

Georgia Letter Ruling: LR SUT-2016-05
Dated: February 23, 2016
Topic: High Tech Exemption

This letter is in response to your request for guidance on the application of Georgia sales and use tax to the sale of computer equipment to a business process and information technology service company that deals solely with affiliated entities.

Facts Presented by Taxpayer

Taxpayer is in the process of forming a new legal entity (hereinafter “Entity”) in partnership with certain other independent [Redacted Distributors]. Entity will be organized as a [Redacted State] limited liability company (“LLC”) that will be taxed as a partnership for federal and Georgia income tax purposes. The purpose of Entity is to provide business process and information technology services to its members. It will be operating under NAICS Code 541512, “Computer Systems Design Services,” and will provide a complete service catalog that includes software development, support processes, and other IT operation services to Taxpayer and, initially, other independent [Redacted Distributors]. Entity will have the flexibility in the future to expand its membership and extend its service offerings to additional Taxpayer [Redacted Distributors], and it is expected that these future users will become partial owners.

Entity will operate as a for-profit entity that provides services to its members on a cost pass-through basis. The initial capital contributions for the formation of the new entity are estimated as [Redacted] % Taxpayer and [Redacted] % from the other [Redacted Distributors]. Two of the independent [Redacted Distributors], are owned in part by The Taxpayer. These ownership percentages are approximately as follows: Taxpayer – [Redacted] % and [Redacted Other Owner] – [Redacted] %. Should these indirect interests in Entity be attributed to Taxpayer, its total ownership (based on value) in Entity would be approximately [Redacted] % to [Redacted] %.¹ Members’ distributive share of income or losses from Entity will be determined by reference to their volume participation. Voting is pro rata based on a “one member one vote” principle. Accordingly, Taxpayer will initially have approximately a [Redacted] % voting interest in Entity.

Taxpayer intends to sell certain computer hardware (various computer equipment, servers, mainframe computers, etc.) and software assets (hereinafter “High Tech Assets”) to Entity. The total value of the High Tech Assets is presently believed to be approximately \$[Redacted amount greater than 15 million].² To finance the initial purchase, Entity will issue a note to Taxpayer. All High Tech Assets are currently located at Taxpayer’s high technology facility in [Redacted] County, Georgia. The High Tech Assets will be sold in-place to Entity and Entity will lease the portion of Taxpayer’s facility where the assets are housed.

Issue(s)

Will Entity, as a legal entity, qualify for the high-technology computer exemption set forth in O.C.G.A. § 48-8-3(68) such that no sales or use tax will be owed on the transfer of the High Tech Assets?³

Analysis

O.C.G.A. § 48-8-3(68) 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 [hereinafter “NAICS 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”⁴

¹ It is possible that the fair value of Taxpayer’s interests in [Redacted] may vary slightly at the time the asset transfer that is the subject of this ruling request occurs; however, for purposes of this ruling, it can be assumed the value will be less than 80%.

² In no event will the amount be less than \$15 million.

³ According to Taxpayer’s facts, the High Tech Assets to be purchased and used by [Redacted] exceed the \$15 million threshold and meet the statutory definition of “computer equipment.” The only remaining issue, therefore, is whether [Redacted] qualifies for the exemption.

⁴ O.C.G.A. § 48-8-3(68)(A).

Department of Revenue Rule 560-12-2-.107 defines “high-technology company” as “a company or specific company facility that has been assigned a classification code as specified in O.C.G.A. §48-8-3(68)(A).”⁵ A “company facility” is “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 classification codes as specified in O.C.G.A. §48-8-3(68)(A) and approved by the commissioner.”⁶ To the extent that Entity operates as a single physical location under NAICS code 541512, “Computer Systems Design Services,” Entity will meet the definition of “company facility.” As a company facility, Entity is not required to conduct a majority of its business with non-affiliated entities.⁷

Ruling(s)

Entity will qualify for the high-technology computer exemption set forth in O.C.G.A. § 48-8-3(68) to the extent that it is created and operated in accordance with the facts presented by Taxpayer.

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, this ruling may become invalid. Subsequent statutory or administrative rule changes or judicial interpretations of the statutes or rules upon which this ruling is based may subject similar future transactions to different tax treatment than that expressed in this ruling.

⁵ Ga. Comp. R. & Regs. r. 560-12-2.107(2)(e).

⁶ Ga. Comp. R. & Regs. r. 560-12-2.107(2)(c).

⁷ Ga. Comp. R. & Regs. r. 560-12-2.107(4)(f).