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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1088 Session of  
2019

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INTRODUCED BY NESBIT, OBERLANDER, LONGIETTI, RYAN, BERNSTINE,  
MENTZER, RAPP, BARRAR, MILLARD, MULLINS, JAMES, METCALFE,  
RADER, MATZIE, SAINATO AND MARSHALL, APRIL 8, 2019

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REFERRED TO COMMITTEE ON FINANCE, APRIL 8, 2019

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AN ACT

1 Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An  
2 act relating to tax reform and State taxation by codifying  
3 and enumerating certain subjects of taxation and imposing  
4 taxes thereon; providing procedures for the payment,  
5 collection, administration and enforcement thereof; providing  
6 for tax credits in certain cases; conferring powers and  
7 imposing duties upon the Department of Revenue, certain  
8 employers, fiduciaries, individuals, persons, corporations  
9 and other entities; prescribing crimes, offenses and  
10 penalties," in Computer Data Center Equipment Incentive  
11 Program, further providing for definitions and providing for  
12 applicability and for sales and use tax exemption; and making  
13 editorial changes.

14 The General Assembly of the Commonwealth of Pennsylvania  
15 hereby enacts as follows:

16 Section 1. Article XXIX-D of the act of March 4, 1971  
17 (P.L.6, No.2), known as the Tax Reform Code of 1971, is amended  
18 by adding a part heading to read:

19 PART I

20 PRELIMINARY PROVISIONS

21 Section 2. Section 2901-D of the act is amended by adding  
22 definitions to read:

23 Section 2901-D. Definitions.

1 The following words and phrases when used in this article  
2 shall have the meanings given to them in this section unless the  
3 context clearly indicates otherwise:

4 \* \* \*

5 "Tax exemption." The tax exemption provided for under this  
6 article.

7 \* \* \*

8 "Telecommunications provider." A provider of  
9 telecommunications services, as defined in 61 Pa. Code § 60.20  
10 (relating to telecommunications service).

11 \* \* \*

12 Section 3. Article XXIX-D of the act is amended by adding a  
13 part heading immediately before section 2902-D to read:

14 PART II  
15 SALES AND USE TAX REFUND PROGRAM

16 Section 4. The act is amended by adding a section to read:  
17 Section 2915-D. Applicability.

18 Tax refunds shall not be issued under this part for taxable  
19 years beginning after June 30, 2019.

20 Section 5. Article XXIX-D of the act is amended by adding a  
21 part to read:

22 PART III  
23 SALES AND USE TAX EXEMPTION PROGRAM

24 Section 2921-D. Sales and use tax exemption.

25 (a) State sales and use tax.--The tax imposed by section 202  
26 shall not be imposed upon the sale at retail or use of computer  
27 data center equipment for installation in a computer data  
28 center, purchased by:

29 (1) An owner or operator of a computer data center  
30 certified under this article.

1           (2) A qualified tenant of a computer data center  
2           certified under this article.

3           (b) Local sales and use tax.--The sale at retail or use of  
4           computer data center equipment for installation in a computer  
5           data center shall be exempt from a city or county tax on  
6           purchase price authorized under Article XXXI-B of the act of  
7           July 28, 1953 (P.L.723, No.230), known as the Second Class  
8           County Code, and the act of June 5, 1991 (P.L.9, No.6), known as  
9           the Pennsylvania Intergovernmental Cooperation Authority Act for  
10          Cities of the First Class, if purchased by:

11           (1) An owner or operator of a computer data center  
12           certified under this article.

13           (2) A qualified tenant of a computer data center  
14           certified under this article.

15           (c) Applicability.--A tax exemption shall apply during the  
16           qualification period.

17           (d) Exclusions.--The following do not qualify for a tax  
18           exemption:

19           (1) Telecommunications providers' computer data centers  
20           that do not have retail or wholesale customers being billed  
21           or paying for services, and whose majority of services are  
22           for internal services to itself or its subsidiaries.

23           (2) Computer data center equipment used by the computer  
24           data center to:

25           (i) generate electricity for resale purposes to a  
26           power utility; or

27           (ii) generate, provide or sell more than 5% of its  
28           electricity outside of the computer data center.

29          Section 2922-D. Application for certification.

30          To be considered for a certification, an owner or operator of

1 a computer data center shall submit to the department an  
2 application on a form prescribed by the department that includes  
3 the following:

4 (1) The owner's or operator's name, address and  
5 telephone number.

6 (2) The address of the site where the facility is or  
7 will be located, including, if applicable, information  
8 sufficient to identify the specific portion or portions of  
9 the facility comprising the computer data center.

10 (3) An affirmation, signed by an authorized executive  
11 representing the owner or operator, that the computer data  
12 center is expected to satisfy the certification requirements  
13 prescribed in section 2925-D.

14 (4) The department shall begin accepting applications no  
15 later than 90 days after the effective date of this section.  
16 Section 2923-D. Review of application for certification.

17 (a) General rule.--Within 60 days after receiving a complete  
18 and correct application, the department shall review the  
19 application and either issue a written certification that the  
20 computer data center qualifies for the certification or provide  
21 written reasons for its denial.

22 (b) Deemed approval.--Failure of the department to approve  
23 or deny an application within 60 days after the date the owner  
24 or operator of a computer data center submits the application to  
25 the department constitutes certification of the computer data  
26 center, and the department shall issue written certification to  
27 the owner or operator within 14 days.

28 Section 2924-D. Separation of facilities.

29 (a) Separate certification.--An owner or operator of a  
30 computer data center may separate a facility into one or more

1 computer data centers, which may each receive a separate  
2 certification, if each computer data center individually meets  
3 the requirements prescribed in section 2925-D.

4 (b) Limitation.--A portion of a facility or an article of  
5 computer data equipment shall not be deemed to be a part of more  
6 than one computer data center.

7 (c) Aggregation.--An owner or operator may aggregate one or  
8 more parcels, buildings or condominiums in a facility into a  
9 single computer data center if, in the aggregate, the parcels,  
10 buildings and condominiums meet the requirements of this  
11 article.

12 Section 2925-D. Computer data center certification  
13 requirements.

14 (a) General rule.--In order to be certified under this part,  
15 a computer data center owner or operator must meet the following  
16 requirements:

17 (1) On or before the fourth anniversary of  
18 certification, the combined investments made by the owner or  
19 operator of the computer data center or the qualified tenant  
20 must have created a total minimum investment of:

21 (i) at least \$35,000,000 of new investment if the  
22 computer data center is located in a county with a  
23 population of 250,000 or fewer individuals; or

24 (ii) at least \$60,000,000 of new investment if the  
25 computer data center is located in a county with a  
26 population of more than 250,000 individuals.

27 (2) On or before the fourth anniversary of  
28 certification, the owner or operator of a computer data  
29 center must pay annual compensation of at least \$1,000,000 to  
30 employees at the certified computer data center site for each

1 year of certification.

2 (b) Prior application.--A computer data center that has met  
3 the eligibility requirements as prescribed under section 2906-D  
4 and has, prior to July 1, 2019, submitted an application for  
5 certification as prescribed under section 2903-D shall be deemed  
6 to meet the certification requirements of this section. The  
7 certification shall not be revoked and shall remain in effect  
8 for the remainder of the certification period.

9 (c) Limitation.--The department may not certify any computer  
10 data center after December 31, 2029.

11 (d) Definition.--As used in this section, the term "new  
12 investment" means construction, expansion or build out of data  
13 center space at either a new or an existing computer data center  
14 on or after July 1, 2019, and the purchase and installation of  
15 computer data center equipment, except for items described under  
16 paragraph (4) of the definition of "computer data center  
17 equipment" in section 2901-D.

18 Section 2926-D. Notification.

19 (a) Requirements satisfied.--On or before the fourth  
20 anniversary of the certification of a computer data center, the  
21 owner or operator of a computer data center shall notify the  
22 department in writing whether the computer data center for which  
23 the certification is requested has satisfied the requirements  
24 prescribed in section 2925-D.

25 (b) Records.--Until a computer data center satisfies the  
26 requirements prescribed in section 2925-D the owner, operator  
27 and qualified tenants shall maintain detailed records of all  
28 investments created by the computer data center, including costs  
29 of buildings and computer data center equipment, and all tax  
30 exemptions directly received by the owner, operator or qualified

1 tenant.

2 Section 2927-D. Revocation of certification.

3 (a) Revocation.--If the department determines that the  
4 requirements of section 2925-D have not been satisfied, the  
5 department may revoke the certification of a computer data  
6 center.

7 (b) Appeal.--The owner or operator of the computer data  
8 center may appeal the revocation. Appeals filed under this  
9 section shall be governed by Article II.

10 (c) Recapture.--If certification is revoked pursuant to this  
11 section, the qualification period of any owner, operator or  
12 qualified tenant of the computer data center expires, and the  
13 department may recapture from the owner, operator or qualified  
14 tenant all or part of the tax exemption provided directly to the  
15 owner or operator or qualified tenant. The department may give  
16 special consideration or allow a temporary exemption from  
17 recapture of the tax exemption if there is extraordinary  
18 hardship due to factors beyond the control of the owner or  
19 operator or qualified tenant. The department may require the  
20 owner or operator or qualified tenant to file appropriate  
21 amended tax returns in order to reflect any recapture of the tax  
22 exemption.

23 Section 2928-D. Guidelines.

24 The department shall publish guidelines and prescribe forms  
25 and procedures as necessary for the purposes of this part.

26 Section 2929-D. Confidential information.

27 Proprietary business information contained in the application  
28 form described in section 2922-D and the written notice  
29 described in section 2926-D, as well as information concerning  
30 the identity of a qualified tenant, are confidential and may not

1 be disclosed to the public. The department shall maintain, on  
2 its Internet website, a list of the names of computer data  
3 centers that have been certified under this part.

4 Section 2930-D. List of tenants.

5 An owner or operator of a computer data center shall provide,  
6 to the extent permissible under Federal law, the department with  
7 a list of qualified tenants, including the commencement and  
8 expiration dates of each qualified tenant's agreement to use or  
9 occupy part of the computer data center. The list shall be  
10 provided to the department annually, upon request by the  
11 department.

12 Section 2931-D. Sale or transfer.

13 Except as provided in section 2927-D, a computer data center  
14 retains its certification regardless of a transfer, sale or  
15 other disposition, directly or indirectly, of the computer data  
16 center.

17 Section 2932-D. Exemption certificate.

18 A computer data center owner, operator or tenant must prepare  
19 and deliver a properly executed exemption certificate to a  
20 vendor from which the owner, operator or tenant purchases exempt  
21 property.

22 Section 6. This act shall take effect as follows:

23 (1) The addition of Part III of Article XXIX-D of the  
24 act shall take effect July 1, 2019.

25 (2) The remainder of this act shall take effect  
26 immediately.