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ETA 3221.2024

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

Purpose

This Excise Tax Advisory (“ETA”) addresses the following three questions regarding the sales and use tax exemption for server equipment and power infrastructure in eligible computer data centers:

1. How are tenants treated with respect to the limitation of six annual exemption certificates for refurbishments of rural data centers, and for the construction and refurbishments of urban data centers?
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 Exemptions

RCW 82.08.986 and RCW 82.12.986 provide an exemption from retail sales and use tax to qualifying businesses and qualifying tenants for certain purchases for a qualifying data center located in a rural county (“rural data center”).¹ The rural data center statutes were enacted in 2010, amended in 2012, 2015, 2017, and 2022.

RCW 82.08.9861 and RCW 82.12.9861 provide a retail sales and use tax exemption to qualifying businesses and qualifying tenants for certain purchases for a qualifying data center located in a county with a population over 800,000 (“urban data center”). The Legislature enacted the urban data center statutes in 2022.

¹ “Rural county” is defined as a county with a population density of less than 100 persons per square mile or a county smaller than 225 square miles. RCW 82.08.986(8)(f)(i)(A); RCW 82.14.370(6).

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These exemptions apply to purchases of: (a) eligible server equipment and labor and services rendered in respect to installing eligible server equipment; and (b) eligible power infrastructure, and labor and services rendered in respect to constructing, installing, repairing, altering, or improving eligible power infrastructure. See [ETA 3213.2023](#) for information on the duration of these exemptions, including expiration dates.

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

Qualifying tenants are eligible to make tax-exempt purchases of eligible server equipment and eligible power infrastructure. 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 for-profit business within an eligible computer data center. RCW 82.08.986(8)(i)-(j); RCW 82.08.9861(9)(j). While there is no limit on the number of exemptions available to qualifying tenants in an eligible computer data center,² tenants may apply for an exemption certificate only after the owner has applied for and received an exemption certificate.

Effective June 9, 2022, rural data centers that were not previously eligible computer data centers can become eligible through refurbishment of the data center.³ The Department may issue no more than six exemption certificates per calendar year for rural data centers to owners that qualify through refurbishment. Tenants of these previously ineligible data centers likewise become eligible for exempt purchases of eligible server equipment and eligible power infrastructure, assuming they meet the other requirements of a qualifying tenant.

For *owners* of urban data centers, the Department may issue no more than six exemption certificates for calendar year 2022, zero in calendar year 2023, and six per calendar year 2024 through 2027. RCW 82.08.9861(2)(c)(i). No new exemption certificates will be issued for urban data center *tenants* after June 30, 2028. RCW 82.08.9861(1)(c). Tenants of previously ineligible urban data centers that become eligible data centers through refurbishment likewise become eligible for exempt purchases of eligible server equipment and eligible power infrastructure, assuming they meet the other requirements of a qualifying tenant.

² Qualifying tenants do not include tenants who are leasing from an affiliate when: (a) the space will be used by the tenant to house server equipment previously installed and operated in that eligible data center by the lessor or another person affiliated with the lessee; or (b) prior to May 2, 2012, the primary use of the server equipment installed in that eligible computer data center was to provide electronic data storage and data management services for the business purposes of either the lessor, persons affiliated with the lessor, or both. Tenants and lessors are affiliated when one person has a direct or indirect ownership interest of at least 20 percent in another person. See RCW 82.08.986(8)(a); RCW 82.08.9861(9)(a).

³ Refurbishment is defined as a substantial improvement to an eligible computer data center to update or modernize servers, server space, ventilation, or power infrastructure in an eligible data center. RCW 82.08.986(8)(k); RCW 82.08.9861(9)(k). To be considered refurbished, the qualifying business must certify to the Department that the refurbishment of the data center is complete.

Question 2: How does the exemption work for a multi-building data center?

The data center exemptions contemplate that a computer data center may consist of multiple buildings. In particular, RCW 82.08.986(8)(d)(i) and RCW 82.08.9861(9)(d)(i) provide:

"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 what will be located at the data center. Documentation may include a site plan, building permit, blueprints, or other documentation deemed sufficient by the Department.

For the purposes of application caps, and exemption issuance expirations, 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 who wish to add additional buildings at a later time must submit a new application.

Example 1.

Facts:

- Taxpayer submits a rural data center refurbishment application to the Department with blueprints and proposed site plans indicating that it will refurbish three data center buildings at the same address over the period of one year.
- Taxpayer, as a qualifying business, is granted one of the six annual rural data center refurbishment exemptions permitted under RCW 82.08.986(1)(e).
- One year after submitting its data center refurbishment application and being granted the exemption, Taxpayer decides to request the addition to the exemption certificate of four additional data center buildings for refurbishment at the same address that were not included in the initial application.

Result:

The refurbishment of the four additional buildings is not covered by the rural data center refurbishment exemption previously claimed by Taxpayer. 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 six annual data center refurbishment exemption limit has not been reached. Each qualifying business may only apply for one new certificate for a refurbished data center each calendar year,

but Taxpayer's application is allowed because it has been submitted in the subsequent calendar year.⁴

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 and RCW 82.08.9861 limit the period for exempt purchases of server equipment. See [ETA 3213 \(2023\)](#) 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. For instance, 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, a qualifying owner, submitted a rural data center exemption application to the Department on January 1, 2023, with blueprints indicating that it will construct two data center buildings at the same address over five years.⁵
- Taxpayer, as a qualifying business, was granted a rural data center exemption.
- The first building was completed and issued a certificate of occupancy on January 1, 2024.
- The second building is completed and issued a certificate of occupancy on January 1, 2026.

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, 2036, whether the equipment is being purchased for the first building or the second building.⁶

⁴ See RCW 82.08.986(1)(e).

⁵ See RCW 82.08.986(8)(h)(iv).

⁶ See ETA 3213.2023. The exemption for purchases of replacement server equipment by a qualifying owner of a rural data center constructed between July 2015 and July 2035 is 12 years after the date of the data center's certificate of occupancy or completion of refurbishment.