

By: Anderson

H.B. No. 3104

A BILL TO BE ENTITLED

AN ACT

relating to the temporary exemption of certain tangible personal property related to certain connected data center projects from sales and use taxes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.3596 to read as follows:

Sec. 151.3596. PROPERTY USED IN CERTAIN CONNECTED DATA CENTER PROJECTS; TEMPORARY EXEMPTION. (a) In this section:

(1) "Affiliated group" has the meaning assigned by Section 171.0001.

(2) "Connected data center project" means a project that:

(A) is located in this state;

(B) is composed of one or more buildings:

(i) comprising at least 250,000 square feet of space;

(ii) located or to be located on contiguous or noncontiguous parcels of land that are commonly owned, owned by affiliation with the qualifying operator, or leased by a common qualifying operator; and

(iii) connected to each other:

(a) by fiber and associated equipment required for operating a fiber transmission network between data

1 center buildings and upstream Internet peering points for the sole  
2 use of the qualifying occupant; and

3 (b) for the purpose of providing  
4 redundancy and resiliency for the data center services provided in  
5 each building;

6 (C) is specifically constructed or refurbished  
7 and primarily used to house servers and related equipment and  
8 support staff for the processing, storage, and distribution of  
9 data;

10 (D) is used by a single qualifying occupant for  
11 the processing, storage, and distribution of data;

12 (E) is not used primarily by a telecommunications  
13 provider to place tangible personal property used to deliver  
14 telecommunications services; and

15 (F) has an uninterruptible power source, backup  
16 electricity generation system, fire suppression and prevention  
17 system, and physical security that includes restricted access,  
18 video surveillance, and electronic systems.

19 (3) "County average weekly wage" means the average  
20 weekly wage in a county for all jobs during the most recent four  
21 quarterly periods for which data is available, as computed by the  
22 Texas Workforce Commission, at the time a connected data center  
23 project creates a job used to qualify under this section. If the  
24 connected data center project is located in more than one county,  
25 the county average weekly wage for each county in which the project  
26 is located may be calculated by averaging the county average weekly  
27 wages of all counties in which the project is located.

1           (4) "Permanent job" means an employment position that  
2 will exist for at least five years after the date the job is  
3 created.

4           (5) "Qualifying connected data center project" means a  
5 connected data center project that meets the qualifications  
6 prescribed by Subsection (d).

7           (6) "Qualifying job" means a full-time, permanent job  
8 that pays at least 120 percent of the county average weekly wage in  
9 the county in which the job is based. The term includes a new  
10 employment position staffed by a third-party employer if a written  
11 contract exists between the third-party employer and a qualifying  
12 owner, qualifying operator, or qualifying occupant that provides  
13 that the employment position is permanently assigned to an  
14 associated qualifying connected data center project. The term does  
15 not include a job that is moved from one county in this state to  
16 another county in this state.

17           (7) "Qualifying operator" means a person who controls  
18 access to a qualifying connected data center project, regardless of  
19 whether that person owns each item of tangible personal property  
20 located at the qualifying connected data center project. A  
21 qualifying operator may also be the qualifying owner.

22           (8) "Qualifying owner" means a person who owns one or  
23 more buildings in which a qualifying connected data center project  
24 is located. The term includes a member of the person's affiliated  
25 group. A qualifying owner may also be the qualifying operator.

26           (9) "Qualifying occupant" means a person who contracts  
27 with a qualifying owner or qualifying operator to place, or cause to

1 be placed, and to use tangible personal property at the qualifying  
2 connected data center project or, in the case of a qualifying  
3 occupant who is also the qualifying owner and the qualifying  
4 operator, who places or causes to be placed and uses tangible  
5 personal property at the qualifying connected data center project.  
6 The term includes a member of the person's affiliated group.

7 (b) Except as otherwise provided by this section, tangible  
8 personal property that is necessary and essential to the operation  
9 of a qualifying connected data center project is exempted from the  
10 taxes imposed by this chapter if the tangible personal property is  
11 purchased for installation at, incorporation into, or in the case  
12 of electricity, use in a qualifying connected data center project  
13 by a qualifying owner, qualifying operator, or qualifying occupant,  
14 and the tangible personal property is:

- 15 (1) electricity;
- 16 (2) an electrical system;
- 17 (3) a cooling system;
- 18 (4) a backup electricity generation system;
- 19 (5) hardware or a distributed mainframe computer or  
20 server;
- 21 (6) a data storage device;
- 22 (7) network connectivity equipment;
- 23 (8) a rack, cabinet, and raised floor system;
- 24 (9) a peripheral component or system;
- 25 (10) software;
- 26 (11) a mechanical, electrical, or plumbing system that  
27 is necessary to operate any tangible personal property described by

1 Subdivisions (2)-(10);

2 (12) any other item of equipment or system necessary  
3 to operate any tangible personal property described by Subdivisions  
4 (2)-(11), including a fixture; and

5 (13) a component part of any tangible personal  
6 property described by Subdivisions (2)-(10).

7 (c) The exemption provided by this section does not apply  
8 to:

9 (1) office equipment or supplies;

10 (2) maintenance or janitorial supplies or equipment;

11 (3) equipment or supplies used primarily in sales  
12 activities or transportation activities;

13 (4) tangible personal property on which the purchaser  
14 has received or has a pending application for a refund under Section  
15 [151.429](#);

16 (5) tangible personal property not otherwise exempted  
17 under Subsection (b) that is incorporated into real estate or into  
18 an improvement of real estate;

19 (6) tangible personal property that is rented or  
20 leased for a term of one year or less; or

21 (7) notwithstanding Section [151.3111](#), a taxable  
22 service that is performed on tangible personal property exempted  
23 under this section.

24 (d) Subject to Subsection (j), a connected data center  
25 project may be certified by the comptroller as a qualifying  
26 connected data center project for purposes of this section if, on or  
27 after September 1, 2023:

1           (1) a single qualifying occupant:

2                   (A) contracts with a qualifying owner or  
3 qualifying operator to lease space in which the qualifying occupant  
4 will locate a connected data center project; or

5                   (B) occupies a space that was not previously used  
6 as a data center in which the qualifying occupant will locate a  
7 connected data center project, in the case of a qualifying occupant  
8 who is also the qualifying operator and the qualifying owner; and

9           (2) the qualifying owner, qualifying operator, or  
10 qualifying occupant, jointly or independently:

11                   (A) creates at least 40 qualifying jobs in the  
12 county or counties in which the connected data center project is  
13 located;

14                   (B) makes or agrees to make a capital investment,  
15 on or after September 1, 2023, of at least \$500 million in that  
16 particular connected data center project, the amount of which may  
17 not include a capital investment to replace personal property  
18 previously placed in service in that connected data center project,  
19 over a five-year period beginning on the earlier of:

20                           (i) the date the connected data center  
21 project submits the application described by Subsection (e); or

22                           (ii) the date the connected data center  
23 project is certified by the comptroller as a qualifying connected  
24 data center project; and

25                   (C) agrees to contract for at least 20 megawatts  
26 of transmission capacity for the operation of the connected data  
27 center project.

1       (e) A connected data center project that is eligible under  
2 Subsection (d) to be certified by the comptroller as a qualifying  
3 connected data center project shall apply to the comptroller for  
4 certification as a qualifying connected data center project and for  
5 the issuance of a registration number or numbers by the  
6 comptroller. The application must be made on a form prescribed by  
7 the comptroller and include the information required by the  
8 comptroller. The application must include the name and contact  
9 information for the qualifying occupant, and, if applicable, the  
10 name and contact information for the qualifying owner and the  
11 qualifying operator who will claim the exemption authorized under  
12 this section. The application form must include a section for the  
13 applicant to certify that the capital investment required by  
14 Subsection (d)(2)(B) will be met independently or jointly by the  
15 qualifying occupant, qualifying owner, or qualifying operator  
16 within the time period prescribed by Subsection (d)(2)(B).

17       (f) The exemption provided by this section begins on the  
18 date the connected data center project is certified by the  
19 comptroller as a qualifying connected data center project and  
20 expires on the 20th anniversary of that date, if the qualifying  
21 occupant, qualifying owner, or qualifying operator, independently  
22 or jointly makes a capital investment of \$500 million or more as  
23 provided by Subsection (d)(2)(B).

24       (g) Each person who is eligible to claim an exemption  
25 authorized by this section must hold a registration number issued  
26 by the comptroller. The registration number must be stated on the  
27 exemption certificate provided by the purchaser to the seller of

1 tangible personal property eligible for the exemption.

2 (h) The comptroller shall revoke all registration numbers  
3 issued in connection with a qualifying connected data center  
4 project that the comptroller determines does not meet the  
5 requirements prescribed by Subsection (d). Each person who has the  
6 person's registration number revoked by the comptroller is liable  
7 for taxes, including penalty and interest from the date of  
8 purchase, imposed under this chapter on purchases for which the  
9 person claimed an exemption under this section, regardless of  
10 whether the purchase occurred before the date the registration  
11 number was revoked.

12 (i) The comptroller shall adopt rules consistent with and  
13 necessary to implement this section, including rules relating to:

14 (1) a qualifying connected data center project,  
15 qualifying owner, qualifying operator, and qualifying occupant;

16 (2) issuance and revocation of a registration number  
17 required under this section; and

18 (3) reporting and other procedures necessary to ensure  
19 that a qualifying connected data center project, qualifying owner,  
20 qualifying operator, and qualifying occupant comply with this  
21 section and remain entitled to the exemption authorized by this  
22 section.

23 (j) A connected data center project is not eligible to  
24 receive an exemption under this section if the connected data  
25 center project is subject to an agreement limiting the appraised  
26 value of the connected data center's property under former  
27 Subchapter B or C, Chapter 313.

1 SECTION 2. Section 151.317(a), Tax Code, is amended to read  
2 as follows:

3 (a) Subject to Sections 151.1551, 151.359, [~~and~~ 151.3595,  
4 and 151.3596 and Subsection (d) of this section, gas and  
5 electricity are exempted from the taxes imposed by this chapter  
6 when sold for:

7 (1) residential use;

8 (2) use in powering equipment exempt under Section  
9 151.318 or 151.3185 by a person processing tangible personal  
10 property for sale as tangible personal property, other than  
11 preparation or storage of prepared food described by Section  
12 151.314(c-2);

13 (3) use in lighting, cooling, and heating in the  
14 manufacturing area during the actual manufacturing or processing of  
15 tangible personal property for sale as tangible personal property,  
16 other than preparation or storage of prepared food described by  
17 Section 151.314(c-2);

18 (4) use directly in exploring for, producing, or  
19 transporting, a material extracted from the earth;

20 (5) use in agriculture, including dairy or poultry  
21 operations and pumping for farm or ranch irrigation;

22 (6) use directly in electrical processes, such as  
23 electroplating, electrolysis, and cathodic protection;

24 (7) use directly in the off-wing processing, overhaul,  
25 or repair of a jet turbine engine or its parts for a certificated or  
26 licensed carrier of persons or property;

27 (8) use directly in providing, under contracts with or

1 on behalf of the United States government or foreign governments,  
2 defense or national security-related electronics, classified  
3 intelligence data processing and handling systems, or  
4 defense-related platform modifications or upgrades;

5 (9) use directly by a data center, ~~or~~ large data  
6 center project, or connected data center project that is certified  
7 by the comptroller as a qualifying data center under Section  
8 [151.359](#), ~~or~~ a qualifying large data center project under Section  
9 [151.3595](#), or a qualifying connected data center project under  
10 Section 151.3596 in the processing, storage, and distribution of  
11 data;

12 (10) a direct or indirect use, consumption, or loss of  
13 electricity by an electric utility engaged in the purchase of  
14 electricity for resale; or

15 (11) use in timber operations, including pumping for  
16 irrigation of timberland.

17 SECTION 3. The change in law made by this Act does not  
18 affect tax liability accruing before the effective date of this  
19 Act. That liability continues in effect as if this Act had not been  
20 enacted, and the former law is continued in effect for the  
21 collection of taxes due and for civil and criminal enforcement of  
22 the liability for those taxes.

23 SECTION 4. This Act takes effect September 1, 2023.