



State of Georgia
Department of Revenue

Suite 15300
1800 Century Boulevard
Atlanta, Georgia 30345
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Bart L. Graham
Commissioner

NOTICE

RE: PROPOSED RULE 560-12-2-.111 “Computer Software and Computer-Related Services.”

TO ALL INTERESTED PERSONS AND PARTIES:

In compliance with O.C.G.A. § 50-13-4, the Georgia Department of Revenue gives notice that it proposes to amend Chapter 560-12-2 of the Rules and Regulations of the State of Georgia by adopting new Rule 560-12-2-.111 entitled 560-12-2-.111 “Computer Software and Computer-Related Services.”

Attached with this notice is an exact copy and synopsis of the proposed Rule. The proposed Rule is being adopted under the authority of O.C.G.A. § 48-2-12.

The Department of Revenue shall consider the adoption of the proposed Rule at 10 am on June 13, 2005 in Suite 15210 of the Department’s headquarters at 1800 Century Blvd. NE, Atlanta, GA 30345-3205.

The Department must receive all comments regarding the proposed Rule from interested persons no later than 10 am June 13, 2005. Written comments must be sent to: Commissioner, Georgia Department of Revenue, 1800 Century Blvd. N.E., Suite 15300, Atlanta, GA 30345-3205. Electronic comments must be sent to regcomments@dor.ga.gov. Facsimile comments must be sent to (404) 417-6651. **Please reference “Notice Number SUT-2005-1” on all comments.**

May 10, 2005

Bart L. Graham
Commissioner
Georgia Department of Revenue

SYNOPSIS

**GEORGIA DEPARTMENT OF REVENUE
SALES AND USE TAX DIVISION
CHAPTER 560-12-2
SUBSTANTIVE RULES AND REGULATIONS**

**Rule 560-12-2-.111
Computer Software and Computer Related Services**

The purpose of proposed Rule 560-12-2-.111 is to provide guidance regarding the applicability of Georgia sales and use tax to computer software and computer related services.

Paragraph (1) explains the purpose of the rule.

Paragraph (2) sets forth relevant definitions for the terms used in the rule.

Paragraph (3) sets forth the general provisions for taxation of software delivered via a tangible medium.

Paragraph (4) sets forth the general provisions for taxation of software delivered electronically.

Paragraph (5) provides guidance regarding software installation and maintenance agreements.

Paragraph (6) provides guidance concerning the application of sales and use tax to various transactions related to computer software and computer software related services.

**RULES
OF
DEPARTMENT OF REVENUE
SALES AND USE TAX DIVISION**

**CHAPTER 560-12-2
SUBSTANTIVE RULES AND REGULATIONS**

560-12-2-.111 Computer Software and Computer-Related Services.

(1) **Purpose.** This regulation sets forth the application of Georgia sales and use tax concerning the sale or use of computer software and computer-related services.

(2) **Definitions.** For the purposes of this regulation, the following definitions and explanations of terms shall apply:

(a) "Computer" means the components and accessories that constitute the physical computer assembly that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions. A computer includes but is not limited to these components and accessories: a central processing unit, keyboard, console, monitor, memory unit, disk drive, tape drive or reader, terminal, printer, plotter, modem, document sorter, and optical reader.

(b) "Computer-related services" means services including, but not limited to, computer programming, installation, time-sharing, consulting, training, data processing, system testing, and information retrieval.

(c) "Computer software" means a set program or sequence of

coded instructions designed to cause a computer or automatic processing equipment to perform a task. This term includes both system and application programs and subdivisions, such as assemblers, compilers, routines, generators, and utilities.

(d) "Custom computer software" means computer software, including custom updates, which is designed and developed by the author to the specifications of a specific purchaser. Any subsequent sale of custom software shall be deemed prewritten computer software.

(e) "Delivered electronically" means delivered to the purchaser by means other than tangible storage media.

(f) "License agreement" means the transfer of possession and the right to use computer software for the purpose of reproduction or other use in a computer.

(g) "Load and leave" means delivery to the purchaser by use of tangible storage media where such tangible storage media is not physically transferred to the purchaser.

(h) "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.

(i) "Software license agreement" means the right to use along with the transfer of possession of computer software.

(j) "Software maintenance agreement" means providing error corrections, fixes, improvements, technical support and updates to purchased or licensed computer software under a single agreement.

(3) Computer software sold in a tangible medium.

(a) Prewritten computer software. 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.

1. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software.

2. Prewritten computer software includes computer software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold in a tangible medium to a person other than the specific purchaser.

(b) Custom computer software. The sale, lease, rental, license, or use of custom computer software is a professional service transaction not subject to sales and use tax.

1. A purchaser may receive custom software by means of a tangible medium without changing the taxability of the purchase. The transfer to the purchaser in a tangible medium is deemed to be merely an incidental part of the sale of a nontaxable professional service.

2. Sales of multiple copies or license agreements of custom software to the original purchaser are not subject to sales and use tax.

Custom software becomes prewritten computer software when it is sold to someone other than the person for whom it was designed and developed.

3. Charge for custom computer software that are not itemized on the purchaser's invoice from the sale, lease, or rental of hardware, machinery, or equipment are considered subject to the tax as part of the hardware, machinery, or equipment sale.

(c) Modified prewritten computer software.

1. Prewritten computer software or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software.

2. If there is a separately stated charge on the purchaser's invoice for the modification or enhancement of prewritten computer software, the charge for modification or enhancement is not subject to sales or use tax.

(4) Computer software sold in intangible form.

(a) Computer software delivered electronically is not a sale of tangible personal property and therefore is not subject to sales or use tax. The purchaser's invoice or purchase contract must indicate the method of delivery. If the method of delivery is not indicated on the purchaser's invoice or purchase contract, delivery will be deemed to have been made through a tangible medium.

(b) If a retailer delivers computer software electronically and also provides the computer software to the purchaser in a tangible medium, the transaction shall be treated as the taxable sale of tangible personal property unless the software qualifies as custom software.

(5) Computer software installation and maintenance agreements.

(a) Installation services. A charge for the service of installing computer software is not subject to sales or use tax when itemized on the purchaser's invoice.

(b) Software maintenance agreements.

1. Charges for computer software maintenance agreements bundled with the retail sale of prewritten software in a tangible medium are subject to sales and use tax.

2. Itemized charges stated separately on the purchaser's invoice for the sale of computer software maintenance agreements for prewritten computer software, which include software updates delivered in a tangible medium, are subject to sales or use tax at 50 percent of the total maintenance agreement charge. All other manuals or products delivered in a tangible medium will be taxed at the full retail selling price.

3. Separately stated charges for the sale of computer software maintenance agreements for custom computer software, which may include upgrades, manuals or other products, are not subject to sales or use tax.

(6) Miscellaneous.

(a) Load and leave. Prewritten or modified computer software transferred to the retail purchaser by means of load and leave is not subject to sales and use tax. The transaction is not deemed to be the sale of tangible personal property when the retailer installs the software and the software does not remain permanently in the purchaser's possession after the software content has been installed.

(b) Computer-related services. The sale of a computer-related service is not subject to sales and use tax when the charge is separately stated on the purchaser's invoice. If the charge for a computer-related service is bundled together with the retail sale, lease, rental, license or use of prewritten computer software, then the entire charge is subject to tax.

(c) Software license agreement. The sale of a prewritten or modified computer software license agreement is subject to sales and use tax as a lease or rental of tangible personal property.

(e) Computer software sold, leased, rented or licensed under an agreement pursuant to O.C.G.A. §§ 48-8-3 (34), 48-8-3(34.1), 48-8-3(34.2), 48-8-3(36), 48-8-3(36.1), 48-8-3(58), or 48-8-3(68) is exempt from sales and use tax when the transaction is properly documented to the seller.

Authority O.C.G.A. § 48-2-12.