

**Frank M. O'Connell**  
State Revenue Commissioner



**Georgia Department of Revenue**  
1800 Century Boulevard, NE | Atlanta, Georgia 30345

**NOTICE SUT-2024-01**

**RE: Proposal to adopt Rule 560-12-2-.118 Digital Products, Goods, and Codes**

**TO ALL INTERESTED PERSONS AND PARTIES:**

In compliance with O.C.G.A. § 50-13-4, the Georgia Department of Revenue gives notice that it proposes to adopt Rule 560-12-2-.118 Digital Products, Goods, and Codes.

Attached to this notice are an exact copy and synopsis of the proposed rule. The proposed rule is being adopted under the authority of O.C.G.A. §§ 48-2-12 and 48-8-30.

The Department of Revenue will consider the adoption of the above rule at a remote regulation hearing held at 10:00 am on December 19, 2024, which can be accessed through the following link: <https://meet.goto.com/778757413> or via telephone at (646) 749-3129 or 1 877 309 2073 (toll-free) with the access code: 778-757-413. At the beginning of the hearing, attendees will be required to announce themselves and notify the Department if they plan to make oral comments during the hearing.

The Department must receive all comments regarding the above-referenced Rule from interested persons and parties no later than 10:00 am on December 19, 2024. Electronic comments must be sent to [regcomments@dor.ga.gov](mailto:regcomments@dor.ga.gov). Facsimile comments must be sent to (770) 342-3157. **Please reference "Notice Number SUT-2024-01" on all comments.**

Dated: 11/01/2024

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## **SYNOPSIS**

### **GEORGIA DEPARTMENT OF REVENUE SALES AND USE TAX DIVISION**

#### **CHAPTER 560-12-2 SUBSTANTIVE RULES AND REGULATIONS**

##### **560-12-2-.118. Digital Products, Goods, and Codes**

The Georgia Department of Revenue proposes to adopt Rule 560-12-2-.118 “Digital Products, Goods, and Codes” to address the sales and use taxation of Specified Digital Products, Other Digital Goods, and Digital Codes pursuant to O.C.G.A. §§ 48-8-3 and 48-8-30. The main features of the Rule are as follows:

Paragraph (1) Purpose.

Paragraph (2) Definitions.

Paragraph (3) Imposition.

Paragraph (4) Sourcing.

Paragraph (5) Exemptions and exclusions.

Paragraph (6) Sales for resale.

Paragraph (7) Withdrawals from inventory.

1                                   **RULES**  
2                                   **OF**  
3                                   **DEPARTMENT OF REVENUE**  
4                                   **SALES AND USE TAX DIVISION**

5  
6                                   **CHAPTER 560-12-2**  
7                                   **SUBSTANTIVE RULES AND REGULATIONS**  
8

9                   **560-12-2-.118 Digital Products, Goods, and Codes**

10           **(1) Purpose.** This Rule sets forth the application of  
11           Georgia sales and use tax concerning the sale or use of  
12           Specified Digital Products, Other Digital Goods, and  
13           Digital Codes, as well as Internet Access Service.

14           **(2) Definitions.** For purposes of this Rule,

15           (a) “Digital Audio-Visual Works” means any series of  
16           related images, together with accompanying sounds, if any  
17           and which, when shown in succession, impart an  
18           impression of motion.

19           (b) “Digital Audio Works” means digitized works that  
20           result from the fixation of a series of musical, spoken, or  
21           other sounds. Such term includes digitized sound files that  
22           are downloaded onto a device and that may be used to alert  
23           an End User with respect to a communication.

24           (c) “Digital Book” means works that are generally  
25           recognized in the ordinary and usual sense as “books.”

26           (d) “Digital Code” means a key, activation, or enabling  
27           code that conveys a right to obtain one or more Specified  
28           Digital Products or Other Digital Goods. Such term does  
29           not include a code that represents a stored monetary value

30 that is deducted from a total as it is used by the purchaser  
31 or a redeemable card, gift card, or gift certificate that  
32 entitles the holder to select Specified Digital Products or  
33 Other Digital Goods of an indicated cash value.

34 (e) “End User” means any person other than a person  
35 that receives by contract a product Transferred  
36 Electronically for further commercial broadcast,  
37 rebroadcast, transmission, retransmission, licensing,  
38 relicensing, distribution, redistribution, or exhibition of the  
39 product, in whole or in part, to another person or persons.

40 (f) “Internet Access Service” has the same meaning as  
41 such term is defined in 47 U.S.C. Section 151, note.

42 (g) “Other Digital Goods” means the following items  
43 Transferred Electronically to an End User:

44 (1) Artwork;

45 (2) Magazines;

46 (3) Newspapers;

47 (4) Photographs;

48 (5) Periodicals;

49 (6) Video or audio greeting cards; or

50 (7) Video games or electronic entertainment.

51 (h) “Prewritten Computer Software” means computer  
52 software, including prewritten upgrades, which is not  
53 designed and developed by the author or other creator to  
54 the specifications of a specific purchaser. The combining of  
55 two or more Prewritten Computer Software programs or

56 prewritten portions thereof does not cause the combination  
57 to be other than Prewritten Computer Software.  
58 Prewritten Computer Software includes software designed  
59 and developed by the author or other creator to the  
60 specifications of a specific purchaser when it is sold to a  
61 person other than the specific purchaser. Where a person  
62 modifies or enhances computer software of which the  
63 person is not the author or creator, the Department  
64 regards the person to be the author or creator only of such  
65 person's modifications or enhancements. Prewritten  
66 Computer Software or a prewritten portion thereof that is  
67 modified or enhanced to any degree, where such  
68 modification or enhancement is designed and developed to  
69 the specifications of a specific purchaser, remains  
70 Prewritten Computer Software; provided, however, that  
71 where there is a reasonable, separately stated charge or an  
72 invoice or other statement of the price given to the  
73 purchaser for such modification or enhancement, such  
74 modification or enhancement does not constitute  
75 Prewritten Computer Software.

76 (i) "Software as a Service" means a method of software  
77 delivery and licensing in which software is accessed online  
78 via a Subscription, rather than bought and installed on  
79 individual computers.

80 (j) "Specified Digital Products" means the following  
81 items Transferred Electronically to an End User:

82 (1) Digital Audio-Visual Works;

83 (2) Digital Audio Works; or

84 (3) Digital Books.

85       (k) “Subscription” means an agreement with a seller  
86 that grants a consumer the right to obtain products  
87 Transferred Electronically from within one or more  
88 product categories having the same tax treatment, in a  
89 fixed quantity or for a fixed period of time, or both.

90       (l) “Transferred Electronically” means obtained,  
91 accessed, or available to be accessed by means other than  
92 tangible storage media.

93       **(3) Imposition.**

94       (a) Beginning January 1, 2024, a tax is imposed  
95 pursuant to O.C.G.A. § 48-8-30 on the retail purchase or  
96 retail sale of Specified Digital Products, Other Digital  
97 Goods, or Digital Codes sold to an End User in this state,  
98 provided that such End User receives or will receive the  
99 right of permanent use of such products, goods, or codes  
100 and the transaction is not conditioned upon continued  
101 payment by the End User.

102       1. If the seller allows the End User to download and  
103 retain the product, then the purchase has conferred the  
104 right of permanent use to the End User. This applies even  
105 if the End User’s right of permanent use is contingent upon  
106 continued payment by the End User. Example: The  
107 purchase of a digital newspaper Subscription permits an  
108 End User to both permanently download the newspaper  
109 and also access the newspaper online, the charge for the  
110 subscription is taxable.

111       2. If a transaction contains both non-fungible tokens  
112 (NFT’s) and taxable Specified Digital Products, Other  
113 Digital Goods, or Digital Codes the entire transaction is

114 taxable. Example: An End User purchases digital graphic  
115 art that is minted with an NFT. The entire sales price of  
116 the digital graphic art and the NFT is taxable.

117 (b) The tax levied under this paragraph shall apply  
118 regardless of whether possession of the Specified Digital  
119 Products, Other Digital Goods, or Digital Codes is  
120 maintained by the seller or a third party. Example: A  
121 taxpayer purchases a Digital Book. The taxpayer can only  
122 access the book via a seller's app or website or a third-  
123 party's app or website. The Digital Book is taxable.

124 (c) Except as provided otherwise in Article 1 of Chapter  
125 8 in Title 48 of the Official Code of Georgia, the tax imposed  
126 on Specified Digital Products, Other Digital Goods, and  
127 Digital Codes is levied, collected, remitted, and  
128 administered in the same manner and at the same rate as  
129 is provided in said Article for the retail purchase, retail  
130 sale, rental, storage, use, or consumption of tangible  
131 personal property.

132 **(4) Sourcing.** Purchases of Specified Digital Products,  
133 Other Digital Goods, and Digital Codes are sourced in  
134 accordance with O.C.G.A. § 48-8-77.

135 **(5) Exemptions and exclusions.** Sales and use tax  
136 does not apply to:

137 (a) Internet Access Service; or

138 (b) The sale of Prewritten Computer Software  
139 Transferred Electronically to the purchaser or delivered to  
140 the purchaser by means of load and leave; provided,  
141 however, that the exemption granted by this paragraph

142 does not include sales of Specified Digital Products, Other  
143 Digital Goods, or Digital Codes;

144 (c) Software as a Service (SaaS);

145 (d) Subscriptions for which the End User does not  
146 receive the right of permanent use of the Specified Digital  
147 Products, Other Digital Goods, or Digital Codes or the End  
148 User's right of use of the Specified Digital Products, Other  
149 Digital Goods, or Digital Codes is conditioned upon  
150 continued payment by the End User. Example: An End  
151 User subscribes to a digital service that provides access to  
152 Digital Books. The Subscription provides no option to  
153 download the books, and access to the books ends when the  
154 Subscription ends. The charge for the Subscription is not  
155 taxable.

156 **(6) Sales for resale.** A sale of any Specified Digital  
157 Product, Other Digital Good, or Digital Code is a sale for  
158 resale if the Specified Digital Product, Other Digital Good,  
159 or Digital Code is subsequently sold, licensed, leased,  
160 broadcast, transmitted, or distributed, in whole or in part,  
161 as an integral, inseparable component part of a service or  
162 another such product, good, or code by the purchaser of the  
163 Specified Digital Product, Other Digital Good, or Digital  
164 Code to an ultimate consumer. The purchaser of the  
165 Specified Digital Product, Other Digital Good, or Digital  
166 Code for resale must maintain records that substantiate  
167 such resale in a manner consistent with this subsection, as  
168 determined by the commissioner.

169 **(7) Withdrawals from inventory.** A dealer who  
170 purchases Specified Digital Products, Other Digital Goods,  
171 or Digital Codes under terms of resale without payment of



172 sales and use tax is liable for use tax on the cost price of  
173 such property if it is withdrawn from inventory and used  
174 for a taxable purpose.

175

176 Authority: O.C.G.A. §§ 48-2-12, 48-8-2, 48-8-3, 48-8-30, 48-  
177 8-38, 48-8-77.

PROPOSED