

---

THE GENERAL ASSEMBLY OF PENNSYLVANIA

---

SENATE BILL

No. 760 Session of  
2017

---

INTRODUCED BY HUTCHINSON AND BARTOLOTTA, JUNE 14, 2017

---

REFERRED TO FINANCE, JUNE 14, 2017

---

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, for sales and use  
12 tax refund, for application for certification, for review of  
13 application, for eligibility requirements, for notification,  
14 for revocation of certification, repealing provisions  
15 relating to application and limitations and providing for  
16 exemption certificate.

17 The General Assembly of the Commonwealth of Pennsylvania  
18 hereby enacts as follows:

19 Section 1. The definitions of "new investment" and "tax  
20 refund" in section 2901-D of the act of March 4, 1971 (P.L.6,  
21 No.2), known as the Tax Reform Code of 1971, added July 13, 2016  
22 (P.L.526, No.84), are amended and the section is amended by  
23 adding definitions to read:

24 Section 2901-D. Definitions.

25 The following words and phrases when used in this article

1 shall have the meanings given to them in this section unless the  
2 context clearly indicates otherwise:

3 \* \* \*

4 "New investment." Construction, expansion or build out of  
5 data center [space at either a new or an existing computer data  
6 center] on or after [January 1, 2014] July 1, 2015, and the  
7 purchase and installation of computer data center equipment,  
8 except for items described under paragraph (4) of the definition  
9 of "computer data center equipment."

10 \* \* \*

11 "Tax exemption." The tax exemption provided for under this  
12 article.

13 ["Tax refund." The tax refund provided for under this  
14 article.]

15 "Telecommunications provider." A provider of  
16 telecommunications services, as defined in 61 Pa. Code § 60.20  
17 (relating to telecommunications service).

18 \* \* \*

19 Section 2. Sections 2902-D, 2903-D, 2904-D(b), 2906-D, 2907-  
20 D(b) and 2908-D(c) of the act, added July 13, 2016 (P.L.526,  
21 No.84), are amended to read:

22 Section 2902-D. Sales and use tax [refund] exemption.

23 [(a) Application.--Beginning July 1, 2017, an owner or  
24 operator or qualified tenant of a computer data center certified  
25 under this article may apply for a tax refund of taxes paid  
26 under Article II upon the sale at retail or use of computer data  
27 center equipment for installation in a computer data center,  
28 purchased by:

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

1 (2) A qualified tenant certified under this article.

2 (b) Applicability.--Taxes paid under Article II during the  
3 qualification period shall be eligible for a refund under this  
4 article.

5 (c) Exclusions.--The following do not qualify for a tax  
6 refund:

7 (1) Computer data center equipment used by the computer  
8 data center to:

9 (i) generate electricity for resale purposes to a  
10 power utility, except for sales incidental to the primary  
11 sale to computer data centers and which qualify under  
12 subparagraph (ii); or

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

15 (2) (Reserved).]

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

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

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

24 (b) Local sales and use tax.--The sale at retail or use of  
25 computer data center equipment for installation in a computer  
26 data center shall be exempt from a city or county tax on  
27 purchase price authorized under Article XXXI-B of the act of  
28 July 28, 1953 (P.L.723, No.230), known as the Second Class  
29 County Code, and the act of June 5, 1991 (P.L.9, No.6), known as  
30 the Pennsylvania Intergovernmental Cooperation Authority Act for

1 Cities of the First Class, if purchased by:

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

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

6 (c) Applicability.--A tax exemption shall apply during the  
7 qualification period.

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

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

14 (2) Computer data center equipment used by the computer  
15 data center to:

16 (i) generate electricity for resale purposes to a  
17 power utility; or

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

20 Section 2903-D. Application for certification.

21 To be considered for a certification, an owner or operator of  
22 a computer data center shall submit to the department an  
23 application on a form prescribed by the department that includes  
24 the following:

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

27 (2) The address of the site where the facility is or  
28 will be located, including, if applicable, information  
29 sufficient to identify the specific portion or portions of  
30 the facility comprising the computer data center.

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

3 (i) The anticipated investment associated with the  
4 computer data center for which the certification is being  
5 sought.

6 (ii)] An affirmation, signed by an authorized  
7 executive representing the owner or operator, that the  
8 computer data center is expected to satisfy the  
9 certification requirements prescribed in section [2906-  
10 D(1)] 2906-D.

11 [(4) If the computer data center is to qualify under  
12 section 2906-D(2), an affirmation, signed by an authorized  
13 executive representing the owner or operator, that the  
14 computer data center has satisfied, or will satisfy, the  
15 certification requirements prescribed in section 2906-D(2).]

16 (5) The department shall begin accepting applications no  
17 later than 90 days after the effective date of this section.

18 Section 2904-D. Review of application.

19 \* \* \*

20 (b) Deemed approval.--Failure of the department to approve  
21 or deny an application within 60 days after the date the owner  
22 or operator of a computer data center submits the application to  
23 the department constitutes certification of the computer data  
24 center, and the department shall issue written certification to  
25 the owner or operator within 14 days. The department may not  
26 certify any new computer data center after December 31, 2029.

27 Section 2906-D. [Eligibility] Computer data center  
28 certification requirements.

29 [A computer data center must meet one of] To be certified, a  
30 computer data center owner or operator must meet the following

1 requirements[, after taking into account the combined  
2 investments made and annual compensation paid by the owner or  
3 operator of the computer data center or the qualified tenant]:

4 (1) On or before the fourth anniversary of  
5 certification, the computer data center [creates] owner or  
6 operator must make a minimum investment of:

7 (i) [At] at least [\$25,000,000] \$35,000,000 of new  
8 investment if the computer data center is located in a  
9 county with a population of 250,000 or fewer individuals;  
10 or

11 (ii) [At] at least [\$50,000,000] \$60,000,000 of new  
12 investment if the computer data center is located in a  
13 county with a population of more than 250,000  
14 individuals.

15 (2) [One or more taxpayers operating or occupying a  
16 computer data center, in the aggregate,] On or before the  
17 fourth anniversary of certification, the computer data center  
18 owner or operator must pay annual compensation of at least  
19 \$1,000,000 to employees at the certified computer data center  
20 site for each year of the certification [after the fourth  
21 anniversary of certification].

22 Section 2907-D. Notification.

23 \* \* \*

24 (b) Records.--Until a computer data center satisfies the  
25 requirements prescribed in section 2906-D, the owner, operator  
26 and qualified tenants shall maintain detailed records of all  
27 investments created by the computer data center, including costs  
28 of buildings and computer data center equipment, and all tax  
29 [refunds] exemptions directly received by the owner, operator or  
30 qualified tenant.

1 Section 2908-D. Revocation of certification.

2 \* \* \*

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

16 Section 3. Sections 2913-D and 2914-D of the act are  
17 repealed:

18 [Section 2913-D. Application.

19 (a) General rule.--An owner, operator or qualified tenant  
20 may apply for a tax refund under this article on or before July  
21 30, 2017, and each July 30 thereafter.

22 (b) Notification.--No later than September 30, 2017, and  
23 each September 30 thereafter, the department shall notify each  
24 applicant of the amount of tax refund approved by the  
25 department.

26 Section 2914-D. Limitations.

27 (a) Total.--The total amount of State tax refunds approved  
28 by the department under this article shall not exceed \$5,000,000  
29 in any fiscal year.

30 (b) Allocation.--If the total amount of tax refunds approved

1 for all applicants exceeds the limitation on the amount of tax  
2 refunds in subsection (a) in a fiscal year, the tax refund to be  
3 received by each applicant shall be determined as follows:

4 (1) Divide:

5 (i) the tax refund approved for the applicant; by

6 (ii) the total of all tax refunds approved for all  
7 applicants.

8 (2) Multiply:

9 (i) the amount under subsection (a); by

10 (ii) the quotient under paragraph (1).

11 (3) The algebraic form of the calculation under this  
12 subsection is:

13 Taxpayer's tax refund = amount allocated for those  
14 tax refunds X (tax refund approved for the  
15 applicant/total of all tax refunds approved for all  
16 applicants).]

17 Section 4. The act is amended by adding a section to read:

18 Section 2915-D. Exemption certificate.

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

22 Section 5. This act shall take effect July 1, 2018.