

House Bill 1291 (COMMITTEE SUBSTITUTE)

By: Representatives Smith of the 133rd, Williams of the 148th, Wiedower of the 119th, Williamson of the 115th, and Frye of the 118th

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 48-8-3 of the Official Code of Georgia Annotated, relating to
2 exemptions from sales and use tax, so as to revise the terms and extend the sunset date for
3 a sales tax exemption for the sale or lease of computer equipment to be incorporated into
4 facilities of high-technology companies; to provide for related matters; to provide for
5 effective dates and applicability; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Code Section 48-8-3 of the Official Code of Georgia Annotated, relating to exemptions from
9 sales and use tax, is amended in paragraph (68) by revising subparagraph (G) as follows:

10 "(G) This paragraph shall stand repealed and reserved by operation of law at the last
11 moment of ~~June 30~~ December 31, 2023."

12 **SECTION 2.**

13 Said Code section is further amended by revising paragraph (68) as follows:

14 "(68)(A)(i) The sale or lease of computer equipment to be incorporated into a facility
15 or facilities in this state to any high-technology company classified under the 2017

H. B. 1291 (SUB)

16 North American Industrial Classification System code 334413, 334614, 511210,
17 517311, 517312, 517410, 517911, 517919, 518210, 522320, 541330, 541511,
18 541512, 541513, 541519, 541713, 541715, or 541720, provided that the exemption
19 allowed under this paragraph shall be limited to those purchases or leases made by
20 such a high-technology company for calendar years during which the high-technology
21 company made taxable purchases or leases of at least \$15 million worth of such
22 computer equipment where such sale of computer equipment for any calendar year
23 exceeds \$15 million or, in the event of a lease of such computer equipment, the fair
24 market value of such leased computer equipment for any calendar year exceeds \$15
25 million.

26 (ii) Notwithstanding the provisions of division (i) of this subparagraph to the
27 contrary, on and after January 1, 2024, the exemption allowed under this paragraph
28 shall be limited such that each person claiming the exemption allowed by this
29 paragraph shall be subject to paying 10 percent of all taxes imposed by this chapter
30 on the first \$15 million of its eligible purchases or leases for which an exemption is
31 claimed under this paragraph.

32 (B) Any person making a sale or lease of computer equipment to a high-technology
33 company as specified in subparagraph (A) of this paragraph shall collect the tax
34 imposed on the sale by this article ~~unless the purchaser furnishes such seller with a~~
35 ~~certificate issued by the commissioner certifying that the purchaser is entitled to~~
36 ~~purchase the computer equipment without paying the tax. As a condition precedent to~~
37 ~~the issuance of the certificate, the commissioner, at such commissioner's discretion,~~
38 ~~may require a good and valid bond with a surety company authorized to do business in~~
39 ~~this state as surety or may require legal securities, in an amount fixed by the~~
40 ~~commissioner, conditioned upon payment by the purchaser of all taxes due under this~~
41 ~~article in the event it should be determined that the sale fails to meet the requirements~~
42 ~~of this subparagraph.~~

43 (C)(i) As used in this paragraph, the term 'computer equipment' means any individual
44 computer or organized assembly of hardware or software, such as a server farm,
45 mainframe or midrange computer, mainframe driven high-speed print and mailing
46 devices, and workstations connected to those devices via high bandwidth connectivity
47 such as a local area network, wide area network, or any other data transport
48 technology which performs one of the following functions: storage or management
49 of production data, hosting of production applications, hosting of application systems
50 development activities, or hosting of applications systems testing.

51 (ii) ~~The~~ Such term shall not include:

52 (I) Telephone central office equipment or other voice data transport technology,
53 including any wireline or wireless telecommunication system; ~~or~~

54 (II) Equipment with imbedded computer hardware or software which is primarily
55 used for training, product testing, or in a manufacturing process;

56 (III) Computers or devices issued to employees, which shall include, but not be
57 limited to, smartphones, tablets, wearables, personal computers, and laptops; or

58 (IV) Prewritten computer software.

59 (D) Any corporation, partnership, limited liability company, or any other similar entity
60 which qualifies for the exemption and is affiliated in any manner with a nonqualified
61 corporation, partnership, limited liability company, or any other similar entity must
62 conduct at least a majority of its business with entities with which it has no affiliation.

63 ~~(E) Each high-technology company that has been issued a certificate of exemption~~
64 ~~pursuant to this paragraph shall report annually to the commissioner~~ An exemption
65 allowed under this paragraph shall be obtained by filing for a refund with the
66 department together with necessary information for the refund and a list of the facilities
67 for which all computer equipment exempted by this paragraph during the preceding
68 calendar year was incorporated, as well as the amount of taxes exempted under this
69 paragraph during the preceding calendar year. The claim for a refund and the ~~Such~~

70 report shall be filed within 90 days after the end of the calendar year for which the
71 ~~high-technology company utilized a certificate of exemption pursuant to this paragraph~~
72 and shall be subject to the confidentiality provisions of Code Section 48-2-15. The
73 ~~commissioner shall not issue a certificate of exemption under this paragraph for the~~
74 ~~calendar year next succeeding the reporting date to any high-technology company that~~
75 ~~has failed to comply with the reporting required by this subparagraph. Refunds made~~
76 pursuant to this paragraph shall not include interest and the commissioner shall deduct
77 the 10 percent of taxes paid if required under division (ii) of subparagraph (A) of this
78 paragraph prior to issuing the refund.

79 (F) The commissioner shall promulgate such rules and regulations as are necessary to
80 implement the provisions of this paragraph.

81 (G) This paragraph shall stand repealed and reserved by operation of law at the last
82 moment of ~~June 30, 2023~~ December 31, 2028."

83 **SECTION 3.**

84 This Act shall become effective upon its approval by the Governor or upon its becoming law
85 without such approval; provided, however, that Section 2 of this Act shall become effective
86 on January 1, 2024, and shall be applicable to transactions occurring on or after such date.

87 **SECTION 4.**

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