

November 25, 2024

This letter is response to your request for guidance on the application of Georgia sales and use tax to a transaction involving prewritten computer software.

### **Facts presented by Taxpayer**

Taxpayer is a provider of design software. Taxpayer loads its software onto HASP HL USB keys (“USB Keys”) and ships USB Keys to their location in Georgia. The USB Keys constitute a tangible medium that stores the Taxpayer’s software.

In the normal course of business, Taxpayer, unless a particular exemption is applicable, charges Georgia sales tax when a customer takes possession of the USB Keys at Taxpayer’s facility. Notwithstanding, Taxpayer has a certain customer that picks up the USB Keys from Taxpayer’s facility in Georgia but has refused to pay sales tax. This customer, after taking possession of the USB Keys at the Taxpayer’s Georgia facility, ultimately distributes them to its employees worldwide. None of the recipient employees are located in Georgia. The customer argues that because none of its employees are located in Georgia and the prewritten software (sold in a tangible medium) is not used in Georgia, then the customer does not have to pay the Georgia sales tax on the USB Keys.

### **Issue**

1. Is the sale of prewritten computer software sold to a customer in Georgia subject to Georgia sales and use tax?
2. Does a multiple point of use (“MPU”) tax exemption apply to the sale of Taxpayer’s software ultimately used outside the State of Georgia?

### **Analysis**

All retail purchases and sales of tangible personal property are taxable unless provided for otherwise.<sup>1</sup> A retail sale or a sale at retail means a sale to a consumer or to any person for any purpose other than for resale of tangible personal property or certain services.<sup>2</sup> A sale means any transfer of title or possession, transfer of title and possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any means of any kind of tangible personal property for a consideration.<sup>3</sup> 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 electricity, water, gas, steam, and prewritten computer software.<sup>4</sup>

### **Taxable Software Sales**

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

<sup>2</sup> O.C.G.A. § 48-8-31.

<sup>3</sup> O.C.G.A. § 48-8-33.

<sup>4</sup> O.C.G.A. § 48-8-2(37).

Computer software means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.<sup>5</sup> Prewritten computer software, also known as "canned computer software," means computer software that is designed, prepared, or held for general distribution or repeated use, or software programs developed in-house and subsequently held or offered for repeated sale, lease, license, or use.<sup>6</sup>

Additionally, the sale, lease, rental, license, or use of prewritten computer software is subject to sales and use tax when sold in a tangible medium. Prewritten computer software, even though modified or enhanced to the specifications of a purchaser, remains prewritten computer software.<sup>7</sup>

Taxpayer, the seller, ships the USB Keys, which constitute prewritten computer software sold in a tangible medium, to its locations in Georgia. The customer picks up the USB Keys from a Georgia location and distributes the USB Keys to its employees outside of Georgia. The sale of prewritten computer software sold in a tangible medium is taxable unless otherwise exempt.

### MPU Tax Exemption

When a product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.<sup>8</sup> The product in this instance, USB Keys loaded with Taxpayer's software, are shipped to Taxpayer's location in Georgia and the customer picks up the USB keys from that location. Thus, the sale is sourced to Georgia.

Furthermore, Georgia courts have held that where a customer ships a purchased good to a location outside of Georgia after the good was shipped to Georgia by the seller, the sale is subject to Georgia sales tax liability.<sup>9</sup>

Certain states provide an MPU exemption when a purchaser buys software for use in multiple jurisdictions. While the MPU exemption exists in other states, the State of Georgia has no such exemption.<sup>10</sup> Taxpayer's customer cannot claim a tax exemption that the State of Georgia does not recognize.

### Ruling

1. The software sold by Taxpayer is prewritten computer software for purposes of Georgia sales and use tax. The prewritten computer software is delivered in a tangible medium and is subject to Georgia sales and use tax.

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<sup>5</sup> Ga. Comp. R. & Regs. r. 560-12-2-.111(2)(d).

<sup>6</sup> Ga. Comp. R. & Regs. r. 560-12-2-.111(2)(i).

<sup>7</sup> Ga. Comp. R. & Regs. r. 560-12-2-.111(3)(a).

<sup>8</sup> O.C.G.A. § 48-8-77(b)(1)(A).

<sup>9</sup> *Inglett & Stubbs Int'l, Ltd. v. Riley*, 339 Ga. App. 375, 377-78 (Ga. App. 2016).

<sup>10</sup> O.C.G.A. § 48-8-3.

2. The sale is sourced to Georgia because the software is shipped to Georgia by the seller and picked up by the customer in Georgia. Georgia does not have an MPU tax exemption. Therefore, the sale of the USB Keys with the Taxpayer's software is subject to Georgia sales and use tax.

The opinions expressed in this ruling are based upon the information contained in your request and limited to the specific transaction and customer 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.