

Excise Tax Advisory

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ETA 3XXX.20XX

Issue Date: , 20XX

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Multiple Points of Use Exemption – Software Maintenance Agreements

Purpose

This Excise Tax Advisory (ETA) provides guidance on the application of the multiple points of use sales tax exemption¹ (MPU exemption) to sales of software maintenance agreements. The software maintenance agreements covered by this ETA involve sales of distinct and identifiable products for one nonitemized price, commonly known as a bundled transaction.²

Note: This ETA does not apply to a transaction to which RCW [82.04.050](#)(8)(b) applies.³

Background

Software maintenance agreements

In general, a software maintenance agreement is an agreement between a software vendor and a customer, which requires the vendor to provide technical support and updates for an existing software product. A software maintenance agreement may also include upgrades to previously purchased software, patches or fixes to prewritten computer software, and/or support services related to prewritten computer software. For the purposes of this ETA,

¹ RCW [82.08.0208](#)(4).

² See [RCW 82.08.190](#).

³ RCW [82.04.050](#)(8)(b) includes within the definition of a retail sale, “any services provided by the seller exclusively in connection with the [seller’s retail sale of] digital goods, digital codes, or digital automated services, whether or not a separate charge is made for such services.”

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the term “product” and “products” have the same meaning as provided in RCW [82.32.023](#).⁴

Retail sales tax generally applies when a single nonitemized price is charged for the sale of a software maintenance agreement that provides both retail-taxable products (e.g., prewritten computer software updates) and non-retail-taxable products (e.g., help desk services), unless the charges for the retail-taxable products (e.g., prewritten computer software updates and/or upgrades) are a de minimis part of the agreement.⁵ This type of agreement is referred to as a software maintenance agreement with mixed elements, or a mixed element software maintenance agreement (MESMA).

In contrast to a MESMA, a sale of a software maintenance agreement that provides only non-retail-taxable products (such as telephone consulting, help desk services, remote diagnostic services, and other professional services) is not subject to retail sales tax. Additionally, in cases where the charges for the non-retail-taxable product component(s) and the retail-taxable component(s) are separately stated on binding sales or other supporting sales-related documentation made available to the customer (e.g., invoice) within a prewritten computer software maintenance agreement, then each activity is taxed according to the nature of the activity.⁶

The MPU exemption

The MPU exemption provides a retail sales tax exemption for purchases of specific products by a business or other organization when the product will be concurrently available for use at one or more locations inside and outside of Washington.⁷ Purchases of the following products are eligible for the MPU exemption (MPU-eligible products):

- Digital goods;
- Prewritten computer software;
- Remotely accessed prewritten computer software;
- Digital automated services (DAS); and

⁴ In accordance with RCW [82.32.023](#), the terms “product” and “products” refer to tangible personal property, digital goods, digital code automated services, other services, extended warranties, and anything else that can be sold or used.

⁵ WAC [458-20-15502](#)(7)(d)(ii). “De minimis,” as defined in RCW [82.08.190](#)(4)(c)(i), means the seller’s purchase price or sales price of the taxable products is ten percent or less of the total purchase price or sales price of the bundled products. When the taxable product(s) within a bundled transaction is more than de minimis, the transaction is a bundled transaction. A bundled transaction is subject to retail sales tax if the retail sale of any of its component products is subject to retail sales tax. RCW [82.08.195](#)(1).

⁶ See WAC [458-20-15502](#) for more information.

⁷ RCW [82.08.0208](#)(4).

- Digital codes.⁸

Instead of paying retail sales tax, buyers claiming the MPU exemption must pay use tax directly to the Department of Revenue, which is apportioned in accordance with RCW [82.12.0208\(7\)](#). RCW [82.12.0208\(7\)](#) apportions use tax based on users⁹ of the eligible products in Washington compared to users of the eligible products everywhere.

Application of the MPU exemption to the sale of a mixed element software maintenance agreement (MESMA)

A MESMA that qualifies as a bundled transaction and is otherwise subject to retail sales tax is eligible for the MPU exemption if it meets the following criteria:

- (1) The MESMA includes one or more MPU-eligible products (e.g., prewritten computer software), and each MPU-eligible product is concurrently available for use inside and outside of Washington;¹⁰
- (2) The non-retail taxable products provided under the MESMA relate to the MPU-eligible product(s) of the MESMA (e.g., customer help desk support for the prewritten computer software); and
- (3) The MESMA does not contain any retail-taxable product other than the MPU-eligible product(s) that are concurrently available for use inside and outside of Washington.

The non-retail taxable products in a MESMA are considered to “relate” to an MPU-eligible product only if the non-retail-taxable products provide support, maintenance, or improvements to the MPU-eligible product(s).

Note: MPU exemption eligibility, as described in this ETA, addresses only non-retail sales taxable product(s) provided under the MESMA that relate to the MPU-eligible product(s). This ETA does NOT address the potential eligibility of transactions that involve unrelated products. The Department has not encountered the fact pattern of unrelated products being sold under the same MESMA at the time of this guidance and will consider the individual facts of these situations in determining eligibility for the MPU exemption. Taxpayers who would like to receive the MPU exemption for MESMAs with non-retail

⁸ See RCW [82.04.192](#) and RCW [82.04.215](#) for definitions of these terms. See RCW [82.04.050\(6\)\(c\)](#) for a description of remotely accessed prewritten software.

⁹ “User” means an employee or agent of the taxpayer who is authorized by the taxpayer to use the MPU-eligible product in the performance of their duties as an employee or other agent of the taxpayer. RCW [82.12.0208\(7\)\(c\)\(ii\)](#).

¹⁰ “Concurrently available for use within and outside this state” means that employees or other agents of the taxpayer may use the digital goods, digital automated services, prewritten computer software, or services defined as a retail sale in RCW [82.04.050\(6\)\(c\)](#) simultaneously at one or more locations within this state and one or more locations outside this state. A digital code is concurrently available for use within and outside this state if employees or other agents of the taxpayer may use the digital goods or digital automated services to be obtained by the code simultaneously at one or more locations within this state and one or more locations outside this state. RCW [82.12.0208\(7\)\(c\)\(i\)](#).

taxable product(s) that are unrelated to the MPU-eligible product(s) and sold as a bundled transaction should submit these facts to the Department in the form of a letter ruling request at dor.wa.gov/Binding_rulings to determine MPU exemption eligibility.

The MPU exemption does not apply to a sale of a MESMA if the agreement includes a retail-taxable product that is *not* an MPU-eligible product, e.g., hardware or installation of prewritten software. This is because an entire bundled transaction is subject to retail sales tax if one of the components of the bundle is subject to retail sales tax.¹¹

Use tax apportionment for a qualified MPU transaction

If the retail sale of a MESMA qualifies for the MPU exemption, the buyer must apportion and pay use tax based on the users of the MPU-eligible products of the MESMA in Washington compared to users of the MPU-eligible products everywhere. The users of the non-retail-taxable products are not factored into the apportionment of the use tax.

One MPU-eligible product. When the MESMA contains one MPU-eligible product, the use tax apportioned to Washington is based on the users of the MPU-eligible product inside of Washington compared to users of the MPU-eligible product everywhere.

Multiple MPU-eligible products. When the MESMA contains multiple MPU-eligible products, the use tax apportioned to Washington is based on the total users of all the MPU-eligible products inside of Washington compared to the total users of all the MPU-eligible products everywhere.

The Department may authorize or require an alternative method of apportionment that fairly reflects the proportion of in-state to out-of-state use by the taxpayer.¹² All apportionment methods must be supported by records the taxpayer keeps in the ordinary course of its business.¹³

Examples

Examples in this ETA identify facts and then state a conclusion. The examples below assume that the non-retail-taxable products *are not provided exclusively in connection with a retail sale of a digital code, digital good, or DAS for purposes of RCW 82.04.050(8)(b)*. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

Example 1—MESMA not qualifying for MPU exemption

¹¹ See WAC [458-20-15502](#)(7)(d)(i) and (ii).

¹² RCW [82.12.0208](#)(7)(a).

¹³ RCW [82.12.0208](#)(7)(b).

Facts:

- ABC is a software publishing company specializing in selling prewritten computer software to residential and commercial plumbing companies.
- Customers who purchase a perpetual license to use ABC’s software are required to purchase an annual software maintenance agreement for an additional fee. The software maintenance agreement is sold for one nonitemized price and entitles purchasers to the following:
 - Routine software updates for all users.
 - Telephone help desk support for all users.
 - Access to ABC’s online customer support portal. ABC’s customer support portal allows users to access pre-recorded training videos, a searchable database to find answers for troubleshooting technical/software issues, and other IT related solutions.
- DEF is a mid-size plumbing company headquartered in Lacey, Washington, with additional business locations in Colorado, Idaho, Oregon, and Utah.
- DEF purchased a perpetual software license from ABC for \$800,000 **and** an annual software maintenance agreement for \$400,000 per year. The software maintenance agreement entitles DEF to prewritten computer software updates for all users of the prewritten computer software, access to ABC’s online self-help portal for five IT staff, and telephone help desk support for all software users.
- DEF’s users of the MPU-eligible products and related products of the software maintenance agreement are located as follows:

Products	Type of users	Users in Washington	Users everywhere	Percentage users in Washington compared to users everywhere
Telephone/email customer support	All employees	40	100	40%
Routine updates/upgrades	All employees	40	100	40%
Online self-help support portal	IT system administrators	5	5	100%

- DEF provides ABC with a completed Digital Products and Remote Access Software Exemption Certificate, claiming the MPU exemption.¹⁴

Result:

¹⁴ This form can be found on our website at dor.wa.gov.

- **DEF's purchase of perpetual software license**

- The MPU exemption from retail sales tax applies to DEF's purchase of the perpetual software license because (i) prewritten computer software is an MPU-eligible product and (ii) the software is concurrently available for use by DEF's employees inside and outside of Washington.
- DEF has 40 users in Washington out of the total of 100 users everywhere of the software product. DEF must pay use tax directly to the Department, apportioned based on the users of software in Washington compared to users everywhere. In this case, DEF will apportion use tax based on its 40 users in Washington.
- The use tax apportioned to Washington for the use of the perpetual software license is \$30,400, *calculated as follows*:

$$\frac{40 \text{ (WA users)}}{100 \text{ (total users)}} \times \$800,000 = \$320,000$$

$$\$320,000 \times 9.5\% \text{ retail sales tax rate for Lacey, Washington} = \$30,400$$

- **DEF's purchase of MESMA**

- The MPU exemption does not apply to DEF's purchase of the MESMA because the transaction does not satisfy all three of the criteria for MPU exemption:
 1. Although the MESMA includes one or more MPU-eligible products, the software updates (prewritten computer software) and the online customer service portal (DAS), only the software updates are concurrently available for use inside and outside of Washington. The online customer service portal is exclusively used in Washington. *This requirement is not met.*
 2. The non-retail taxable product (help desk support) provided under software maintenance agreement is for providing support to an MPU-eligible product (prewritten computer software updates), and therefore is related to the MPU-eligible product. *This requirement is met.*
 3. The MESMA contains a retail-taxable product that is not eligible for the MPU exemption: the online customer service portal is not eligible for the MPU exemption. *This requirement is not met.*
- Because the MESMA in this case fails to meet criteria #1 and #3, the nonitemized price ABC charges DEF for the sale of its MESMA is not eligible for the MPU-exemption. Therefore, the entire charge is subject to retail sales

tax. The tax due is \$38,000 (\$400,000 x 9.5% sales tax rate for Lacey, Washington).

Example 2 (MESMA qualifying for MPU exemption)

Facts:

- IJK is a mid-sized logistics company with warehouse locations throughout the western United States. IJK is headquartered in Lacey, Washington.
- IJK purchased a 5-year license to use logistics analytics and management prewritten computer software from FGH. In addition, IJK purchased an annual software maintenance agreement from FGH for \$200,000. The nonitemized yearly purchase price of the software maintenance agreement entitles IJK to the following support and updates for the logistics analytics and management software:
 - Telephone/email customer support for 20 help desk support staff.
 - Telephone technical support for 10 IT system administrators.
 - Routine updates for all software users.
 - Online self-help support portal for 10 IT system administrators.
 - Online self-training courses for 20 help desk support staff.
- The users of the MPU-eligible products and non-retail taxable products in the software maintenance agreement are located as follows:

Products	Type of users	Users in Washington	Users everywhere	Percentage users in Washington compared to users everywhere
Telephone/email customer support	Help desk support staff	7	20	35%
Telephone technical support	IT system administrators	5	10	50%
Routine updates	All employees	400	1,000	40%
Online self-help support portal	IT system administrators	5	10	50%
Online self-training courses	Help desk support staff	7	20	35%

- IJK provides FGH with a completed Digital Products and Remote Access Software Exemption Certificate, claiming MPU exemption.

Result:

- **IJK's purchase of five-year software license**

- IJK's purchase of the software license is eligible for the MPU exemption and is exempt from retail sales tax because the software is an MPU-eligible product that is concurrently available for use inside and outside of Washington. IJK must pay use tax directly to the Department, apportioned based on users of the software in Washington compared to users everywhere.

- **IJK's purchase of MESMA**

- IJK's purchase of the MESMA for one nonitemized price qualifies for the MPU exemption from sales tax because it meets all three of the requirements above:
 1. The MESMA includes MPU-eligible products: the routine software updates (prewritten computer software), online self-help support portal (DAS), and online self-training courses (DAS). Each of these MPU-eligible products is concurrently available for use inside and outside of Washington. *This requirement is met.*
 2. The non-retail-taxable products (telephone/email customer support and telephone technical support) provided under the MESMA are for the support, maintenance, or improvement of the MPU-eligible products (the online self-help support portal and online self-training courses) within the agreement. Therefore, the non-retail-taxable products are related to the MPU-eligible products in the agreement. *This requirement is met.*
 3. The MESMA does not contain any retail-taxable product that is not eligible for the MPU exemption. *This requirement is met.*
- The use tax apportioned to Washington is based on the total users of all the MPU-eligible products that are concurrently available for use inside of Washington compared to users everywhere. In this case, the use tax apportioned to Washington is based on the total number of Washington users of the MPU-eligible products, the prewritten computer software updates, the online self-help portal, and the online self-training courses, compared to the number of users everywhere of these MPU-eligible products.
 - The total number of Washington users for all the MPU-eligible products is 412 (400 + 5 + 7). The total number of users located everywhere for all the MPU-eligible products is 1,030 (1,000 + 10 + 20).

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- Thus, the use tax apportioned to Washington on the software maintenance agreement is \$7,600, *calculated as follows*.

$$\frac{400+5 \text{ (WA users)}}{1,000+10+20 \text{ (total users)}} \times \$200,000 = \$80,000$$

\$80,000 x 9.5% sales tax rate for Lacey, WA tax rate = \$7,600

Documentation Requirements

- A buyer claiming MPU treatment for their purchases of MPU-eligible products should provide the seller with a completed Digital Products and Remote Access Software Exemption Certificate.
- The buyer must maintain documentation to support eligibility for the MPU exemption and the use tax apportionment calculation for the nonitemized-price purchase of the MESMA. Necessary records include agreements or contracts between the seller and buyer, documentation of users located inside and outside of Washington for the MPU-eligible products, purchase orders, invoices, etc.
- A buyer making purchases of products that qualify for the MPU exemption may seek a refund of retail sales tax previously paid. Buyers claiming a refund must provide all records necessary to document eligibility for the MPU exemption and support the apportionment of the use tax due.