

Georgia Letter Ruling Number: LR SUT-2018-10
Topic: Software
Dated: August 7, 2018

This letter is in response to your request for guidance on the application of Georgia sales and use tax to sales of software installed using the internet.

Facts Presented by Taxpayer

[Redacted], (“Taxpayer”) is a computer software company. Taxpayer is registered and operating from the State of [Redacted]. Taxpayer sells prewritten software, which Taxpayer can customize upon a customer’s request. Taxpayer always remotely installs the software on a customer’s computer using the internet. Taxpayer does not sell hardware, nor does Taxpayer make any software available on a tangible storage medium. Taxpayer does not indicate the method of software delivery on its invoice to the customer.

Issues

1. Are Taxpayer’s computer software sales exempt from Georgia sales and use tax?
2. If Taxpayer’s only Georgia sales are exempt from the tax, is Taxpayer required to register to remit sales and use tax in Georgia?

Analysis

Imposition of Tax

Georgia levies and imposes a tax (subject to certain specific exemptions) on the retail purchase, retail sale, storage, use, or consumption of tangible personal property, certain enumerated services, and utilities.¹ “Retail sale” means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.² “Tangible personal property” means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses. Tangible personal property includes prewritten computer software.³

Tax Exemption

Exemptions from taxation are strictly construed, and an exemption will not be granted unless the relevant statute clearly and distinctly shows that such was the plain and unambiguous intention of the General Assembly.⁴ Georgia law provides that sales and use tax does not apply to the sale of prewritten software which has been delivered to the purchaser electronically or by means of load and leave.⁵ “Delivered electronically” means delivered to the purchaser by means other than tangible storage media.⁶ Since Taxpayer sells software that is only delivered using the internet, Taxpayer’s software sales fall squarely within the subject tax exemption.

Nonetheless, all gross sales of a retailer are subject to sales and use tax until the contrary is established, and the retailer bears the burden of proving that a sale of tangible personal property is not a taxable sale.⁷ If the method of delivery is not indicated on the Taxpayer’s invoice, purchase contract, or other documentation, delivery will be presumed to have been made through a tangible medium, and the burden will be upon Taxpayer to establish to the satisfaction of the Department that the computer software was delivered electronically.⁸

¹ O.C.G.A. §§ 48-8-1, 48-8-2(31)(A), and 48-8-30(a).

² O.C.G.A. § 48-8-2(31).

³ O.C.G.A. § 48-8-2(37).

⁴ Ga. Comp. R. & Regs. r. 560-12-1-.18.

⁵ O.C.G.A. § 48-8-3(91).

⁶ Ga. Comp. R. & Regs. 560-12-2-.111(2)(f).

⁷ O.C.G.A. § 48-8-38.

⁸ Ga. Comp. R. & Regs. 560-12-2-.111(4)(a).

Dealer Registration

Any individual or entity desiring to engage in or conduct business as a seller or dealer in this state is required to register for a sales and use tax number regardless of whether all sales will be online, out of state, wholesale, or exempt from tax.⁹

Rulings

1. The retail sale (including the sale, lease, rental, license, or use) of prewritten computer software is generally subject to Georgia sales and use tax. The tax does not apply to the sale of prewritten software which is delivered to the purchaser electronically. Because Taxpayer only delivers software using the internet (i.e., electronically), Taxpayer's sales of software are tax exempt. To show that a sale is tax exempt, Taxpayer's invoice, purchase contract, or other documentation must indicate the method of delivery.
2. All dealers conducting business in Georgia are required to register for a sales and use tax number. The Department does not generally issue letter rulings determining whether a taxpayer is a dealer; however, because Taxpayer has an active withholding account, the Department assumes Taxpayer satisfies the definition of Dealer. Consequently, Taxpayer should apply through the Georgia Tax Center (<https://gtc.dor.ga.gov>) for a sales tax certificate of registration. A sales tax return must be filed even when no tax is due or no sales were made.

The opinions expressed in this ruling are based upon the information contained in your request and limited to the specific transactions, facts, circumstances and taxpayer in question. The facts herein are those presented by the taxpayer and the Department accepts them as true for this ruling. If the facts presented herein change, are not true, are different, or material facts have been omitted, the conclusions reached in this ruling may change. In addition, subsequent statutory or administrative rule changes or judicial interpretations of the statutes or rules upon which this advice is based may subject similar future transactions to a different tax treatment than that expressed in this ruling.

⁹ O.C.G.A. § 48-8-59.