

Massachusetts DOR Abatement Requests: Sales and Use Tax on Software Used in More than One State

The following Frequently-Asked-Questions (FAQs) provide guidance with respect to the abatement of Massachusetts sales and use tax paid on software, including the apportionment of tax where software is used in more than one state.

Can a vendor seek an abatement of a portion of the sales and use tax collected on software sold if it is later determined that the customer used the software outside Massachusetts?

Yes. A vendor may request an abatement of a portion of the sales and use tax paid on the sale of software if it can show that the software was transferred for use in more than one state. The portion of tax to be abated must be determined using an apportionment method that reasonably approximates the extent to which the customer used the software outside Massachusetts in accordance with [TIR 22-8](#): Decision of the Massachusetts Supreme Judicial Court in Oracle USA, Inc. v. Commissioner of Revenue, [487 Mass. 518 \(2021\)](#), and [830 CMR 64H.1.3\(15\)](#). The abatement request must be timely and must meet the requirements for a valid abatement application. For information regarding the abatement process, see [Administrative Procedure 627](#) or the Department of Revenue's (DOR's) [Abatement Regulation](#).

Is a vendor seeking an abatement of sales and use tax required to prove that it collected and remitted the tax to the Department?

Yes. A vendor must submit documentation that proves the sales and use tax at issue was collected and remitted to the Department.

Is a vendor that receives an abatement of sales and use tax required to refund the tax to the purchaser?

Yes. A vendor must either refund the tax to the purchaser prior to approval of an abatement or apply for an abatement first and then refund the tax to the purchaser, if and when the abatement is approved and paid. In the former case, the Department will abate the tax for the vendor if the vendor has demonstrated that the tax has been refunded to the purchaser. In the latter case, the Department will abate the tax for the vendor on the condition that the vendor refunds the tax to the purchaser. As proof, the vendor must submit a copy of the conditional credit memo or other proof that the vendor repaid or credited, or will repay or credit, the purchaser the amount of tax abated.

Can a purchaser of software apply for an abatement of sales or use tax paid at the time of purchase?

Yes. A purchaser may apply for an abatement of sales or use tax paid if it obtains a Power of Attorney, Form M-2848, from the vendor, authorizing the purchaser to act on

behalf of the vendor with respect to the abatement application. See [TIR 16-12](#). In such instances, the refund will be paid to the vendor on the condition that the vendor will refund the tax to the purchaser.

What methodology should be applied to determine the apportionment percentage with respect to in-state use of the software?

Generally, the apportionment method to be applied depends upon the nature of the use of the software. If the software is to be used exclusively within a particular group or for a specific function by the purchaser, an apportionment method that is based on the number of licensed users in that group or engaged in that function within a particular state will typically be accepted. If the software is to be used on a company-wide basis, an apportionment based upon the purchaser's number of employees using the software will typically be accepted. Note that other methods may also be considered reasonable, depending on the specific facts. See [TIR 22-8](#) and [830 CMR 64H.1.3\(15\)](#)

What documentation must be submitted with an application for abatement of sales or use tax paid on software that was used in at least one other state?

An application for abatement should include copies of all invoices, contracts, or other documentation relating to the sales transactions included in the abatement request, whether the request was submitted by the vendor or the purchaser.

The application for abatement must include a description of the purpose of use and business function of the software at issue. The application must also include a statement regarding whether the software purchased was used by a particular group or function within the purchaser or, alternatively, by the purchaser's employees on a company-wide basis.

The application must provide and explain the methodology used to determine the apportionment percentage, along with all documentation that supports such calculation, including documentation that shows the location of the employees who used the software at the time of purchase.

In addition, the application should include all documentation that substantiates that the apportioned use tax was reported and/or paid to any other state(s) as well as the conditional credit memo referenced above.