

By: Christian

H.B. No. 3479

A BILL TO BE ENTITLED

AN ACT

relating to the rate and amount of the sales and use taxes imposed on certain equipment sold, leased, or used by certain data centers.

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

SECTION 1. Section 151.051(b), Tax Code, is amended to read as follows:

(b) Except as provided by Section 151.0516, the ~~[The]~~ sales tax rate is 6-1/4 percent of the sales price of the taxable item sold.

SECTION 2. Subchapter C, Chapter 151, Tax Code, is amended by adding Section 151.0516 to read as follows:

Sec. 151.0516. CERTAIN TANGIBLE PERSONAL PROPERTY SOLD TO QUALIFIED DATA CENTERS. (a) In this section:

(1) "County average weekly wage" means the average weekly wage in a county for all jobs during the most recent four quarterly periods for which data is available, as computed by the Texas Workforce Commission, at the time a data center creates a job used to qualify under this section.

(2) "Data center" means a facility:

(A) located in this state;

(B) composed of one or more buildings specifically constructed or refurbished and actually used primarily to house servers and related equipment and support staff;

and

1           (C) that has an uninterruptible power source, a  
2 generator backup power, a sophisticated fire suppression and  
3 prevention system, and enhanced physical security that includes  
4 restricted access, permanent security guards, video surveillance,  
5 and electronic systems.

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

9           (4) "Qualifying data center" means a data center that  
10 meets the qualifications prescribed by Subsection (e).

11           (5) "Qualifying job" means a full-time, permanent job  
12 that pays at least 150 percent of the county average weekly wage in  
13 the county in which the job is based.

14           (b) Except as provided by Subsections (c) and (d), the sales  
15 tax rate is one percent of the sales price of tangible personal  
16 property purchased by a qualifying data center that is necessary to  
17 manage or operate the data center, including:

- 18           (1) electricity;
- 19           (2) an electrical system;
- 20           (3) a cooling system;
- 21           (4) an emergency generator;
- 22           (5) hardware or a distributed mainframe computer or  
23 server;
- 24           (6) a data storage device;
- 25           (7) network connectivity equipment;
- 26           (8) a peripheral component or system; and
- 27           (9) a component part of tangible personal property

1 described by Subdivisions (2)-(8).

2 (c) This section does not apply to:

3 (1) office equipment or supplies; or

4 (2) equipment or supplies used in sales or  
5 distribution activities or in transportation activities.

6 (d) Notwithstanding any other law, the amount of tax imposed  
7 under this chapter on the sale of each item of tangible personal  
8 property to which this section applies may not exceed \$80.

9 (e) A data center is entitled to purchase tangible personal  
10 property at the rate and subject to the limitation authorized by  
11 this section only if:

12 (1) the data center creates at least 25 qualifying  
13 jobs in the county in which the data center is located;

14 (2) the data center agrees to invest at least \$150  
15 million in this state over a five-year period after initial  
16 construction of the data center facility; and

17 (3) the data center facility is designed, constructed  
18 or refurbished, and operated so that the facility obtains  
19 certification under the Leadership in Energy and Environmental  
20 Design (LEED) Green Building Rating System.

21 (f) A qualifying data center is entitled to purchase  
22 tangible personal property at the rate and subject to the  
23 limitation authorized by this section beginning on the date the  
24 center makes the initial investment described by Subsection (e)(2)  
25 and ending on the 10th anniversary of that date.

26 (g) The comptroller shall adopt rules necessary to  
27 implement this section, including rules relating to the:

1           (1) qualification of a data center under this section;

2           (2) determination of the date a data center initially  
3 qualifies for the entitlement to purchase tangible personal  
4 property at the rate and subject to the limitation authorized by  
5 this section; and

6           (3) reporting and other procedures necessary to ensure  
7 that the qualifying data center complies with this section and  
8 remains entitled to purchase tangible personal property at the rate  
9 and subject to the limitation authorized by this section.

10           SECTION 3. Section 151.101(b), Tax Code, is amended to read  
11 as follows:

12           (b) The tax is at the same percentage rate as is provided by  
13 Section 151.051 [~~of this code~~] on the sales price of the taxable  
14 item or, as applicable, at the same percentage rate and limitation  
15 as is provided by Section 151.0516 on the sales price of tangible  
16 personal property subject to that section.

17           SECTION 4. Subchapter C, Chapter 321, Tax Code, is amended  
18 by adding Section 321.2075 to read as follows:

19           Sec. 321.2075. LOCAL TAX INAPPLICABLE TO TANGIBLE PERSONAL  
20 PROPERTY TO WHICH SECTION 151.0516 APPLIES. The taxes imposed by  
21 this chapter do not apply to the sale, storage, use, or other  
22 consumption of tangible personal property if the sale, storage,  
23 use, or other consumption of the property is subject to the rate and  
24 limitation authorized by Section 151.0516.

25           SECTION 5. Subchapter B, Chapter 322, Tax Code, is amended  
26 by adding Section 322.1065 to read as follows:

27           Sec. 322.1065. LOCAL TAX INAPPLICABLE TO TANGIBLE PERSONAL

1 PROPERTY TO WHICH SECTION 151.0516 APPLIES. The taxes imposed by  
2 this chapter do not apply to the sale, storage, use, or other  
3 consumption of tangible personal property if the sale, storage,  
4 use, or other consumption of the property is subject to the rate and  
5 limitation authorized by Section 151.0516.

6 SECTION 6. Subchapter C, Chapter 323, Tax Code, is amended  
7 by adding Section 323.2065 to read as follows:

8 Sec. 323.2065. LOCAL TAX INAPPLICABLE TO TANGIBLE PERSONAL  
9 PROPERTY TO WHICH SECTION 151.0516 APPLIES. The taxes imposed by  
10 this chapter do not apply to the sale, storage, use, or other  
11 consumption of tangible personal property if the sale, storage,  
12 use, or other consumption of the property is subject to the rate and  
13 limitation authorized by Section 151.0516.

14 SECTION 7. The change in law made by this Act does not  
15 affect tax liability accruing before the effective date of this  
16 Act. That liability continues in effect as if this Act had not been  
17 enacted, and the former law is continued in effect for the  
18 collection of taxes due and for civil and criminal enforcement of  
19 the liability for those taxes.

20 SECTION 8. This Act takes effect September 1, 2011.