

**RULES
OF
DEPARTMENT OF REVENUE**

**CHAPTER 560-12
SALES AND USE TAX DIVISION**

**SUBJECT 560-12-2
SUBSTANTIVE RULES AND REGULATIONS**

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(1) Exemption. In accordance with O.C.G.A. § 48-8-3(68) and subject to this Regulation, sales of Computer Equipment are exempt from sales and use tax.

(a) “Computer Equipment” means any individual computer or organized assembly of hardware or software, including, but not limited to, a server farm, mainframe or midrange computer, mainframe driven high-speed print and mailing devices, and workstations connected to those devices via high bandwidth connectivity such as a local area network, wide area network, or any other data transport technology which performs one of the following functions: storage or management of production data, hosting of production applications, hosting of application systems development activities, or hosting of applications systems testing.

1. Beginning January 1, 2001, “Computer Equipment” excludes:

(i) Telephone central office equipment or other voice data transport technology, including any wireline or wireless telecommunication system; and

(ii) Equipment with imbedded computer hardware or software which is primarily used for training, product testing, or in a manufacturing process.

2. Beginning January 1, 2024, "Computer Equipment" also excludes:

(i) Computers or devices issued to employees, including, but not limited to, smartphones, tablets, wearables, personal computers, and laptops; and

(ii) Prewritten computer software.

3. Examples of items that do not qualify as Computer Equipment include, but, are not limited to: cable; telephone central office equipment; voice data transmission equipment; equipment with imbedded hardware or software used primarily for training, product testing or in manufacturing; scanners; printers and paper; ink and toner; wrist and mouse pads; tools; all removable storage media such as, diskettes, compact disks or tapes; and parts for maintenance or repair of computer system hardware.

(2) Exemption limitation. Pursuant to O.C.G.A. § 48-8-3(68)(A)(ii), beginning January 1, 2024, each taxpayer claiming the exemption must pay ten percent of all state and local sales and use taxes imposed under the laws of this state on the first \$15 million of Computer Equipment purchased each year for which this exemption is claimed.

(a) Persons making a tax-free purchase under this exemption must report and remit to the Department the tax imposed under O.C.G.A. § 48-8-3(68)(A)(ii) on the sales and use tax return that is next due after the purchase.

(b) Persons claiming this exemption by refund will receive a refund of ninety percent of tax imposed on the first \$15 million of eligible purchases for which exemption is claimed under O.C.G.A. § 48-8-3(68).

(3) Exemption requirements. To qualify for the exemption,

(a) The Computer Equipment must be purchased or leased exclusively for operational use in this state at a High-Technology Company. For purposes of this Regulation,

1. "High-Technology Company" means a business entity or Company Facility classified under the North American Industrial Classification System codes ("NAICS code") specified in O.C.G.A. § 48-8-3(68).

(i) For taxpayers other than those applying on a Company Facility basis, the NAICS code on a taxpayer's income tax return determines whether the taxpayer is a High-Technology Company, unless the commissioner, in his or her sole discretion, determines that the NAICS code does not accurately reflect the taxpayer's business activity.

2. "Company Facility" means a single physical establishment in this state, as defined in the North American Industrial Classification System (NAICS) United States Manual, where the primary business activity is designated within the NAICS codes as specified

in O.C.G.A. § 48-8-3(68)(A) and approved by the commissioner.

(i) For taxpayers applying on a Company Facility basis, the NAICS code designated on the Application for Certificate of Exemption (Form ST-CE1) determines whether the facility is a High-Technology Company, unless the commissioner, in his or her sole discretion, determines that the NAICS code does not accurately reflect the facility's business activity.

(b) The total combined value of all Computer Equipment purchased or leased during any calendar year must meet the following thresholds:

1. From January 1, 2001 through December 31, 2023, the total fair market value of Computer Equipment purchased or leased during any calendar year must exceed \$15 million.

2. Beginning January 1, 2024, the total fair market value of taxable Computer Equipment purchased or leased during any calendar year must equal or exceed \$15 million.

3. For calculating the \$15 million threshold, the fair market value of leased Computer Equipment is the book value of the Computer Equipment at the time of lease's inception. The book value of leased Computer Equipment counts toward the exemption threshold for the initial calendar year of the lease and does not count toward the threshold in subsequent years. In addition, the exercise of any option to purchase such Computer Equipment under a qualifying lease must not be used in subsequent years to meet the \$15 million requirement.

(c) For entities qualifying for the exemption on a Company Facility basis, only Computer Equipment purchased or leased exclusively for operational use at the Company Facility are eligible for the exemption and count toward the threshold.

(d) Beginning July 1, 2021, each taxpayer claiming the exemption must comply with the reporting requirement in paragraph (6) of this Regulation.

(e) The eligible purchasers or lessees of such Computer Equipment must obtain a Certificate of Exemption from the commissioner as provided in paragraph (4) of this Regulation. The application for such Certificate must contain a specific schedule of planned purchases or leases, or both, of qualified Computer Equipment for the calendar year for which the application is filed.

(f) The Computer Equipment must be purchased or leased exclusively for operational use in this state by a High-Technology Company.

(g) A High-Technology Company, other than a Company Facility, that is affiliated in any manner with a nonqualified corporation, partnership, limited liability company, or other similar entity, must derive more than fifty (50) percent of its gross revenues from the activities designated by its NAICS code in arms-length transactions with entities with which it has no affiliation.

(4) Certificates of exemption.

(a) Any purchaser or lessee desiring to secure the benefits of the exemption provided by O.C.G.A. § 48-8-3(68) must file an Application for Certificate of Exemption (Form ST-CE1). The application must include disclosure

of business name, address, specific Company Facility location (if applicable), NAICS code as indicated on the federal income tax return for the High-Technology Company, NAICS code for a specific Company Facility (if applicable), whether equipment is purchased, leased or both, anticipated dates of purchase or lease, and a schedule of the Computer Equipment to be purchased or leased for the entire calendar year including purchase price, or in the case of a lease, the book value. In addition, the commissioner may require such other information as deemed necessary for the determination of the claim for exemption. These requirements are applicable to all purchasers and lessees, including holders of direct pay permits.

(b) Upon approval of an application, the commissioner will issue a certificate of exemption (Form ST-CE2) to the company. The certificate of exemption relieves the Computer Equipment supplier from the collection of the sales and use tax on Computer Equipment if the supplier accepts the certificate in accordance with O.C.G.A. § 48-8-38, from a High-Technology Company.

(c) Where the certificate of exemption (Form ST-CE2) has not previously been obtained and tax is collected on the purchase or lease of Computer Equipment that may be qualified for exemption, the purchaser or lessee may apply for a refund of such tax. The Claim for Refund (Form ST-12) must be accompanied by an Application for Exemption (Form ST-CE1). As provided by O.C.G.A. § 48-2-35.1, refunds issued pursuant to this exemption do not bear interest.

(5) Tax, penalty, and interest. If any purchases or leases fail to meet the requirements of this exemption, the

High-Technology Company will be liable for tax, penalty, and interest on the purchases or leases.

(6) Reporting.

(a) Beginning July 1, 2021, each High-Technology Company that has been issued a certificate of exemption must report to the Department a list of the facilities into which Computer Equipment exempted under O.C.G.A. § 48-8-3(68) during the preceding calendar year was incorporated, as well as the amount of taxes exempted under O.C.G.A. § 48-8-3(68) during the preceding calendar year.

(b) The report is due by March 31st of each year following the year the High-Technology Company utilized a certificate of exemption pursuant to O.C.G.A. § 48-8-3(68).

(c) The report is subject to the confidentiality provisions of O.C.G.A. § 48-2-15.

(d) The Department will not issue a certificate of exemption under O.C.G.A. § 48-8-3(68) for the calendar year following the reporting year to any High-Technology Company that has failed to comply with the reporting required by O.C.G.A. § 48-8-3(68).

(e) The report must be submitted by email to the Department's Tax Policy Division at tax.policy@dor.ga.gov.

AUTHORITY: O.C.G.A. Secs. §§ 48-2-12, 48-8-3.