

Date Issued: July 9, 2014  
Georgia Letter Ruling: LR SUT-2014-06  
Topic: High Tech Exemption

This letter is in response to your request for guidance as to whether your client qualifies as a high-technology company for purposes of Georgia's sales and use tax exemption provided by O.C.G.A. § 48-8-3(68).

### **Facts as presented by the Taxpayer**

Taxpayer operates several data centers throughout the United States and is considering establishing a data center in Georgia ("Data Center"). The Data Center will include a modular/container server technology, which is a plug-and-play infrastructure that contains many of the same attributes as traditional data centers. The Data Center will consist of several modular/container servers rather than a traditional, large single building. The modular/container servers will provide computer server services. Taxpayer has a North American Industrial Classification System ("NAICS") code of 51121.

### **Issues**

1. Does Taxpayer qualify as a high-technology company for purposes of the computer equipment sales tax exemption in O.C.G.A. § 48-8-3(68)?
2. Is the Data Center a "facility" within the meaning of O.C.G.A. § 48-8-3(68)?
3. Do modular/container servers meet the definition of computer equipment that qualifies for the high-technology exemption in O.C.G.A. § 48-8-3(68)?

### **Analysis**

O.C.G.A. § 48-8-3(68)(A) provides a sales and use tax exemption for:

The sale or lease of computer equipment to be incorporated into a facility or facilities in this state to any high-technology company classified under North American Industrial Classification System code 51121, 51331, 51333, 51334, 51421, 52232, 54133, 54171, 54172, 334413, 334611, 513321, 513322, 514191, 541511, 541512, 541513, or 541519 where such sale of computer equipment for any calendar year exceeds \$15 million or, in the event of a lease of such computer equipment, the fair market value of such leased computer equipment for any calendar year exceeds \$15 million.

The term "company facility" means a single physical establishment, as defined in the North American Industrial Classification System United States Manual 1997, where the primary business activity is designated within the NAICS classification codes as specified in O.C.G.A. § 48-8-3(68)(A) and approved by the commissioner.<sup>1</sup> For purposes of determining the appropriate classification code for a high-technology company, the classification code of the high-technology company as indicated on its Federal Income Tax Return shall be used unless that classification code is determined by the commissioner to be inappropriate for purposes of the exemption; or in the case of a specific company facility the classification code designated and approved by the commissioner on the Application for Certificate of Exemption (Form ST-CE1) shall be used.<sup>2</sup> As a single physical establishment, a modular/container server is a facility for purposes of the exemption provided by O.C.G.A. § 48-8-3(68)(A).

The term "computer equipment" means any individual computer or organized assembly of hardware or software, such as a server farm, mainframe or midrange computer, mainframe-driven high speed print and mail 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 application system development activities, or hosting of applications systems testing which are not otherwise exempt under Chapter 8 of Title 48 of the Official Code of Georgia Annotated.<sup>3</sup> A "server" is a computer in a network that is used to provide services (as access to files or

<sup>1</sup> Ga. Comp. R. & Regs. r. 560-12-2-.107.

<sup>2</sup> Id.

<sup>3</sup> Id.

shared peripherals or the routing of e-mail) to other computers in the network.<sup>4</sup> The modular/container server technology's infrastructure does not meet the definition of qualifying computer equipment. However, the multiple servers and other data center components contained in the modular/container server may meet the definition of qualifying computer equipment.

### **Rulings**

1. Having a NAICS code of 51121, Taxpayer qualifies as a high-technology company for purposes of Georgia's computer equipment sales and use tax exemption provided by O.C.G.A. § 48-8-3(68). It should be noted that Code Section 48-8-3(68)(D) provides that to qualify for the exemption any entity that is affiliated in any manner with a nonqualified entity must conduct at least a majority of its business with entities with which it has no affiliation. This ruling does not address the requirement in § 48-8-3(68)(D).
2. When a modular/container server is a single physical establishment, and the proper primary business activity at that location is designated within a qualifying classification code (51121, 51331, 51333, 51334, 51421, 52232, 54133, 54171, 54172, 334413, 334611, 513321, 513322, 514191, 541511, 541512, 541513, or 541519), the modular/container server is a qualifying "facility" for purposes of the sales and use tax exemption contained in O.C.G.A. § 48-8-3(68).
3. While the modular/container infrastructure itself does not meet the definition of computer equipment and does not qualify for the high-technology exemption in O.C.G.A. § 48-8-3(68) any multiple servers and other data center components contained within the modular/container server may meet the definition of qualifying computer equipment for purposes of the exemption.

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. Should the circumstances regarding the transactions change, or differ materially from those represented, then this ruling may become invalid. In addition, please be advised that 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 response.

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<sup>4</sup> <http://www.merriam-webster.com/dictionary/server>, July 5, 2013.