

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 952 Session of 2021

INTRODUCED BY OBERLANDER, MUSTELLO, KAUFER, RYAN, MILLARD,
 LONGIETTI, JAMES, NEILSON, SAYLOR, PICKETT, SANKEY,
 BERNSTINE, METCALFE, MARSHALL, WHEELAND, SAINATO, FARRY,
 LABS, MIHALEK, HENNESSEY, D. WILLIAMS AND CIRESI,
 MARCH 17, 2021

REFERRED TO COMMITTEE ON FINANCE, MARCH 17, 2021

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 for review of
 12 application, providing for applicability and for sales and
 13 use tax exemption program; imposing duties on the Department
 14 of Revenue; and making editorial changes.

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

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

SUBARTICLE A

PRELIMINARY PROVISIONS

22 Section 2. The definition of "tax refund" in section 2901-D

1 of the act is amended and the section is amended by adding
2 definitions to read:

3 Section 2901-D. Definitions.

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

7 * * *

8 "Tax exemption." The tax exemption provided under Subarticle
9 C.

10 "Tax refund." The tax refund provided for under [this
11 article] Subarticle B.

12 "Telecommunications provider." A provider of
13 telecommunications services as defined in 61 Pa. Code § 60.20
14 (relating to telecommunications service).

15 * * *

16 Section 3. Article XXIX-D of the act is amended by adding a
17 subarticle heading to read:

18 SUBARTICLE B

19 SALES AND USE TAX REFUND PROGRAM

20 Section 4. Section 2902-D of the act is renumbered to read:
21 Section [2902-D] 2911-D. Sales and use tax refund.

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

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

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

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

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

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

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

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

14 (2) (Reserved).

15 Section 5. Sections 2903-D, 2904-D and 2905-D of the act are
16 amended to read:

17 Section [~~2903-D~~] 2912-D. Application for certification.

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

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

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

28 (3) If the computer data center is to qualify under
29 section [~~2906-D(1)~~] 2915-D(1), the following information:

30 (i) The anticipated investment associated with the

1 computer data center for which the certification is being
2 sought.

3 (ii) An affirmation, signed by an authorized
4 executive representing the owner or operator, that the
5 computer data center is expected to satisfy the
6 certification requirements prescribed in section [2906-
7 D(1)] 2915-D(1).

8 (4) If the computer data center is to qualify under
9 section [2906-D(2)] 2915-D(2), an affirmation, signed by an
10 authorized executive representing the owner or operator, that
11 the computer data center has satisfied, or will satisfy, the
12 certification requirements prescribed in section [2906-D(2)]
13 2915-D(2).

14 (5) The department shall begin accepting applications no
15 later than 90 days after the effective date of this section.
16 Section [2904-D] 2913-D. Review of application.

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. The department may not
28 certify any computer data center after December 31, 2029.

29 (c) Limitation.--The department may not certify any computer
30 data center under this subarticle after December 31, 2021.

1 Section [2905-D] 2914-D. Separation of facilities.

2 (a) Separate certification.--An owner or operator of a
3 computer data center may separate a facility into one or more
4 computer data centers, which may each receive a separate
5 certification, if each computer data center individually meets
6 the requirements prescribed in section [2906-D] 2915-D.

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

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

15 Section 6. Section 2906-D of the act is renumbered to read:
16 Section [2906-D] 2915-D. Eligibility requirements.

17 A computer data center must meet one of the following
18 requirements, after taking into account the combined investments
19 made and annual compensation paid by the owner or operator of
20 the computer data center or the qualified tenant:

21 (1) On or before the fourth anniversary of
22 certification, the computer data center creates a minimum
23 investment of:

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

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

30 (2) One or more taxpayers operating or occupying a

1 computer data center, in the aggregate, pay annual
2 compensation of at least \$1,000,000 to employees at the
3 certified computer data center site for each year of the
4 certification after the fourth anniversary of certification.

5 Section 7. Sections 2907-D and 2908-D of the act are amended
6 to read:

7 Section [2907-D] 2916-D. Notification.

8 (a) Requirements satisfied.--On or before the fourth
9 anniversary of the certification of a computer data center, the
10 owner or operator of a computer data center shall notify the
11 department in writing whether the computer data center for which
12 the certification is requested has satisfied the requirements
13 prescribed in section [2906-D] 2915-D.

14 (b) Records.--Until a computer data center satisfies the
15 requirements prescribed in section [2906-D] 2915-D, the owner,
16 operator and qualified tenants shall maintain detailed records
17 of all investments created by the computer data center,
18 including costs of buildings and computer data center equipment,
19 and all tax refunds directly received by the owner, operator or
20 qualified tenant.

21 Section [2908-D] 2917-D. Revocation of certification.

22 (a) Revocation.--If the department determines that the
23 requirements of section [2906-D] 2915-D have not been satisfied,
24 the department may revoke the certification of a computer data
25 center.

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

29 (c) Recapture.--If certification is revoked pursuant to this
30 section, the qualification period of any owner, operator or

1 qualified tenant of the computer data center expires, and the
2 department may recapture from the owner, operator or qualified
3 tenant all or part of the tax refund provided directly to the
4 owner or operator or qualified tenant. The department may give
5 special consideration or allow a temporary exemption from
6 recapture of the tax refund if there is extraordinary hardship
7 due to factors beyond the control of the owner or operator or
8 qualified tenant.

9 Section 8. Section 2909-D of the act is renumbered to read:
10 Section [2909-D] 2918-D. Guidelines.

11 The department shall publish guidelines and prescribe forms
12 and procedures as necessary for the purposes of this article.

13 Section 9. Section 2910-D of the act is amended to read:
14 Section [2910-D] 2919-D. Confidential information.

15 Proprietary business information contained in the application
16 form described in section [2903-D] 2912-D and the written notice
17 described in section [2907-D] 2916-D, as well as information
18 concerning the identity of a qualified tenant, are confidential
19 and may not be disclosed to the public. The department may
20 disclose the name of a computer data center that has been
21 certified under this article.

22 Section 10. Section 2911-D of the act is renumbered to read:
23 Section [2911-D] 2920-D. List of tenants.

24 An owner or operator of a computer data center shall provide,
25 to the extent permissible under Federal law, the department with
26 a list of qualified tenants, including the commencement and
27 expiration dates of each qualified tenant's agreement to use or
28 occupy part of the computer data center. The list shall be
29 provided to the department annually, upon request by the
30 department.

1 Section 11. Section 2912-D of the act is amended to read:

2 Section [2912-D] 2921-D. Sale or transfer.

3 Except as provided in section [2908-D] 2917-D, a computer
4 data center retains its certification regardless of a transfer,
5 sale or other disposition, directly or indirectly, of the
6 computer data center.

7 Section 12. Sections 2913-D and 2914-D of the act are
8 renumbered to read:

9 Section [2913-D] 2922-D. Application.

10 (a) General rule.--An owner, operator or qualified tenant
11 may apply for a tax refund under this article on or before July
12 30, 2017, and each July 30 thereafter.

13 (b) Notification.--No later than September 30, 2017, and
14 each September 30 thereafter, the department shall notify each
15 applicant of the amount of tax refund approved by the
16 department.

17 Section [2914-D] 2923-D. Limitations.

18 (a) Total.--The total amount of State tax refunds approved
19 by the department under this article shall not exceed \$7,000,000
20 in any fiscal year.

21 (b) Allocation.--If the total amount of tax refunds approved
22 for all applicants exceeds the limitation on the amount of tax
23 refunds in subsection (a) in a fiscal year, the tax refund to be
24 received by each applicant shall be determined as follows:

25 (1) Divide:

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

27 (ii) the total of all tax refunds approved for all
28 applicants.

29 (2) Multiply:

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

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

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

4 Taxpayer's tax refund = amount allocated for those
5 tax refunds X (tax refund approved for the
6 applicant/total of all tax refunds approved for all
7 applicants).

8 Section 13. Article XXIX-D of the act is amended by adding a
9 section to read:

10 Section 2924-D. Applicability.

11 Notwithstanding any other provision of this article, the
12 department may not issue a tax refund under this subarticle for
13 the tax imposed upon the sale at retail or use of computer data
14 center equipment purchased after December 31, 2021.

15 Section 14. Article XXIX-D of the act is amended by adding a
16 subarticle to read:

17 SUBARTICLE C

18 SALES AND USE TAX EXEMPTION PROGRAM

19 Section 2931-D. Sales and use tax exemption.

20 (a) State sales and use tax.--Beginning January 1, 2022, the
21 tax imposed under Article II shall not be imposed upon the sale
22 at retail or use of computer data center equipment purchased for
23 installation in a certified computer data center, if purchased
24 by any of the following:

25 (1) An owner or operator of a computer data center
26 certified under this subarticle.

27 (2) A qualified tenant of a computer data center
28 certified under this subarticle.

29 (b) Local sales and use tax.--Beginning January 1, 2022, the
30 tax imposed under Article XXXI-B of the act of July 28, 1953

1 (P.L.723, No.230), known as the Second Class County Code, the
2 tax imposed under Chapter 6 of the act of June 5, 1991 (P.L.9,
3 No.6), known as the Pennsylvania Intergovernmental Cooperation
4 Authority Act for Cities of the First Class, and the tax imposed
5 under Article II-B, shall not be imposed upon the sale at retail
6 or use of, or the purchase price of, computer data center
7 equipment purchased for installation in a certified computer
8 data center if purchased by any of the following:

9 (1) An owner or operator of a computer data center
10 certified under this subarticle.

11 (2) A qualified tenant of a computer data center
12 certified under this subarticle.

13 (c) Applicability.--A tax exemption approved under this
14 subarticle shall apply during the qualification period.

15 (d) Exclusions.--The following shall not qualify for a tax
16 exemption:

17 (1) A telecommunications provider's computer data center
18 that does not have retail or wholesale customers being billed
19 or paying for services and does provide a majority of
20 services for internal use or use by the telecommunications
21 provider's subsidiaries.

22 (2) Computer data center equipment used by the certified
23 computer data center for any of the following purposes:

24 (i) Generating electricity for resale purposes to a
25 power utility.

26 (ii) Generating, providing or selling more than 5%
27 of its electricity outside of the certified computer data
28 center.

29 Section 2932-D. Application for certification.

30 (a) Application.--To be considered for a certification, an

1 owner or operator of a computer data center shall submit to the
2 department an application on a form prescribed by the department
3 that includes all of 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 computer data
7 center is or will be located, including, if applicable,
8 information sufficient to identify the specific portion of a
9 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 under section 2935-D.

14 (b) Acceptance.--The department shall begin accepting
15 applications no later than 30 days after the effective date of
16 this section.

17 Section 2933-D. Review of application.

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

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

29 Section 2934-D. Separation of facilities.

30 (a) Separate certification.--An owner or operator of a

1 computer data center may separate a facility into one or more
2 computer data centers, which may each receive a separate
3 certification, if each computer data center individually meets
4 the requirements prescribed in section 2935-D.

5 (b) Limitation.--A portion of a facility or an article of
6 computer data equipment shall not be deemed to be a part of more
7 than one computer data center for certification under this
8 subarticle.

9 (c) Aggregation.--An owner or operator may aggregate one or
10 more parcels, buildings or condominiums in a facility into a
11 single computer data center for certification under this
12 subarticle if, in the aggregate, the parcels, buildings and
13 condominiums meet the requirements prescribed in section 2935-D.
14 Section 2935-D. Eligibility requirements.

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

18 (1) On or before the fourth anniversary of
19 certification, the combined investment, in the aggregate, of
20 the owner or operator or qualified tenant of the computer
21 data center must total a minimum of any of the following:

22 (i) At least \$75,000,000 of new investment if the
23 computer data center is located in a county with a
24 population of 250,000 or fewer individuals and creates 25
25 new jobs.

26 (ii) At least \$100,000,000 of new investment if the
27 computer data center is located in a county with a
28 population of more than 250,000 individuals and creates
29 45 new jobs.

30 (2) On or before the fourth anniversary of

1 certification, the owner or operator or qualified tenant of a
2 computer data center, in the aggregate, must pay annual
3 compensation of at least \$1,000,000 to employees at the
4 certified computer data center site for each year of the
5 certification after the fourth anniversary of certification.

6 (b) Prior applications.--A computer data center that has met
7 the eligibility requirements as prescribed under section 2915-D
8 and has, prior to July 1, 2021, been certified under section
9 2913-D shall be deemed to meet the certification requirements of
10 this section. The certification shall not be revoked, except as
11 provided under section 2917-D, and shall remain in effect for
12 the remainder of the qualification period.

13 (c) Limitation.--The department may not certify any computer
14 data center under this subarticle after December 31, 2032.

15 (d) Definition.--As used in this section, the term "new
16 investment" means construction, expansion or build out of data
17 center space at either a new or an existing computer data center
18 on or after January 1, 2022, and the purchase and installation
19 of computer data center equipment, except for items described
20 under paragraph (4) of the definition of "computer data center
21 equipment" in section 2901-D.

22 Section 2936-D. Notification.

23 (a) Requirements satisfied.--On or before the fourth
24 anniversary of the certification of a computer data center, the
25 owner or operator of the computer data center shall notify the
26 department in writing whether the computer data center for which
27 the certification is requested has satisfied the requirements
28 prescribed under section 2935-D.

29 (b) Records.--Until a computer data center satisfies the
30 requirements prescribed in section 2935-D, the owner or operator

1 or qualified tenant shall maintain detailed records of all
2 investments created by the computer data center, including costs
3 of buildings and computer data center equipment and all tax
4 refunds directly received by the owner or operator or qualified
5 tenant.

6 Section 2937-D. Revocation of certification.

7 (a) Revocation.--If the department determines that the
8 requirements of section 2935-D have not been satisfied, the
9 department may revoke the certification of a computer data
10 center.

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

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

26 Section 2938-D. Guidelines.

27 The department shall publish guidelines and prescribe forms
28 and procedures as necessary for the purposes of this article.

29 Section 2939-D. Confidential information.

30 Proprietary business information contained in the application

1 form described under section 2932-D and the written notice
2 described under section 2936-D, as well as information
3 concerning the identity of a qualified tenant, shall be
4 confidential and may not be disclosed to the public. The
5 department may disclose the name of a computer data center that
6 has been certified under this subarticle.

7 Section 2940-D. List of tenants.

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

15 Section 2941-D. Sale or transfer.

16 Except as provided under section 2937-D, a computer data
17 center retains its certification regardless of a transfer, sale
18 or other disposition, directly or indirectly, of the computer
19 data center.

20 Section 2942-D. Exemption certificate.

21 The owner or operator or qualified tenant of a certified
22 computer data center shall prepare and deliver a properly
23 executed exemption certificate to a vendor from which the owner
24 or operator or qualified tenant purchases exempt computer data
25 center equipment.

26 Section 15. This act shall take effect immediately.