

Date Issues: March 30, 2016  
Georgia Letter Ruling: LR SUT-2016-09  
Topic: Software and Software Related

This letter is in response to your request for guidance on the application of Georgia sales and use tax to certain products and services offered by [Redacted] (“Taxpayer”).

### **Facts as Presented by Taxpayer**

Taxpayer offers messaging security software products that protect communication service provider networks and their subscribers against messaging threats. Taxpayer’s products and services maximize security and control across messaging environments to intercept and remove the challenges of cyber-attacks. The software is designed to enable communication service providers to create a safe user experience and reduce operational costs.

Taxpayer also sells software-related services. Taxpayer often sells software products and services in a single price to customers. The bundled products typically include all of the following components in one single price:

- Computer software – The prewritten software is sold and delivered electronically to customers.
- Professional services – These services include (a) implementation and (b) installation services in order for the software to be fully functional at its inception.
- Upgrades, updates, and technical support – Computer upgrade are major revisions to the software, while computer updates are minor revisions to the software. Taxpayer also provides technical support for customers.

### **Issue**

Are Taxpayer’s sales of bundled products, which are sold at a single price for both software and software-related services as described above, subject to Georgia sales and use taxes?

### **Analysis**

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.<sup>1</sup>

#### *Computer Software*

Computer software is considered to be delivered electronically if it is delivered to the purchaser by means other than tangible storage media.<sup>2</sup> Computer software delivered electronically is not a sale of tangible personal property and therefore is not subject to sales or use tax. The dealer’s invoice, purchase contract, or other documentation must indicate the method of delivery. If the method of delivery is not indicated on the dealer’s invoice, purchase contract, or other documentation, delivery will be presumed to have been made in a tangible format, and the burden will be upon the taxpayer to establish to the satisfaction of the Department that the computer software was delivered electronically.<sup>3</sup>

If a dealer delivers computer software electronically and also provides the same software to the purchaser in a tangible medium, the transaction is a taxable sale of tangible personal property.<sup>4</sup> Additionally, when a customer receives the rights to tangible personal property as part of a sale, the sale is considered the sale of tangible personal property and subject to tax regardless of whether the customer takes possession of the property purchased.

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

<sup>2</sup> Ga. Comp. R. & Regs. r. 560-12-2-.111(2)(f).

<sup>3</sup> Ga. Comp. R. & Regs. r. 560-12-2-.111(4)(a).

<sup>4</sup> Ga. Comp. R. & Regs. r. 560-12-2-.111(4)(b).

### *Software-related Services*

Unlike sales of tangible personal property, which are generally presumed taxable, sales of services are not subject to the tax unless the service is specifically designated as taxable.<sup>5</sup> Georgia Code does not identify software-related services as taxable services.

Service providers are end-users and consumers of the materials they buy, use, or consume in providing a service. They must pay the sales tax at the time of purchase of such materials. If the tax is not paid at the time of purchase or if the purchase was made out of state, service providers are liable for the payment of the sales or use tax.<sup>6</sup>

### **Ruling**

Taxpayer's charges for sales of electronically-delivered software are not subject to tax to the extent that the customer does not receive the software in a tangible medium nor receive any right to the software in a tangible medium. The customer's invoice or supporting documentation must indicate that the software was delivered to the customer exclusively in an electronic format.

Software-related services are not specifically identified in the Georgia Code as services subject to tax. Thus, charges made by Taxpayer for software-related services, including implementation, installation, upgrades, updates, and technical support, are not subject to the tax. However, Taxpayer is liable for tax on all tangible personal property used to provide its software-related services. Given that neither Taxpayer's sales of electronically delivered software nor Taxpayer's sales of software-related services are subject to tax, charges made for these products and services are not subject to tax regardless of itemization on the customer's invoice.

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.

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<sup>5</sup> O.C.G.A. §§ 48-8-3(22) and 48-8-30(a).

<sup>6</sup> See O.C.G.A. § 48-8-63(b) (although this statute specifically addresses contractors, it contains the general rule for all service providers); Ga. Comp. R. & Regs. r. 560-12-2-.26(1).