
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 471 Session of
2019

INTRODUCED BY HUTCHINSON, ARGALL, BARTOLOTTA, BOSCOLA, BROOKS,
DISANTO, KILLION, PHILLIPS-HILL, STEFANO AND VOGEL,
MARCH 22, 2019

REFERRED TO FINANCE, MARCH 22, 2019

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.