

House Bill 170

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 use of certain digital products and
3 services; to provide for procedures, conditions, and limitations; to exempt digital services
4 sold to or used by an end user on a time-limited subscription or membership basis; to revise
5 a sales tax exemption for certain computer software; to revise and provide for definitions; to
6 provide for related matters; to provide for an effective date and applicability; to repeal
7 conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use tax,
11 is amended in Code Section 48-8-2, relating to definitions, by redesignating paragraph (20.1)
12 as (20.2), by revising paragraph (28.1), by adding a new subparagraph to paragraph (31), and
13 by adding new paragraphs to read as follows:

14 "(11.2) 'Digital audio-visual works' means any series of related images, together with
15 accompanying sounds, if any and which, when shown in succession, impart an
16 impression of motion.

H. B. 170

17 (11.3) 'Digital audio works' means digitized works that result from the fixation of a series
18 of musical, spoken, or other sounds. Such term shall include digital ringtones.

19 (11.4) 'Digital code' means:

20 (A) A key, activation, or enabling code that provides a purchaser with a right to obtain
21 one or more other digital products regardless of the manner in which such products are
22 delivered, transferred, or accessed, provided that all of such products have the same
23 sales and use tax treatment.

24 (B) Such term shall not include a code that represents stored monetary value that is
25 deducted from a total as it is used by the purchaser or a redeemable card, gift card, or
26 gift certificate that entitles the holder to select digital products of an indicated cash
27 value.

28 (11.5) 'Digital products' means:

29 (A) Specified digital products, other digital goods, digital services, and digital codes
30 transferred electronically to an end user, regardless of whether the end user receives
31 permanent or less than permanent rights to access or utilize such products, whether the
32 end user is required to make continued payments for such rights, or whether such
33 products are sold on a subscription basis or not on a subscription basis.

34 (B) Such term includes digital products for which rights may be permitted for access
35 or use and for which possession is maintained by the seller or a third party and rights,
36 licenses, or benefits transferred electronically to enhance, maintain, update, renew,
37 upgrade, or expand benefits for digital products.

38 (C) Such term shall not include cable service, multi-channel video service,
39 direct-to-home satellite service, or other video or audio service that is sold by a provider
40 that owns the infrastructure over which such content is distributed.

41 (11.6) 'Digital service' means:

42 (A) Any service or services that offer to an end user the right to access or use
43 prewritten computer software, or any one or more digital products or other digital

44 products, provided that such prewritten computer software, specified digital products,
45 or other digital products are only delivered, accessed, or transferred electronically.

46 (B) Such term shall not include:

47 (i) Any service that primarily involves the application of human effort by the seller,
48 and the human effort originated after the customer requested the service;

49 (ii) The loaning or transferring of money;

50 (iii) The purchase, sale, or transfer of financial instruments;

51 (iv) Dispensing cash or other physical items from a machine;

52 (v) Debit and credit card authorization, processing, and related services;

53 (vi) Advertising services;

54 (vii) Telecommunications services or ancillary services;

55 (viii) Internet access service;

56 (ix) Online educational programs provided by a private elementary or secondary
57 school or an institution of higher education as defined in 20 U.S.C. Sections 1001 and
58 1002; or

59 (x) Live presentations, such as lectures, seminars, workshops, or courses, where
60 participants are connected to other participants via the internet or telecommunications
61 equipment, which allows audience members and the presenter or instructor to give,
62 receive, and discuss information with each other in real time."

63 "(15.1) 'End user' means any person other than a person that receives by contract a
64 product transferred electronically for further commercial broadcast, rebroadcast,
65 transmission, retransmission, licensing, relicensing, distribution, redistribution, or
66 exhibition of the product, in whole or in part, to another person or persons."

67 "(16.05) 'Internet access service' shall have the same meaning as such term is defined in
68 47 U.S.C. Section 151, note."

69 "(20.1) 'Other digital goods' means digital:

70 (A) Artwork;

- 71 (B) Photographs;
72 (C) Periodicals;
73 (D) Newspapers;
74 (E) Magazines;
75 (F) Video or audio greeting cards;
76 (G) Video games or electronic entertainment; or
77 (H) Digital applications."

78 "(28.1) 'Prewritten computer software' means:

79 (A) Computer ~~computer~~ software, including prewritten upgrades, which is not designed
80 and developed by the author or other creator to the specifications of a specific
81 purchaser. The combining of two or more prewritten computer software programs or
82 prewritten portions thereof ~~does~~ shall not cause the combination to be other than
83 prewritten computer software. Prewritten computer software includes software
84 designed and developed by the author or other creator to the specifications of a specific
85 purchaser when it is sold to a person other than the specific purchaser. Where a person
86 modifies or enhances computer software of which the person is not the author or
87 creator, the person shall be deemed to be the author or creator only of such person's
88 modifications or enhancements. Prewritten computer software or a prewritten portion
89 thereof that is modified or enhanced to any degree, where such modification or
90 enhancement is designed and developed to the specifications of a specific purchaser,
91 remains prewritten computer software; provided, however, that where there is a
92 reasonable, separately stated charge or an invoice or other statement of the price given
93 to the purchaser for such modification or enhancement, such modification or
94 enhancement shall not constitute prewritten computer software.

95 (B) Such term includes all such computer software regardless of:

96 (i) How such software is delivered or accessed;

- 97 (ii) Whether the end user receives permanent or less than permanent rights to access
 98 or utilize such computer software;
 99 (iii) Whether the possession of such computer software is maintained by the seller or
 100 a third party and rights, license, or benefits transferred electronically to enhance,
 101 maintain, update, renew, upgrade, or expand benefits for such software, including
 102 software as a service;
 103 (iv) Whether the end user is required to make continued payments for such rights; or
 104 (v) Whether such products are sold on a subscription basis or not on a subscription
 105 basis."
 106 "(E.1) Sales of digital products;"
 107 "(34.1) 'Specified digital products' means the following items transferred electronically:
 108 (A) Digital audio-visual works;
 109 (B) Digital audio works; or
 110 (C) Digital books."
 111 "(39.2) 'Transferred electronically' means obtained or accessed by the purchaser by
 112 means other than tangible storage media."

113 **SECTION 2.**

114 Said chapter is further amended in Code Section 48-8-3, relating to exemptions from sales
 115 and use tax, by revising paragraphs (90) and (91) as follows:

- 116 "(90) Digital services sold to or used by an end user on a subscription or membership
 117 basis providing the end user with the limited right to access or utilize such digital services
 118 for a period of at least 30 days and not more than one year Reserved;
 119 ~~(91) The sale of prewritten software which has been delivered to the purchaser~~
 120 ~~electronically or by means of load and leave~~ Prewritten computer software or digital
 121 products sold to a commercial enterprise and used primarily for its commercial purposes;"

122 **SECTION 3.**

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

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

128 (2) Except as otherwise provided in this article, the tax imposed by this article on digital
129 products shall be levied, collected, remitted, and administered in the same manner and
130 at the same rate as is provided in this article for the retail purchase, retail sale, rental,
131 storage, use, or consumption of tangible personal property."

132 **SECTION 4.**

133 Said chapter is further amended in Code Section 48-8-38, relating to burden of proof on
134 seller as to taxability, certificate that property purchased for resale, requirements of purchaser
135 having certificate, contents, and proof of claimed exemption, by adding a new subsection to
136 read as follows:

137 "(f) A sale of a digital product shall be considered a sale for resale if the digital product
138 is subsequently sold, licensed, leased, broadcast, transmitted, or distributed, in whole or in
139 part, as an integral, inseparable component part of a service or another digital product by
140 the purchaser of the digital product to an ultimate consumer. The purchaser of the digital
141 product for resale shall maintain records that substantiate such resale in a manner consistent
142 with this subsection, as determined by the commissioner."

143 **SECTION 5.**

144 Said chapter is further amended by adding a new Code section to read as follows:

145 "48-8-77.2.

146 In the case of a bundled transaction that includes telecommunications service, ancillary
147 service, internet access, audio or video programming service, or a digital product:

148 (1) If the price is attributable to products that are taxable and products that are not
149 taxable, the portion of the price attributable to the nontaxable products is subject to the
150 tax imposed by Code Section 48-8-30 unless the seller can identify by reasonable and
151 verifiable standards the portion from its books and records that are kept in the regular
152 course of business for other purposes, including, but not limited to, nontax purposes; and
153 (2) If the price is attributable to products that are subject to tax at different tax rates, the
154 total price is attributable to the products subject to the tax at the highest tax rate unless
155 the seller can identify by reasonable and verifiable standards the portion of the price
156 attributable to the products subject to the tax imposed by Code Section 48-8-30 at the
157 lower rate from its books and records that are kept in the regular course of business for
158 other purposes, including, but not limited to, nontax purposes."

159 **SECTION 6.**

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

162 **SECTION 7.**

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