

**SALES TAX RULES COMMITTEE
PRELIMINARY AGENDA**

The Committee convenes on Tuesday, July 30, 2013, at 2:30 p.m. at:

Idaho State Tax Commission
Room 1CR5 / Plaza IV / 800 Park Blvd / Boise, Idaho

1. Welcome & Introductions
2. Sales & Use Tax Rules Discussion
 - a. **Rule 027** Computer Equipment, Software, and Data Services
3. Any Additional Items for Discussion
4. Next meeting date: July 31, 2013
5. Meeting adjourned

For more information, please contact the Rules Coordinator at sherry.briscoe@tax.idaho.gov or at 208.334.7544. All agendas and rules related documents are posted on our website under the appropriate committee.

Sales & Use Tax

Rule 027

Relevant Statutes (Unofficial Copy)

63-3616. Tangible personal property. [Effective April 3, 2013] (a) The term "tangible personal property" means personal property which may be seen, weighed, measured, felt or touched, or which is in any other manner perceptible to the senses.

(b) The term "tangible personal property" includes any computer software ~~which that~~ is not a custom computer program and is not application software accessed over the internet or through wireless media.

(i) As used in this subsection, the term "computer software" means any computer program, part of a program or any sequence of instructions for automatic data processing equipment or information stored in an electronic medium. Computer software is deemed to be tangible personal property for purposes of this chapter regardless of the method by which the title, possession or right to use the software is transferred to the user.

(ii) As used in this subsection, the term "custom computer program" means any computer software (as defined in this subsection) which is written or prepared exclusively for a customer and includes those services represented by separately stated charges for the modification of existing prewritten programs when the modifications are written or prepared exclusively for a customer. The term does not include a "canned" or prewritten program which is held or existing for general or repeated sale, lease or license, even if the program was initially developed on a custom basis or for in-house use. Modification to an existing prewritten program to meet the customer's needs is custom computer programming only to the extent of the modification, and only to the extent that the actual amount charged for the modification is separately stated on invoices, statements, and other billing documents supplied to the purchaser.

(iii) As used in this section, the term "application software accessed over the internet or through wireless media" means the right to use computer software where the software is accessed over the internet or through wireless media from a location owned or maintained by the seller or an agent of the seller and is not loaded and left at the user's location. The term does not include such remotely accessed computer software if the primary purpose of such computer software is for entertainment use, or if the vendor of that computer software offers for sale, in a storage media or by an electronic download, to the user's computer or server, and either directly or through wholesale or retail channels, that same computer software or comparable computer software that performs the same functions.

(c) The term "tangible personal property" does not include advertising space when sold to an advertiser or its agent by the publisher of the newspaper or the magazine in which the advertisement is displayed or circulated.

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027. COMPUTER EQUIPMENT, SOFTWARE, AND DATA SERVICES (RULE 027).

Section 63-3616, Idaho Code ()

01. ~~Hardware and Computers Defined.~~ Definitions. For purposes of this rule, the following terms will have the following meanings: (3-6-00)()

a. ~~Hardware is the physical computer assembly and all peripherals, whether attached physically or remotely by any type of network, and includes all equipment, parts and supplies.~~ (3-6-00)

a. Application Software Accessed Over the Internet or Through Wireless Media. Application software accessed over the internet or through wireless media is software that is accessed by the user over the internet or other network and the software is not loaded and left. The vendor or an agent of the vendor owns or controls the computer hardware which hosts the software. The term does not include software for which the primary purpose is entertainment or software for which the vendor offers for sale the same or comparable software on storage media or by electronic download such that it can be loaded and left on the user's computer. For purposes of this rule, the term is interchangeable with "remotely accessed software." ()

b. Canned Software. Canned software is prewritten software which is offered for sale, lease, or use to customers on an off-the-shelf basis or is electronically transferred by whatever means, with little or no modification at the time of the transaction beyond specifying the parameters needed to make the program run. Evidence of canned software includes the selling, licensing, or leasing of identical software more than once. Software may qualify as custom software for the original purchaser, licensee, or lessee, but become canned software when sold to others. Canned software includes program modules which are prewritten and later used as part of a larger computer program. ()

b.c. Computers. A computer are is a programmable machines or devices having information processing capabilities and includes word, data, and math processing equipment, testing equipment, programmable microprocessors, and any other integrated circuit embedded in manufactured machinery or equipment. (3-6-00)()

d. Computer Hardware. Computer hardware is the physical computer assembly and all peripherals, whether attached physically or remotely by any type of network, and includes all equipment, parts and supplies. ()

e. Computer Program. A computer program, or simply a program, is a sequence of instructions written for the purpose of performing a specific operation in a computer. ()

f. Custom Software. Custom software is software designed and written by a vendor

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at the specific request of a client to meet a particular need. Custom software includes software which is created when a user purchases the services of a person to create software which is specialized to meet the user's particular needs. ()

g. Digital Good. See definition for "Information Stored in an Electronic Medium" in this subsection. ()

h. Information Stored in an Electronic Medium. Any electronic data file other than a computer program which can be contained on and accessed from storage media. The term includes audio and video files and any documents stored in an electronic format. For purposes of this rule, the term is interchangeable with "digital good." ()

i. Loaded and Left. Software that is loaded and left is software that is copied or installed onto the user's storage media and remains copied or installed onto the user's storage media. The term applies whether the user loads the software from another storage medium or the user downloads the software directly over the internet or other network. ()

j. Offers For Sale. When a vendor offers for sale certain software, it means to publicly advertise or solicit sales, through web sites, promotional materials or other advertising methods, or through wholesale or distribution channels. ()

k. Remotely Accessed Software. See definition for "application software accessed over the internet or through wireless media" in this subsection. ()

l. Software. Software is tangible personal property and is defined as one of the following: ()

i. A computer program, ()

ii. Any part of a computer program, ()

iii. Any other sequence of instructions that operates automatic data processing equipment, or ()

iv. Information stored in an electronic medium. ()

However, custom software or application software accessed over the internet or through wireless media is not tangible personal property.

~~**02. Computer Software, Storage Media and Transfer Media Defined.** (3-6-00)~~

~~**a.** Computer Software. Computer software, interchangeable with the terms program~~

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~~or software program, is a sequence of instructions or collections of data which, when incorporated into a machine readable data processing storage or communication medium or device, is capable of causing a computer to indicate, perform, or achieve a particular function, task, or result. Computer software includes upgrades, fixes and error corrections as well as any documentation or related information held on storage media or transferred by whatever means from any location.~~ (3-6-00)

b.m. Storage and Transfer Media. Storage media includes, but are not limited to, hard disks, ~~compact disks, floppy disks, diskettes, diskpacks,~~ optical media discs, diskettes, magnetic tape data storage, cards, solid state drives, and other semiconductor memory chips used for nonvolatile storage of information readable by a computer. ~~Transfer media include, but are not limited to, the Internet, electronic bulletin boards, local and remote networks, and file transfer protocols.~~ (3-6-00)()

032. Computer Hardware. The sale or lease of computer hardware is a sale at retail. Sales tax is imposed based on the total purchase price, lease, or rental charges. See Rule 024 of these rules. (3-6-00)()

043. Canned Software. The transfer of title, possession, or use for a consideration of any computer software which is not custom software or remotely accessed software is a transfer of tangible personal property and is taxable. ~~Canned software is prewritten computer software which is offered for sale, lease, or use to customers on an off-the-shelf basis or is electronically transferred by whatever means, with little or no modification at the time of the transaction beyond specifying the parameters needed to make the program run. Evidence of canned software includes the selling, licensing, or leasing of the identical software more than once. Software may qualify as custom software for the original purchaser, licensee, or lessee, but become canned software with respect to all others. Canned software includes program modules which are prewritten and later used as needed for integral parts of a complete program.~~ (3-6-00)()

a. Canned software may be transferred to a customer electronically or in storage media. Tax applies to the sale or lease of the canned software, including ~~the~~ any charges for the storage media or ~~the~~ charges to effect complete an electronic transfer. (3-6-00)()

b. Tax applies when operational control of canned software is transferred to the buyer, whether title to the storage media on which the software resides passes to the customer or the software resides on storage media furnished by the customer. A fee for the permanent or temporary transfer of possession of software by any means is a sale or lease of tangible personal property and is taxable. (3-6-00)

c. Tax applies to the entire amount charged to the customer for canned software. If the consideration consists of license fees, royalty fees, right to use fees or program design fees, whether for a period of minimum use or for extended periods, all fees are includable in the

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purchase price subject to tax.

(3-6-00)

d. Example 1: A user purchases canned software that is loaded and left on the user's storage media. The software provider releases software updates on a regular basis that are only available by download over the internet. Once downloaded, the updates are left and loaded on the user's storage media. The sale of the canned software is taxable. ()

054. Maintenance Contracts. Maintenance contracts sold in connection with the sale or lease of canned software generally provide that the purchaser will be entitled to receive periodic program enhancements and error correction, often referred to as upgrades, either on storage media or through remote telecommunications. The maintenance contract may also provide that the purchaser will be entitled to telephone or on-site support services. (3-6-00)()

a. If the maintenance contract is required as a condition of the sale, lease, or rental of canned software, the gross sales price is subject to tax whether or not the charge for the maintenance contract is separately stated from the charge for software. In determining whether an agreement is optional or mandatory, the terms of the contract shall be controlling. (3-30-07)

b. If the maintenance contract is optional to the purchaser of canned software: (3-30-07)

i. Then only the portion of the contract fee representing upgrades or enhancements is subject to sales tax if the fee for any maintenance agreement support services is separately stated; (3-30-07)

ii. If the fee for any maintenance agreement support services is not separately stated from the fee for upgrades or enhancements, then 50 percent (50%) of the entire charge for the maintenance contract is subject to sales tax; (3-30-07)

iii. If the maintenance contract only provides canned computer software upgrades or enhancements, and no maintenance agreement support services, then the entire contract is taxable; (3-30-07)

iv. If the maintenance contract only provides maintenance agreement support services, and the customer is not entitled to or does not receive any canned computer software upgrades or enhancements, then the entire contract is exempt. (3-30-07)

065. Reports Compiled by a Computer. The sale of specifically designed and prepared statistical reports, graphs, diagrams, microfilm, microfiche, photorecordings, or any other information produced or compiled by a computer and sold or reproduced for sale in substantially the same form as it is produced is a sale of tangible personal property and is taxable regardless of the means of transfer. If a report is compiled from information furnished by the

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same person to whom the finished report is sold, the report will be subject to tax unless the person selling the report performs some sort of service regarding the data or restates the data in substantially different form than that from which it was originally presented. ~~(3-6-00)~~()

a. Example: An accountant uses a computer to prepare financial statements from a client's automated accounting records. No tax will apply since what is sought is the accountant's expertise and knowledge of generally accepted accounting principles. (7-1-93)

b. Example: A company sells mailing lists which are stored on a computer disk. The seller compiles all the mailing lists from a single data base. Since the same data base is used for all such mailing lists it is not custom software. Therefore, the sale is subject to tax. (7-1-93)

c. Example: An auto parts retailer hires a data processing firm to optically scan and record its parts book on a computer disk. No analysis or other service is performed regarding the data. Essentially, this is the same as making a copy of the parts books and the sale is, therefore, subject to tax. (7-1-93)

d. When additional copies of records, reports, manuals, tabulations, etc., are provided, tax applies to the charges made for the additional copies. Additional copies are all copies in excess of those produced simultaneously with the production of the original and on the same printer, where the copies are prepared by running the same program, by using multiple printers, by looping the program, by using different programs to produce the same output, or by other means. (7-1-93)

e. Charges for copies produced by means of photocopying, multilithing, or by other means are subject to tax. (7-1-93)

076. Training Services. Separately stated charges for training services are not subject to the tax, unless they are incidental services agreed to be rendered as a part of the sale of tangible personal property as provided by Rule 011 of these rules. (3-6-00)

a. When separate charges are made for training materials, such as books, manuals, or canned software, sales tax applies. (7-1-93)

b. When training materials are provided at no cost to the purchaser in conjunction with the sale of tangible personal property, the training materials are considered to be included in the sales price of the tangible personal property. (7-1-93)

c. When no tangible personal property, computer hardware or canned software, is sold and training materials are provided at no charge to the customer, the provider of the training is the consumer of the training materials and must pay sales tax or accrue and remit use tax.

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(3-6-00)

087. Custom Software. The transfer of title, possession, or use for a consideration of custom software is not subject to sales tax. ~~Custom software is specified, designed, and created by a vendor at the specific request of a client to meet a particular need. Custom software includes software which is created when a user purchases the services of a person to create software which is specialized to meet the user's particular needs.~~ The term includes those services that are represented by separately stated and identified charges for modification to existing canned software which are made to the special order of the customer, even though the sales, lease, or license of the existing program remains taxable. Examples of services that do not result in custom software include loading parameters to initialize program settings and arranging preprogrammed modules to form a complete program. (7-1-93)()

a. Tax does not apply to the sale, license, or lease of custom software regardless of the form or means by which the program is transferred. The tax does not apply to the transfer of custom software or custom programming services performed in connection with the sale or lease of computer equipment if such charges are separately stated from the charges for the equipment. (3-6-00)

b. If the custom programming charges are not separately stated from the sale or lease of equipment, they will be considered taxable as part of the sale. (7-1-93)

c. Custom software includes a program prepared to the special order of a customer who will use the program to produce and sell or lease copies of the program. The sale of the program by the customer for whom the custom software was prepared will be a sale of canned software. (7-1-93)

08. Digital Goods. The sale, purchase, and lease of a digital good is taxable when the user has the right to download the digital good and the digital good is loaded and left. For charges to access a remote database of digital goods, see Subsection 10 of this rule. ()

09. Remotely Accessed Software. Remotely accessed software is not tangible personal property. Therefore, the sale, lease, purchase, or use of remotely accessed software is not taxable. ()

a. If part of the software can be loaded and left on the user's storage media, the entire transaction must be analyzed to determine the primary object of the transaction. If the primary object of the transaction is a sale of remotely accessed software, the sale of the software is exempt. If the primary object of the transaction is a sale of canned software that can be loaded and left, the sale of the software is taxable. This analysis will involve a test similar to the test set forth in Rule 011 of these rules to determine the primary object in a sale of both tangible personal property and services. For purposes of the examples under subsection 09.a, it will be

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assumed that the primary use of the software is not entertainment and the vendor does not offer for sale the same or comparable software on storage media or by electronic download that can be loaded and left. ()

i. Example 1: A doctor's office pays to use software for entering and storing patient data. The user accesses the software over the internet using an internet browser. The software can also be used to generate reports from the data entered by the user. The reports can be downloaded to the user's computer and loaded and left. However, no other part of the software can be loaded and left. The remotely accessed computer program that allows the user to enter the data and generate reports is the primary purpose of the software. The ability to download the reports is inconsequential to the overall transaction. Therefore, the software is remotely accessed software and the sale of the software is exempt. ()

ii. Example 2: A business pays to use software that can remotely connect several users' computers and host a meeting between the users. To enable the connection, each user must download software that is loaded and left. However, the software serves no function without remotely connecting to the vendor's servers for each meeting. Because the primary function of the software requires remote access over the internet, the sale of the software is exempt. ()

iii. Example 3: A business pays to use software that requires each user to download a small part of the software that is loaded and left. This part of the software only functions to establish a user interface on the user's computer and facilitate a remote connection to the main computer program hosted on the vendor's servers. The primary object of the transaction is the remotely accessed software. The loaded and left software serves an inconsequential function. Therefore, the sale of the software is exempt. ()

iv. Example 4: A business pays to use software that requires the user to authenticate or validate that copy of the software over the internet. The entirety of the software is left and loaded. Besides the authentication of the software, no other functionality requires internet access. The authentication process is an inconsequential part of the transaction. Therefore, the sale of the software is taxable. ()

b. The determination of whether a vendor has offered for sale the same or comparable software as the remotely accessed software must be made at the time of the initial subscription or agreement granting access to the software. This initial determination of taxability will apply to all charges during the initial contract period. Subsequent addendums to or renewals of the agreement after the initial contract period will require a new determination. A taxpayer may establish that a transaction falls within the definition of remotely accessed software, by obtaining a statement from the vendor, stating that, at the time of initial subscription or agreement to remotely access software by the taxpayer, the same or comparable software was not offered for sale, as defined above. ()

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i. Example 1: Vendor sells remotely accessed software to Taxpayer 1. At the time of the initial subscription or agreement with Taxpayer 1 for the right to use the remotely accessed software, the vendor did not publicly advertise or solicit sales, through web sites, promotional materials or other advertising methods, or through wholesale or retail distribution channels, that same or comparable software through storage media or electronic download to the user's computer or server. Taxpayer 1 is not taxed on any payment made for the right to use the remotely accessed software for the duration of the initial contract period. ()

ii. Example 2: Same facts as Example 1. At the time of initial subscription or agreement with Taxpayer 1 for the right to use remotely accessed software, or at any time thereafter, the vendor has only made an isolated sale of the same or comparable software through electronic download or storage media to Taxpayer 2. This version of the software has not been generally offered for sale to the public by the vendor. Taxpayer 1 is not taxed on any payment made for the right to use the remotely accessed software for the duration of the initial contract period. Taxpayer 2 is taxed on the purchase price of the electronic download or storage media. ()

iii. Example 3: Same facts as Example 1. After the initial subscription or agreement for the right to use remotely accessed software by Taxpayer 1, the vendor begins publicly advertising or soliciting sales, through web sites, promotional materials or other advertising methods, or through wholesale or retail distribution channels, the same or comparable software in storage media or electronic download to a user's computer or server. Taxpayer 1's payments made for the continuing right to use the remotely accessed software are not taxable for the duration of the initial contract period. Any addendums to or renewals of the agreement for periods subsequent to the initial contract period will make the charges during those subsequent periods taxable. ()

10. Online Database Subscriptions. Subscription charges paid by a user for access to an online database of digital goods may be taxable or nontaxable depending on the facts of the transaction as outlined below. ()

a. If the user can only access the digital goods remotely over the internet or other network and the primary purpose of that digital goods is something other than entertainment, the subscription charge is not taxable. ()

b. If the user can export and download digital goods from the database and save it to the user's storage media for future use, the subscription charge may be taxable. The primary object test described in Subsection 10 above would need to be applied. ()

c. If the primary purpose of the digital goods is for entertainment, the subscription charge is taxable regardless of whether the digital goods can be loaded and left. ()

d. Example 1: A user pays a subscription charge for access to a database of research

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papers that can only be accessed over the internet. The user may not download any of the documents to the user's personal storage media. The primary purpose of the database is not for entertainment. Therefore, the subscription charge would not be taxable. ()

e. Example 2: A user pays a subscription charge for access to a database of music or movies accessed remotely using an internet browser. The user cannot download the movies to the user's personal storage media; however, the primary content of the movies is entertaining in nature. Therefore, the subscription charge would be taxable. ()

0911. Purchases for Resale. Sales tax does not apply when computer hardware or software is purchased for resale. A properly executed resale certificate must be on file. See Rule 128 of these rules. (3-6-00)

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Public Comment

From: Rick Smith [Attorney w/ Hawley Troxell representing the Idaho Technology Council]
Sent: Tuesday, July 23, 2013 3:44 PM
To: McLean Russell; Saul Cohen; Erick Shaner; Doug Harrie
Subject: "Loaded and Left" and SSUTA excerpts on sourcing rules

McLean, Saul, Erick and Doug,

We have been reviewing the matters we covered at the meeting Tuesday, and we think the language Saul sent with his email (see below) has merit. In the following, we have added similar language to the Version A definition of software, with a couple of additional examples consistent with the "applet" example:

- Loaded and Left. Software that is loaded and left is software that is copied onto the user's storage media and remains copied onto the user's storage media. The term applies whether the user loads the software from another storage medium or the user downloads the software directly over the internet or other network. In order for application software to be considered loaded and left in a manner that makes that software taxable for purposes of section 63-3616, the software that is loaded and left must be capable of performing substantially the same functions as that which was remotely accessed. "Applets" that provide a gateway to remotely accessed software but do not function independently will not cause the remotely accessed software to be loaded and left, nor will the ability to download or print the output of the remotely accessed software application as long as the remotely accessed software application allows the performance of other functions that are a material component of the software to which the taxpayer subscribes (such as search functions on applications like Westlaw or Lexis). Features of downloaded software that merely allow the user to obtain updates or to request assistance from the vendor (as with TurboTax and similar applications) will not prevent software from being considered loaded and left.

The advantage of the "substantially the same functions" language is that it is more consistent with the language of the statute and also the clear intent, as Saul mentions, while also allowing for taxation in situations like the one we discussed (and the one referenced as an example here) where the only non-downloaded functions are minor or incidental, such as help desk or update features.

Saul's email also suggests the "object of the transaction" test will still be relevant, but I don't see how it would be applied in this context. That test applies where the question is whether the taxable component (usually tangible property) is the primary object of the transaction. Here, the issue is whether the remote software is downloaded in a way that allows the user to perform substantially the same functions. It is a more objective test, but more important is not one that requires a 51%-49% judgment as to which objective prevails over the other. Instead, consistent with the language and intent of the statute, it looks to whether all but incidental or immaterial functions are being downloaded in a way that shows the buyer is really obtaining downloaded software and not remotely accessed software. I suppose you could use the object of the transaction test to evaluate whether the object of the transaction is to obtain downloadable software that has "substantially the same functions" as the remote application, but I don't see how that would add clarity to the rule.

On the issue of the use of software in multiple states, I think Scott made some good points during the meeting and in his email, and I encourage you to consider that issue. Some examples would be helpful.

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Public Comment

Let me know if you have any questions about this.

Thanks, Rick

From: Saul Cohen
Sent: Tuesday, July 23, 2013 12:03 PM
To: Rick Smith
Subject: "Loaded and Left" and SSUTA excerpts on sourcing rules

Rick,

Please forward this to our other two guests, Scott and Chris, if you have their email addresses. If not, McLean likely has them.

I've attached the Streamlined Sales and Use Tax Agreement (SSUTA). Sections 309 and 310 refer to sourcing for the purpose of defining where a sale takes place (and where tax should be imposed). Note that Section 312, Multiple Points of Use, was repealed. The primary purpose of this section was to address the sale of multiple software licenses. I don't know the history of the repeal, but guess that it was administratively unfeasible.

Here is my opinion on (L&L). To give the amended statute, Idaho Code § 63-3616, its intended meaning (i.e., to exempt something from tax that was previously taxable), L&L must be defined to mean that what is L&L has substantially the same function as that which was remotely accessed. In its practical application, software output can be L&L on a user's computer without negating the exemption. Applets that provide a gateway to remotely accessed software but don't function independently will not negate the exemption. I realize that this will not cover all possible fact situations.

The "object of the transaction" test will still be an appropriate inquiry for auditors to make and be considered in audit protests. Remotely accessed employee time recording software qualifies for the exemption despite the a user's ability to download data reports to a computer. The use of remotely accessed software that delivers non-custom stored documents from the software's remote access location to a user's location with the intent of being permanent may be a mixed transaction with a taxable element.

Regards,

Saul

Saul J. Cohen • Tax Policy Specialist
Idaho State Tax Commission • Tax Policy
phone: (208) 334-7543 • fax: (208) 334-7844
e-mail: saul.cohen@tax.idaho.gov • website: tax.idaho.gov

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Public Comment

From: Scott Mueller [Sales & Use Tax Manager w/ Micron Technology]

Sent: Tuesday, July 23, 2013 3:49 PM

To: McLean Russell; Saul Cohen; Doug Harrie; Erick Shaner

Subject: "Loaded and Left" and SSUTA excerpts on sourcing rules

McLean, Saul, Doug and Erick,

Thank you for taking the time to discuss the application software issue with Rick, Chris and myself this morning. I feel that progress was made and am hopeful that the next draft will reflect a position that is agreeable to those involved. Saul's concept of "substantially the same function" appears very workable.

In particular, I appreciate your time spent in discussing the complications that multiple point of use software creates for taxpayers trying to comply with the current Idaho law.

Upon my return to the office, I dug into some history on the reason that the MPU concept was struck from the SSTP. There were several concerns, but the primary one related to the scenario where a software vendor would receive an MPU certificate where only part of the states indicated were full SSTP members. The business community perceived a shift of collection burdens from software sellers to business purchasers of software. The concerns are very valid when trying to draft rules that address multiple member and non-member states. My proposal would be simpler to implement because only one state is at issue.

After looking at the history of the SSTP, I looked at some current state statutes and rules regarding the MPU concept. I attach for your review, language from Washington and from Minnesota where a new statute was just implemented.

In both states, the concept is to allow the buyer to accept the burden of tax remittance from the seller through the use of a certificate. Accepting this certificate in good faith would relieve the seller from collection responsibilities similar to the function of a resale certificate. In addition to shifting the burden, the rules require that the buyer use a reasonable, consistent apportionment method that is supported by the taxpayer's books and records. The utilization of the apportionment is optional so neither the seller nor the buyer have any increased burden if it is not utilized.

I understand that it is late in the game to bring this up, but I feel that this is a change that does not need to be made statutorily. I also suggest that integrating this concept into the current draft would provide sellers and buyers with relief from the uncertainty of dealing with software concurrently used in multiple jurisdictions. If I can be of assistance in drafting proposed language, please let me know.

Finally, as suggested in the meeting, it would be helpful to gain an understanding of the Commission's current treatment of this issue under audit.

Thank you again,

Scott Mueller

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Public Comment

Minnesota

Minnesota Sales Tax Guide, Minnesota, Sec. 297A.668, Sourcing of sale; situs in this state

[Click to open document in a browser](#)

MINNESOTA STATUTES, CHAPTER 297A GENERAL SALES AND USE TAXES



297A.668, Subd. 6a., as reproduced below, added by Ch. 143 (H.F. 677), Laws 2013, is effective for sales and purchases made after June 30, 2013. CCH.



297A.668.Subd.6a. *Multiple points of use.*

297A.668.Subd.6a.(a) Notwithstanding the provisions of subdivisions 2 and 3, a business purchaser that has not received authorization to pay the tax directly to the commissioner may use an exemption certificate indicating multiple points of use if:

297A.668.Subd.6a.(a)(1) the purchaser knows at the time of its purchase of a digital good, computer software delivered electronically, or a service that the good or service will be concurrently available for use in more than one taxing jurisdiction; and

297A.668.Subd.6a.(a)(2) the purchaser delivers to the seller the exemption certificate indicating multiple points of use at the time of purchase.

297A.668.Subd.6a.(b) Upon receipt of the fully completed exemption certificate indicating multiple points of use, the seller is relieved of the obligation to collect, pay, or remit the applicable tax and the purchaser is obligated to collect, pay, or remit the applicable tax on a direct pay basis. The provisions of [section 297A.665](#) apply to this paragraph.

297A.668.Subd.6a.(c) The purchaser delivering the exemption certificate indicating multiple points of use may use any reasonable but consistent and uniform method of apportionment that is supported by the purchaser's business records as they exist at the time of the consummation of the sale.

297A.668.Subd.6a.(d) The purchaser shall provide the exemption certificate indicating multiple points of use to the seller at the time of purchase.

297A.668.Subd.6a.(e) A purchaser that has received authorization to pay the tax directly to the commissioner is not required to deliver to the seller an exemption certificate indicating multiple points of use. A purchaser that has received authorization to pay the tax directly to the commissioner shall follow the provisions of paragraph (c) in apportioning the tax due on a digital good, computer software delivered electronically, or a service that will be concurrently available for use in more than one taxing jurisdiction.

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Public Comment

Washington

Washington Sales Tax Guide, Washington, Sec. 82.08.02088, Exemptions—Digital products—Business buyers— Concurrently available for use within and outside state

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REVISED CODE OF WASHINGTON, TITLE 82 EXCISE TAXES, CHAPTER 82.08 RETAIL SALES TAX

82.08.02088(1) The tax imposed by RCW 82.08.020 does not apply to the sale of digital goods, digital codes, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(b) to a buyer that provides the seller with an exemption certificate claiming multiple points of use. An exemption certificate claiming multiple points of use must be in a form and contain such information as required by the department.

82.08.02088(2) A buyer is entitled to use an exemption certificate claiming multiple points of use only if the buyer is a business or other organization and the digital goods or digital automated services purchased, or the digital goods or digital automated services to be obtained by the digital code purchased, or the prewritten computer software or services defined as a retail sale in RCW 82.04.050(6)(b) purchased will be concurrently available for use within and outside this state. A buyer is not entitled to use an exemption certificate claiming multiple points of use for digital goods, digital codes, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(b) purchased for personal use.

82.08.02088(3) A buyer claiming an exemption under this section must report and pay the tax imposed in RCW 82.12.020 and any local use taxes imposed under the authority of chapter 82.14 RCW and RCW 81.104.170 directly to the department in accordance with RCW 82.12.02088 and 82.14.457.

82.08.02088(4) For purposes of this section, "concurrently available for use within and outside this state" means that employees or other agents of the buyer may use the digital goods, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(b) simultaneously from 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 buyer 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.

(As added by Ch. 535 (H.B. 2075), Laws 2009, effective July 26, 2009.)

Washington Sales Tax Guide, Washington, Sec. 82.12.02088, Exemptions—Digital products—Business buyers— Concurrently available for use within and outside state— Apportionment

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REVISED CODE OF WASHINGTON, TITLE 82 EXCISE TAXES, CHAPTER 82.12 USE TAX

Sales & Use Tax

Rule 027

Public Comment

82.12.02088(1) A business or other organization subject to the tax imposed in RCW 82.12.020 on the use of digital goods, digital codes, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(b) that are concurrently available for use within and outside this state is entitled to apportion the amount of tax due this state based on users in this state compared to users everywhere. The department may authorize or require an alternative method of apportionment supported by the taxpayer's records that fairly reflects the proportion of in-state to out-of-state use by the taxpayer of the digital goods, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(b).

82.12.02088(2) No apportionment under this section is allowed unless the apportionment method is supported by the taxpayer's records kept in the ordinary course of business.

82.12.02088(3) For purposes of this section, the following definitions apply:

82.12.02088(3)(a) "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)(b) 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.

82.12.02088(3)(b) "User" means an employee or agent of the taxpayer who is authorized by the taxpayer to use the digital goods, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(b) in the performance of his or her duties as an employee or other agent of the taxpayer.

(As added by Ch. 535 (H.B. 2075), Laws 2009, effective July 26, 2009.)

Washington Sales Tax Guide, Washington, Sec. 82.14.457, Sales and use tax for digital goods—Apportionment

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REVISED CODE OF WASHINGTON, TITLE 82 EXCISE TAXES, CHAPTER 82.14 LOCAL RETAIL SALES AND USE TAXES

82.14.457(1) A business or other organization that is entitled under RCW 82.12.02088 to apportion the amount of state use tax on the use of digital goods, digital codes, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(b) is also entitled to apportion the amount of local use taxes imposed under the authority of this chapter and RCW 81.104.170 on the use of such products or services.

82.14.457(2) To ensure that the tax base for state and local use taxes is identical, the measure of local use taxes apportioned under this section must be the same as the measure of state use tax apportioned under RCW 82.12.02088.

82.14.457(3) This section does not affect the sourcing of local use taxes.

(As added by Ch. 535 (H.B. 2075), Laws 2009, effective July 26, 2009.)