
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1120 Session of
2015

INTRODUCED BY NESBIT, GABLER, SCHREIBER, IRVIN, THOMAS,
D. PARKER, GIBBONS, PYLE, KOTIK, TOPPER, BARRAR, MUSTIO,
MURT, WATSON AND A. HARRIS, MAY 6, 2015

REFERRED TO COMMITTEE ON FINANCE, MAY 6, 2015

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," providing for a computer data center equipment
11 incentive program.

12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 Section 1. Article XXIX-D heading of the act of March 4,
15 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, added
16 October 9, 2009 (P.L.451, No.48) is amended to read:

17 ARTICLE XXIX-D

18 [(RESERVED)]

19 COMPUTER DATA CENTER EQUIPMENT

20 INCENTIVE PROGRAM

21 Section 2. The act is amended by adding sections to read:

22 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 "Computer data center." All or part of a facility that may
5 be composed of one or more businesses, owners or tenants, that
6 is or will be predominantly used to house working servers or
7 similar data storage systems and that may have uninterruptible
8 energy supply or generator backup power, or both, cooling
9 systems, towers and other temperature control infrastructure.

10 "Computer data center equipment." Equipment that is used to
11 outfit, operate or benefit a computer data center and component
12 parts, installations, refreshments, replacements and upgrades to
13 the equipment, whether any of the equipment is affixed to or
14 incorporated into real property, including:

15 (1) All equipment necessary for the transformation,
16 generation, distribution or management of electricity that is
17 required to operate computer server or similar data storage
18 equipment, including generators, uninterruptible energy
19 supplies, conduit, gaseous fuel piping, cabling, duct banks,
20 switches, switchboards, batteries and testing equipment.

21 (2) All equipment necessary to cool and maintain a
22 controlled environment for the operation of the computer
23 servers or data storage systems and other components of the
24 computer data center, including mechanical equipment,
25 refrigerant piping, gaseous fuel piping, adiabatic and free
26 cooling systems, cooling towers, water softeners, air
27 handling units, indoor direct exchange units, fans, ducting
28 and filters.

29 (3) All water conservation systems, including facilities
30 or mechanisms that are designed to collect, conserve and

1 reuse water.

2 (4) All software, including, but not limited to,
3 enabling software and licensing agreements, computer server
4 or similar data storage equipment, chassis, networking
5 equipment, switches, racks, cabling, trays and conduit.

6 (5) All monitoring equipment and security systems.

7 (6) Modular data centers and preassembled components of
8 any item described in this definition, including components
9 used in the manufacturing of modular data centers.

10 (7) Other tangible personal property that is essential
11 to the operations of a computer data center.

12 "Department." The Department of Revenue of the Commonwealth.

13 "Existing computer data center." A computer data center in
14 operation prior to January 1, 2014.

15 "Facility." One or more parcels of land in this Commonwealth
16 and any structures and personal property contained on the land.

17 "New computer data center." A computer data center that
18 first commences operation on or after January 1, 2014.

19 "New investment." Construction, expansion or build out of
20 data center space at either a new computer data center or an
21 existing computer data center on or after January 1, 2014, and
22 the purchase and installation of computer data center equipment,
23 except for items described under paragraph (4) of the definition
24 of "computer data center equipment."

25 "Owner or operator." Includes a single entity, multiple
26 entities or affiliated entities.

27 "Qualification period." As follows:

28 (1) With respect to the owner or operator of a computer
29 data center certified under this article, a period of time
30 beginning on the date of certification of the computer data

1 center and expiring at the end of the fifteenth full calendar
2 year following the calendar year in which the owner or
3 operator filed the form for certification.

4 (2) With respect to a qualified tenant of the owner or
5 operator of a computer data center certified under this
6 article, a period of time beginning on the date that the
7 qualified tenant enters into an agreement concerning the use
8 or occupancy of the computer data center and expiring at the
9 earlier of the expiration of the term of the agreement or the
10 end of the 10th full calendar year following the calendar
11 year in which the qualified tenant enters into the agreement.

12 "Qualified tenant." An entity that contracts with the owner
13 or operator of a computer data center that is certified pursuant
14 to this article to use or occupy part of the computer data
15 center for at least 100 kilowatts per month for two or more
16 years.

17 "Tax exemption." The tax exemption provided for under this
18 article.

19 "Telecommunications provider." A provider of
20 telecommunications services, as defined in 61 Pa. Code § 60.20
21 (relating to telecommunications service).

22 "Tenant." An entity that contracts with the owner or
23 operator of a computer data center to use or occupy part of the
24 computer data center.

25 Section 2902-D. Sales and use tax exemption.

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

30 (1) An owner or operator of a computer data center

1 certified under this article.

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

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

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

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

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

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

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

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

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

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

30 Section 2903-D. Application.

1 To be considered for a tax exemption, an owner or operator of
2 a computer data center shall submit to the department an
3 application on a form prescribed by the department that includes
4 the following:

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

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

11 (3) If the computer data center is to qualify under
12 section 2906-D(1), the following:

13 (i) The anticipated investment associated with the
14 computer data center for which the tax exemption is being
15 sought.

16 (ii) An affirmation, signed by an authorized
17 executive representing the owner or operator, that the
18 computer data center is expected to satisfy the
19 certification requirements prescribed in section 2906-
20 D(1).

21 (4) If the computer data center is to qualify under
22 section 2906-D(2), an affirmation, signed by an authorized
23 executive representing the owner or operator, that the
24 computer data center has satisfied, or will satisfy, the
25 certification requirements prescribed in section 2906-D(2).

26 Section 2904-D. Review of application.

27 (a) General rule.--Within 60 days after receiving a complete
28 and correct application, the department shall review the
29 application and either issue a written certification that the
30 computer data center qualifies for the tax exemption or provide

1 written reasons for its denial.

2 (b) Deemed approval.--Failure of the department to approve
3 or deny an application within 60 days after the date the owner
4 or operator of a computer data center submits the application to
5 the department constitutes certification of the computer data
6 center, and the department shall issue written certification to
7 the owner or operator within 14 days. The department may not
8 certify any new computer data center after December 31, 2029.

9 Section 2905-D. Separation of facilities.

10 (a) Separate certification.--An owner or operator of a
11 computer data center may separate a facility into one or more
12 computer data centers, which may each receive a separate
13 certification, if each computer data center individually meets
14 the requirements prescribed in section 2906-D.

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

18 (c) Aggregation.--An owner or operator may aggregate one or
19 more parcels, buildings or condominiums in a facility into a
20 single computer data center if, in the aggregate, the parcels,
21 buildings and condominiums meet the requirements of this
22 article.

23 Section 2906-D. Eligibility requirements.

24 A computer data center must meet one of the following
25 requirements, after taking into account the combined investments
26 made and annual compensation paid by the owner or operator of a
27 computer data center or a qualified tenant:

28 (1) On or before the fourth anniversary of
29 certification, the computer data center creates a minimum
30 investment of:

1 (i) At least \$25,000,000 of new investment if the
2 computer data center is located in a county with a
3 population of 250,000 or fewer individuals; or

4 (ii) At least \$50,000,000 of new investment if the
5 computer data center is located in a county with a
6 population of more than 250,000 individuals.

7 (2) On or before the fourth anniversary of
8 certification, one or more taxpayers operating or occupying a
9 computer data center, in the aggregate, pay annual
10 compensation of at least \$1,000,000 to employees at the
11 certified computer data center site for each year of the
12 certification.

13 Section 2907-D. Notification.

14 (a) Requirements satisfied.--On or before the fourth
15 anniversary of the certification of a computer data center, the
16 owner or operator of a computer data center shall notify the
17 department in writing whether the computer data center for which
18 the certification is requested has satisfied the requirements
19 prescribed in section 2906-D.

20 (b) Records.--Until a computer data center satisfies the
21 requirements prescribed in section 2906-D, the owner, operator
22 and qualified tenants shall maintain detailed records of all
23 investment created by the computer data center, including costs
24 of buildings and computer data center equipment, and all tax
25 exemption directly received by the owner, operator or qualified
26 tenant.

27 Section 2908-D. Revocation of certification.

28 (a) Revocation.--If the department determines that the
29 requirements of section 2906-D have not been satisfied, the
30 department may revoke the certification of a computer data

1 center.

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

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

17 Section 2909-D. Regulations.

18 The department shall promulgate regulations and prescribe
19 forms and procedures as necessary for the purposes of this
20 article.

21 Section 2910-D. Confidential information.

22 Proprietary business information contained in the application
23 form described in section 2903-D and the written notice
24 described in section 2907-D, as well as information concerning
25 the identity of a qualified tenant, are confidential and may not
26 be disclosed to the public. The department may disclose the name
27 of a computer data center that has been certified under this
28 article.

29 Section 2911-D. List of tenants.

30 An owner or operator of a computer data center shall provide,

1 to the extent permissible under Federal law, the department with
2 a list of qualified tenants, including the commencement and
3 expiration dates of each qualified tenant's agreement to use or
4 occupy part of the computer data center. The list shall be
5 provided to the department annually, upon request by the
6 department.

7 Section 2912-D. Sale or transfer.

8 Except as provided in section 2908-D, a computer data center
9 retains its certification regardless of a transfer, sale or
10 other disposition, directly or indirectly, of the computer data
11 center.

12 Section 2913-D. Exemption certificate.

13 An owner, operator or tenant must prepare and deliver a
14 properly executed exemption certificate to a vendor from which
15 the owner, operator or tenant purchases exempt property.

16 Section 3. This act shall take effect immediately.