

House Bill 170 (COMMITTEE SUBSTITUTE)

By: Representatives Carpenter of the 4th, Blackmon of the 146th, Williamson of the 112th, Gullett of the 19th, and Smith of the 138th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales
2 and use tax, so as to provide for the taxation of the sale or purchase of specified digital
3 products, other digital goods, and digital codes; to provide for procedures, conditions, and
4 limitations; to revise and provide for definitions; to provide for related matters; to provide
5 for an effective date and applicability; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use tax,
9 is amended in Code Section 48-8-2, relating to definitions, by adding a new subparagraph
10 to paragraph (31) and by adding new paragraphs to read as follows:

11 "(11.2) 'Digital audio-visual works' means any series of related images, together with
12 accompanying sounds, if any and which, when shown in succession, impart an
13 impression of motion.

14 (11.3) 'Digital audio works' means digitized works that result from the fixation of a series
15 of musical, spoken, or other sounds. Such term shall include digitized sound files that are

16 downloaded onto a device and that may be used to alert an end user with respect to a
17 communication.

18 (11.4) 'Digital code' means a key, activation, or enabling code that conveys a right to
19 obtain one or more specified digital goods or other digital goods. Such term shall not
20 include a code that represents a stored monetary value that is deducted from a total as it
21 is used by the purchaser or a redeemable card, gift card, or gift certificate that entitles the
22 holder to select specified digital goods or other digital goods of an indicated cash value."

23 "(15.1) 'End user' means any person other than a person that receives by contract a
24 product transferred electronically for further commercial broadcast, rebroadcast,
25 transmission, retransmission, licensing, relicensing, distribution, redistribution, or
26 exhibition of the product, in whole or in part, to another person or persons."

27 "(20.05) 'Other digital goods' means the following items transferred electronically to an
28 end user:

- 29 (A) Artwork;
30 (B) Photographs;
31 (C) Periodicals;
32 (D) Newspapers;
33 (E) Magazines;
34 (F) Video or audio greeting cards;
35 (G) Video games or electronic entertainment; or
36 (H) Digital applications."

37 "(E.1)(i) Sales of digital codes.

38 (ii) Sales of specified digital products or other digital goods;"

39 "(34.1)(A) 'Specified digital products' means the following items transferred
40 electronically to an end user:

- 41 (i) Digital audio-visual works;
42 (ii) Digital audio works; or

43 (iii) Digital books."

44 "(39.2) 'Transferred electronically' means obtained, accessed, or available to be accessed
45 by means other than tangible storage media."

46 **SECTION 2.**

47 Said chapter is further amended in Code Section 48-8-30, relating to imposition of tax, rates,
48 and collection, by revising subsection (a) as follows:

49 "(a)(1) There is levied and imposed a tax on the retail purchase, retail sale, rental,
50 storage, use, or consumption of tangible personal property and on the services described
51 in this article.

52 (2)(A) There is levied and imposed a tax on the retail purchase or retail sale of specified
53 digital products, other digital goods, or digital codes sold to an end user in this state,
54 provided that such end user receives or will receive the right of permanent use of such
55 products, goods, or codes and the transaction is not conditioned upon continued payment
56 by the end user.

57 (B) The tax levied under this paragraph shall apply regardless of whether possession of
58 the specified digital goods, other digital goods, or digital codes are maintained by the
59 seller or a third party.

60 (C) Except as provided otherwise in this article, the tax imposed by this article on
61 specified digital products, other digital goods, and digital codes shall be levied, collected,
62 remitted, and administered in the same manner and at the same rate as is provided in this
63 article for the retail purchase, retail sale, rental, storage, use, or consumption of tangible
64 personal property."

65 **SECTION 3.**

66 Said chapter is further amended in Code Section 48-8-38, relating to burden of proof on
67 seller as to taxability, certificate that property purchased for resale, requirements of purchaser

68 having certificate, contents, and proof of claimed exemption, by adding a new subsection to
69 read as follows:

70 "(f) A sale of any specified digital product, other digital good, or digital code shall be
71 considered a sale for resale if the specified digital product, other digital good, or digital
72 code is subsequently sold, licensed, leased, broadcast, transmitted, or distributed, in whole
73 or in part, as an integral, inseparable component part of a service or another such product,
74 good, or code by the purchaser of the specified digital product, other digital good, or digital
75 code to an ultimate consumer. The purchaser of the specified digital product, other digital
76 good, or digital code for resale shall maintain records that substantiate such resale in a
77 manner consistent with this subsection, as determined by the commissioner."

78 **SECTION 4.**

79 This Act shall become effective on January 1, 2024, and shall be applicable to transactions
80 occurring on or after January 1, 2024.

81 **SECTION 5.**

82 All laws and parts of laws in conflict with this Act are repealed.