that Drivers charge to Riders, but goes directly to Uber to cover the costs described in paragraph 4 above. (Stip. at ¶ 5.)

6.

Only certain types of rides were subject to the Safe Rides Fee. On all such rides where the Safe Rides Fee applied, Riders paid Uber the flat fee charge. (Stip. at ¶ 6.)

7.

The Safe Rides Fee was a separate line item from the fare on Riders’ receipts. (Second Joint Stip. Of Facts at ¶ 7.)

8.

The Safe Rides Fee was a flat fee for each ride. (Stip. at ¶ 8.)

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The Safe Rides Fee was separate from Uber's service fee that it charged Drivers. (Stip. at ¶ 9.)

10.

The Safe Rides Fee was not included in the calculation of Uber's service fee (which was calculated as a percentage of the Rider's fare) that Uber charges to Drivers. (Stip. at ¶ 10.)

11.

The Safe Rides Fee was renamed after the Audit Period (July 23, 2012 to June 30, 2015), and is now referred to as the "Booking Fee." (Stip. at ¶ 11.)

### **CONCLUSIONS OF LAW**

#### **I. STANDARD OF REVIEW**

To prevail on a motion for summary judgement, the moving party must demonstrate that there is no genuine issue as to any material fact as to each element of its claim and the undisputed facts, when viewed in the light most favorable to the nonmoving party, warrant judgment as a matter of law. O.C.G.A. § 9-11-56(c); Tax Tribunal Rule 616-1-3-.19(a); see also Lau's Corp., Inc. v. Haskins, 261 Ga. 491, 491 (1991); Scholastic Book Clubs, Inc. v. Comm'r, 2017-2 (Ga. Tax Tribunal, Feb. 14, 2017).

#### **II. THE SAFE RIDES FEE IS PART OF THE TOTAL AMOUNT OF CONSIDERATION FOR WHICH THE TRANSPORTATION SERVICES ARE SOLD**

Georgia law calculates sales tax based upon the "sales price" of the goods or services at issue. "Sales price" is defined by statute, in pertinent part, as follows:

(A) "Sales price" applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise without any deduction for the following:

(i) The seller's cost of property sold;

- (ii) The cost of materials used, labor, or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- (iii) Charges by the seller for any services necessary to complete the sale; and
- (iv) Delivery charges.

(B) Sales price shall not include:

- (i) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;
- (ii) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;
- (iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser;
- (iv) Installation charges if they are separately stated on the invoice, billing, or similar document given to the purchaser;
- (v) Telecommunications nonrecurring charges if they are separately stated on the invoice, billing, or similar document; and
- (vi) Credit for any trade-in.

O.C.G.A. § 48-8-2(34).

The definition of “sales price” as being without any deduction for expenses has been the law in Georgia since at least 1965: “‘Sales price’ means the total amount for which tangible personal property or services are sold, including any services that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the seller, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or services costs, losses or any other expenses whatsoever.”

Undercofler v. Capital Auto. Co., 111 Ga. App. 709, 711 (1965).

Here, Petitioner argues that Department Regulation 560-12-2-.84 only applies to “fares of transportation” and not to fees for other, non-taxable services such as the Safe Rides Fee. (Uber Br. at 5.) The governing sales tax statutes require sales tax to be collected based on the “Sales



Price,” and define the term “Sales Price” broadly. Thus, a fee, even for non-taxable services, that is part of the “total amount of consideration” for services sold falls under the broad definition of “Sales price.”

Petitioner further argues that the Safe Rides Fee is not part of the sales price for transportation services because the Safe Rides Fee is a distinct and identifiable charge paid by the Rider to Uber for the recovery of costs of various non-taxable services. (Uber Response Br. at 5-6.) The only items that are excluded from the definition of “Sales Price” are listed in the enumerated list set forth in O.C.G.A. § 48-8-2(34)(B). Petitioner states that the Safe Rides Fee was charged to recover costs Uber incurred to improve the safety of its platform. These costs include regulatory compliance, insurance, Driver background checks, motor vehicle records checks, development of safety features in the Uber App, incident response, and Driver safety education, among other things. (Stip. at 4). None of these costs are expressly excluded from the definition of “Sales Price” set forth in O.C.G.A. § 48-8-2(34)(B). Thus, the Safe Rides Fee is part of the taxable base under Georgia law.

### CONCLUSION

For all the forgoing reasons, the Department’s Motion is hereby **GRANTED**, Petitioner’s Motion is Denied, and judgment is entered in favor of the Department.

SO ORDERED this 31<sup>st</sup> day of October, 2022.



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HONORABLE LAWRENCE E. O’NEAL, JR.  
CHIEF JUDGE  
GEORGIA TAX TRIBUNAL