

**RULES
OF
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

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

(2) Definitions. For purposes of this Rule,

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

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

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

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

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

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

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

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

- (1) Artwork;
- (2) Magazines;
- (3) Newspapers;
- (4) Photographs;
- (5) Periodicals;
- (6) Video or audio greeting cards; or
- (7) Video games or electronic entertainment.

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

prewritten portions thereof does not cause the combination to be other than Prewritten Computer Software. Prewritten Computer Software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the specific purchaser. Where a person modifies or enhances computer software of which the person is not the author or creator, the Department regards the person to be the author or creator only of such person's modifications or enhancements. Prewritten Computer Software or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains Prewritten Computer Software; provided, however, that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement does not constitute Prewritten Computer Software.

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

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

- (1) Digital Audio-Visual Works;
- (2) Digital Audio Works; or
- (3) Digital Books.

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

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

(3) Imposition.

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

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

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

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

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

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

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

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

(a) Internet Access Service; or

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

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

(c) Software as a Service (SaaS);

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

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

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

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

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