

Excise Tax Advisory

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ETA 3221.2020

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Data Center Exemption: Qualifying Tenant Exemption & Data Centers Consisting of Multiple Buildings

Purpose

This Excise Tax Advisory (“ETA”) addresses the following three questions:

1. How are tenants treated with respect to the twelve data center exemption limitation set forth in RCW 82.08.986(2)(c)?
2. How does the exemption apply to a computer data center comprised of multiple buildings?
3. How long does the exemption last for a data center comprised of multiple buildings constructed over a number of years?

Overview of the Data Center Exemption

Presuming all statutory requirements are met, RCW 82.08.986 and RCW 82.12.896 provide an exemption from retail sales and use tax to qualifying businesses and qualifying tenants on purchases of eligible server equipment and labor and services rendered in respect to installing eligible server equipment, as well as on sales of power infrastructure, and labor and services rendered in respect to constructing, installing, repairing, altering, or improving constructing power infrastructure of a data center. The statutes were enacted in 2010, amended in 2012, 2015, 2017, and will expire in 2025.

Question 1: How are tenants treated with respect to the twelve data center limitation?

There are twelve data center exemptions permitted collectively. For computer data centers where commencement of construction occurs after July 1, 2015 and before July 1, 2019 only eight computer data center exemptions are allowed. Additionally, four computer data center exemptions can be claimed where commencement of construction occurs between July 1, 2019 and July 1, 2025.

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To qualify for the data center exemption, a qualifying tenant must lease space from a qualifying business. A qualifying tenant is a business entity that exists for the primary purpose of engaging in commercial activity for profit and that leases space from a qualifying business within an eligible computer data center. RCW 82.08.986(6)(i).

A qualifying business is a business entity that exists for the primary purpose of engaging in commercial activity for profit and that is the owner of an eligible computer data center. RCW 82.08.986(6)(h).

RCW 82.08.986(1) grants qualifying businesses a data center exemption subject to the twelve exemption limit referenced above. Tenants are eligible for the exemptions when leasing from these qualifying businesses. Moreover, the statute makes clear that these tenants of “qualified data centers” do not constitute additional data centers under the limit. RCW 82.08.986(2)(c). Thus, a tenant is not subject to the data center limitation and may not claim the exemption when leasing from a lessor that has not qualified for the data center exemption.

**Question 2:
Application to a
multi-building data
center?**

The data center exemption contemplates that a computer data center may consist of multiple buildings. In particular, RCW 82.08.986(6)(c)(i) provides:

"Computer data center" means a facility comprised of one or more buildings, which may be comprised of multiple businesses

When a taxpayer submits a data center exemption application to the Department, it must provide the Department with documentation substantiating that it qualifies for the data center exemption, which includes a description of all the buildings that are contemplated at the outset of construction and that will be located at the data center.

Documentation may include a site plan, blueprints, or other documentation deemed sufficient by the Department. Applicants must affirm that the buildings referenced in their application are all the buildings contemplated and that no further buildings are planned or contemplated.

Applicants will not be permitted to add additional buildings at a later time if those buildings are not included in the initial application.

Qualifying businesses with existing data centers must provide the documentation described above, e.g., site plan, blueprints, etc., to establish the buildings that are not yet built, but were contemplated at the outset of the data center’s original construction, by March 1, 2021.

Example 1.

- **Facts:**
 - Taxpayer submits a data center application to the Department with blueprints indicating that it will construct three data center buildings at the same address over the period of one year.
 - Taxpayer, as a qualifying business, is granted one of the twelve computer data center exemptions permitted under RCW 82.08.986(2)(c).
 - One year after submitting its data center application and being granted the exemption, Taxpayer decided to request the addition of two data center buildings at the same address that were not included in the initial application.
- **Result:**
 - The two new buildings cannot be added to the computer data center for which the taxpayer had previously claimed a computer data center exemption. Taxpayer must submit a new application to the Department for the additional data center buildings because these buildings were not identified at the time the application was submitted, which will be considered only if the twelve data center exemption limit has not been reached.

Question 3: How long does the exemption last for a data center comprised of multiple buildings constructed over a number of years?

RCW 82.08.986 limits the period for exempt purchases of server equipment. For an owner of an eligible data center, the construction of which began after June 30, 2015, the exemption for purchases of server equipment expires “[12] years after the date of certificate of occupancy.” RCW 82.08.986(6)(g)(iii)(B). The same duration applies to qualifying tenant purchases of replacement server equipment. See [ETA 3213](#) for more information.

In the case of a data center consisting of multiple buildings falling within one exemption certificate, one measure of duration applies to all of the data center’s buildings. Thus, the date of the first certificate of occupancy issued with respect to a data center controls for measuring the duration of the exemption for purchases of server equipment.

Example 2.

- **Facts:**
 - Taxpayer submitted a data center application to the Department with blueprints indicating that it will construct two data center buildings at the same address over five years.
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- Taxpayer, as a qualifying business, is granted one of the twelve computer data center exemptions permitted under RCW 82.08.986(2)(c).
 - The first building is completed and issued a certificate of occupancy on January 1, 2020.
 - The second building is completed and issued a certificate of occupancy in January 1, 2025.
 - **Result:**
 - The date of the first certificate of occupancy controls for measuring the duration of the exemption for purchases of server equipment. Therefore, Taxpayer may make exempt server equipment purchases until January 1, 2032, whether the equipment is being purchased for the first building or the second building.
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