

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 463 Session of 2021

INTRODUCED BY HUTCHINSON, BROOKS, ARGALL, STEFANO, BARTOLOTTA, J. WARD, GORDNER, MENSCH, BOSCOLA, DiSANTO, PHILLIPS-HILL, REGAN, AUMENT, COMMITTA, KANE AND YUDICHAK, MARCH 19, 2021

SENATOR HUTCHINSON, FINANCE, AS AMENDED, APRIL 19, 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
23 of the act is amended and the section is amended by adding

1 definitions to read:

2 Section 2901-D. Definitions.

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

6 * * *

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

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

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

14 * * *

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

17 SUBARTICLE B

18 SALES AND USE TAX REFUND PROGRAM

19 Section 4. Section 2902-D of the act is renumbered to read:

20 Section [2902-D] 2911-D. Sales and use tax refund.

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

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

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

30 (b) Applicability.--Taxes paid under Article II during the

1 qualification period shall be eligible for a refund under this
2 article.

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

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

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

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

13 (2) (Reserved).

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

16 Section [2903-D] 2912-D. Application for certification.

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

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

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

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

29 (i) The anticipated investment associated with the
30 computer data center for which the certification is being

1 sought.

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

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

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

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

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

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

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

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

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

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 if, in the aggregate, the parcels,
12 buildings and condominiums meet the requirements of this
13 article.

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

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

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

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

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

29 (2) One or more taxpayers operating or occupying a
30 computer data center, in the aggregate, pay annual

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

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

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

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

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

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

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

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

28 (c) Recapture.--If certification is revoked pursuant to this
29 section, the qualification period of any owner, operator or
30 qualified tenant of the computer data center expires, and the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (1) Divide:

25 (i) the tax refund approved for the applicant; by
26 (ii) the total of all tax refunds approved for all
27 applicants.

28 (2) Multiply:

29 (i) the amount under subsection (a); by
30 (ii) the quotient under paragraph (1).

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

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

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

9 Section 2924-D. Applicability.

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

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

16 SUBARTICLE C

17 SALES AND USE TAX EXEMPTION PROGRAM

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

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

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

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

28 (b) Local sales and use tax.--Beginning January 1, 2022, the
29 tax imposed under Article XXXI-B of the act of July 28, 1953
30 (P.L.723, No.230), known as the Second Class County Code, the

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

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

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

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

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

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

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

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

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

28 Section 2932-D. Application for certification.

29 (a) Application.--To be considered for a certification, an
30 owner or operator of a computer data center shall submit to the

1 department an application on a form prescribed by the department
2 that includes all of the following:

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

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

9 (3) An affirmation, signed by an authorized executive
10 representing the owner or operator, that the computer data
11 center is expected to satisfy the certification requirements
12 prescribed under section 2935-D.

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

16 Section 2933-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 shall constitute certification of the computer
26 data center, and the department shall issue written
27 certification to the owner or operator within 14 days.

28 Section 2934-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 2935-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 for certification under this
7 subarticle.

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

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

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

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

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

29 (2) On or before the fourth anniversary of
30 certification, the owner or operator or qualified tenant of a

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

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

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

21 Section 2936-D. Notification.

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

28 (b) Records.--Until a computer data center satisfies the
29 requirements prescribed in section 2935-D, the owner or operator
30 or qualified tenant shall maintain detailed records of all

1 investments created by the computer data center, including costs
2 of buildings and computer data center equipment and all tax
3 refunds directly EXEMPTIONS received by the owner or operator or <--
4 qualified tenant.

5 Section 2937-D. Revocation of certification.

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

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

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