



MULTISTATE TAX

Georgia imposes sales tax on certain digital products and decouples from TCJA changes to IRC section 174

Tax Alert

Overview

On May 2, 2023, Georgia [Senate Bill 56](#) (S.B. 56) was enacted into law. Effective January 1, 2024, the legislation makes certain amendments to the state's sales and use tax provisions, including imposing tax on certain specified digital products, other digital goods, and digital codes sold to users in Georgia.

Applicable to tax years beginning on and after January 1, 2022, the bill also updates the state's conformity to the Internal Revenue Code ("IRC") and expressly decouples from the amendments to IRC section 174 made by the Tax Cuts and Jobs Act of 2017 ("TCJA").

This Tax Alert summarizes some of the relevant provisions of S.B. 56.

Georgia sales and use tax amendments

Effective on January 1, 2024—and applicable to transactions occurring on and after January 1, 2024—S.B. 56 imposes tax on the retail sale of specified digital products, other digital goods, and digital codes (collectively, "digital products") and updates the state's sales and use tax exemption provisions.

Taxation of digital products

- Under S.B. 56, sales and use tax is imposed on the retail purchase or retail sale of specified digital products, other digital goods, or digital codes sold to an end user in Georgia if: (1) such end user receives or will receive the right of permanent use of such digital products and (2) the transaction is not conditioned upon continued payment by the end user.
 - The tax applies regardless of whether possession of the specified digital products is maintained by a seller or third party.

- The tax rate imposed on sales of digital products is the same rate imposed on sales of tangible personal property.
- S.B. 56 also adds several new definitions applicable to the tax on digital products including the following:
 - “Specified digital products” means the following items transferred electronically to an end user: (1) digital audio-visual works; (2) digital audio works; or (3) digital books.
 - “Digital code” means a key, activation, or enabling code that conveys a right to obtain one or more specified digital goods or other digital goods. However, the term does not include “a code that represents a stored monetary value that is deducted from a total as it is used by the purchaser or a redeemable card, gift card, or gift certificate that entitles the holder to select specified digital goods or other digital goods of an indicated cash value.”
 - “Other digital goods” means the following items transferred electronically to an end user: (1) artwork; (2) photographs; (3) periodicals; (4) newspapers; (5) magazines; (6) video or audio greeting cards; or (5) video games or electronic entertainment.

Exemptions from sales and use tax

- S.B. 56 codifies the exemption from sales and use tax for internet access services, as defined by the Internet Tax Freedom Act.

IRC conformity update and section 174

- Georgia generally conforms to the IRC as of a certain date, unless it expressly decouples from a specific provision.
- Under S.B. 56, for tax years beginning on or after January 1, 2022, Georgia generally conforms with the IRC of 1986, as amended, on or before January 1, 2023. Georgia previously conformed to the IRC as amended on or before January 1, 2022.
- The TCJA made certain changes to IRC section 174 related to the capitalization and amortization of research and experimental expenditures, effective for tax years beginning after December 31, 2021. S.B. 56 expressly decouples from those amendments and provides that IRC section 174 should be treated as it was in effect before the enactment of the TCJA.

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