

Georgia Letter Ruling Number: LR SUT-2017-12
Topic: High Tech Exemption
Date Issued: August 30, 2017

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

Facts as Provided by Taxpayer

Taxpayer is an online social networking company that connects users through its website interface or mobile device application. Taxpayer operates two data centers/server farms within Georgia which qualify for the high technology sales and use tax exemption. Among other items, such as computers, servers and their processing component parts, Taxpayer purchases power cables, data transmission cables, and racking systems to maintain its data centers in Georgia.

Routine purchases of large volumes of cables include power cables, Cat-5 cables, SNM cables, Ethernet cables, LAN cables, etc. These cables provide power to servers and other computer equipment and are used to connect an assembly of computers into an organized system functioning as a server farm.

Additionally, Taxpayer purchases a significant number of computer racking systems. A racking system contains multiple mounting slots called bays, each designed to hold a hardware unit, secured in place with screws. A single rack can contain multiple servers stacked one above the other, consolidating network resources and minimizing the required floor space. The rack server configuration also simplifies cabling resources and minimizes the required floor space. The rack server configuration also simplifies cabling among network components. In an equipment rack filled with servers, a special cooling system might be embedded into the racking structure to prevent excessive heat build-up that would otherwise occur when many power-dissipating components are confined in a small space. These racking systems provide peripheral cooling and power support for server farms and enable server organization.

Issues

1. Are server farm data transmission cables and computer power cables “computer equipment” as defined in of Georgia’s high-technology exemption, O.C.G.A. § 48-8-3(68)?
2. Are computer racking systems “computer equipment” as defined in Georgia’s high-technology exemption, O.C.G.A. § 48-8-3(68)?

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.¹ A “retail sale” is any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.²

While taxation is the rule, the Georgia Code does provide for specific exemptions. O.C.G.A. § 48-8-3(68) states that sales and use taxes do not apply to 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.³ As used in this exemption, the term “high-technology company” means a company or specific company facility that has been assigned a classification code as specified above.⁴

The term “computer equipment” means:

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

² O.C.G.A. § 48-8-2(31).

³ O.C.G.A. § 48-8-3(68)(A).

⁴ Ga. Comp. R. & Regs. r. 560-12-2.107(2)(e). The U.S. Census Bureau revises NAICS codes and publishes an updated manual. An entity should use the appropriate code from the most recent manual, currently the 2017 NAICS Manual.

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 mailing 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 applications, hosting of application systems development activities, or hosting of applications systems testing.*⁵ (emphasis added)

The term “computer equipment” excludes (i) telephone central office equipment or other voice data transport technology and (ii) equipment with imbedded computer hardware or software which is primarily used for training, product testing, or in a manufacturing process.⁶

Rule 560-12-2-.107 provides examples of items that do not qualify for this exemption. Such items include, but are not limited to, “cable; telephone central office equipment; voice data transmission equipment; equipment with imbedded hardware or software used primarily for training, product testing or in manufacturing; scanners; printers and paper; ink and toner; wrist and mouse pads; tools; all removable storage media such as, diskettes, compact disks or tapes; and parts for maintenance or repair of computer system hardware.”⁷

Because taxation is the rule and exemption from taxation is the exception, tax exemptions are strictly construed and cannot be granted unless the statute clearly shows that exemption was the intention of the General Assembly.⁸ Accordingly, Department reads statutes with their natural and most obvious import without forcing limits or extending their operation.⁹ As the plain language of the Rule provides, cables do not qualify for the relevant exemption. In addition, Taxpayer’s computer racking systems do not perform one of the enumerated functions and, thus, are not computer equipment for purposes of the exemption.

Rulings

1. The cables at issue do not qualify as computer equipment as defined in the exemption codified at O.C.G.A. § 48-8-3(68).
2. The computer racking systems described above do not qualify as computer equipment as defined in the exemption codified at O.C.G.A. § 48-8-3(68).

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. 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 a different tax treatment than that expressed in this response.

⁵ O.C.G.A. § 48-8-3(68)(C)(i).

⁶ O.C.G.A. § 48-8-3(68)(C)(ii).

⁷ Ga. Comp. R. & Regs. r. 560-12-2-107(4)(g).

⁸ Ga. Comp. R. & Regs. r. 560-12-1-.18; *Ga. Dept. of Revenue v. Owens Corning*, 283 Ga. 489 (2008).

⁹ *ChoicePoint Services, Inc. v. Graham*, 305 Ga. App. 254 (2010).